

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

September 28, 2009

Present: Steven P. Knowlton, Chair
Mary Ann Armano
John Dunnigan
Robert Knoebel, Sr.
Ellyse Berg

In Memoriam:
Raymond O'Connell

The following resolution was offered by Member Berg, seconded by Member Dunnigan, and carried based upon a review of the evidence presented at the public hearing held September 28, 2009 .

**BOARD OF APPEALS
VILLAGE OF NYACK, COUNTY OF ROCKLAND**

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In the Matter of the application of Jamroc Enterprises (10 Piermont Avenue) for an Area Variances from VON Code 59-10B(2)(a) et. seq. to permit an increase in residential density and a special permit to permit residential use over retail.

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The Zoning Board of Appeals held a public meeting on 28th of September, 2009, and due deliberations having been made this day;

Due to the untimely death of the Chief Building Inspector and no appearance by the Building Department at the hearing, the Applicant was given the opportunity to adjourn until the October hearing. The Applicant declined.

Now, upon said hearing and upon the evidence adduced thereat, it is hereby found and determined that:

FINDINGS OF FACT & CONCLUSIONS OF LAW

FIRST: Applicant petitions the Zoning Board for the area variance and special permit as noted above.

SECOND: The ZBA, in reaching its Findings of Fact and Conclusions of Law has taken the following factual testimony and evidence under consideration:

1. The application and supporting documents submitted;
2. Testimony of Joseph Sclafani for the Applicant
3. Site visits by all members of the ZBA
4. ZBA members knowledge of the site in question
5. Positive recommendation for both the variance and the special permit from the Planning Board
6. Testimony of no members of the public

THIRD: The site in question is located in the RM zoning district. The Applicant purchased the property in 1989 pursuant to the local zoning regulations.

FOURTH: The Nyack Planning Board has issued a positive recommendation to this Board in relation to the variance and special permit requests.

FIFTH: The applicant seeks to convert present commercial space to a 2 bedroom residential unit. The applicant contends, and has submitted a letter from a real estate professional supporting his contention, that there is little or no need for commercial space in there. He has been unable to rent out the space.

SIXTH: The proposed new residential use is less intense than the former use, and there is no requirement for a parking variance.

SEVENTH: The application furthers the objectives of the Comprehensive Master Plan in relation to residential density in the downtown.

CONCLUSIONS OF LAW:

The Zoning Board considered the factors set forth in Section 7-712-b of the Village Law of the State of New York as follows:

FIRST: That the proposed variances creates/does not create an undesirable change in the neighborhood. 5-0

SECOND: That no detriment to nearby properties will result from granting the variance. 5-0

THIRD: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variance. 5-0

FOURTH: That the variance is not substantial in light of the current conditions on the site. 5-0

FIFTH: That the hardship is not self-created.

The Board has weighed the findings of fact and the conclusions of law against one another as required under Section 7-712-b of the Village Law of the State of New York and finds in the interest of justice that the variance(s) applied for should be GRANTED with the following conditions:

Variance conditional upon confirmation of notice by the Building Department.

On a roll call, the vote was as follows:

Ayes: 5

Nays: 0

Abstain: 0

As to the Application for a Special Permit, The Zoning Board considered the factors set forth in Section 59-39(C) *et. seq.* and makes these Conclusions of Law:

FIRST: That the applicant has shown that all proposed structures, equipment and material will be readily accessible for fire and police protection.

SECOND: That the applicant has shown that the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.

THIRD: The applicant has shown that the location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with said residential district or conflict with the normal traffic of the neighborhood.

FOURTH: The applicant has shown that the location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

The Board has weighed the findings of fact and the conclusions of law as required under VON Code Section 59-39(C) *et. seq.* and finds in the interest of justice that the Special Permit should be GRANTED with the following conditions:

That the directives of the Planning Board and Architectural Review Board be followed.
Special Permit conditional upon confirmation of notice by the Building Department.
(Confirmed 9/29/09)

s/ Steven P. Knowlton

STEVEN P. KNOWLTON, Chairman
Zoning Board of Appeals, Nyack.