

RESOLUTION OF THE NYACK VILLAGE BOARD REGARDING STANDARDS FOR SITE SPECIFIC PERMITTING OF OUTDOOR DINING AND SIDEWALK CAFES

WHEREAS, it is the responsibility of the Nyack Board of Trustees, inter alia, to protect, promote and preserve the public health, safety and welfare by reducing and otherwise regulating noise levels; to promote the use and enjoyment of property; to protect the value of property; to promote commerce, and to keep noise levels in the commercial areas in the Village of Nyack at levels where they will not adversely effect the public or other business located near the source of the sound.

WHEREAS, certain provisions of the Nyack Village Code, specifically Chapter 238 (entitled "Noise Ordinance"), provide for the regulation of noise within the Village of Nyack, and

WHEREAS, there is a proliferation of businesses in the DMU Zoning District which have had, or have installed, windows and or doors which, when opened, emit noise from the building or establishment to the street and surrounding area, and

WHEREAS, many of the establishments who have windows and doors which, when opened, emit noise from the building or establishment to the street and surrounding area utilize the windows and doors in connection with Outdoor Dining or Sidewalk Cafes, and

WHEREAS, the Nyack Village Board has previously delegated the authority to issue Site Specific Permits for Outdoor Dining and Sidewalk Cafes to the Village of Nyack Building Inspector pursuant to the standards set forth in Village Code section 360-3.2 (E) (6) & (7), and

WHEREAS, the Village Board is desirous of adopting additional minimum standards with respect to all Outdoor Dining and/or Sidewalk Café Permits specifically to address the concerns raised by residents and commercial business owners in the downtown area,

THEREFORE BE IT RESOLVED, that the Village Board reaffirms that it has delegated its

authority to issue permits for Outdoor Dining or Sidewalk Cafes within the Village of Nyack to the Nyack Building Department under Village Code Sections 263-7 (B) and 360-3.2 (E) (6) & (7),

BE IT FURTHER RESOLVED, the Village Board moves to schedule a Public Hearing to amend the Village Code to add the following standards as conditions to any Outdoor Dining or Sidewalk Café Permit:

1. That all tables authorized under an Outdoor Dining and/or Sidewalk Café Permit shall be completely removed from the sidewalk by _____ (insert time).

2. That all windows and doors to any establishment holding an Outdoor Dining or Sidewalk Café Permit close all windows and doors to the establishment by _____ (insert time).

- 3.

- 4.

Passed by unanimous resolution of the Village Nyack Board of Trustees at its regularly scheduled Board meeting held on _____.

Mary E. White, Village Clerk

Local Law # ___ of 2011

A local law to amend Sections 360-3.2 (E) (6) & (7), entitled "Use Specific Standards" as applies to the standards applicable to Outdoor Dining Permits and Sidewalk Café Permits

New text in italics (underlined text are issues the Building Department has requested that the Board consider amending).

360-3.2 - USE SPECIFIC STANDARDS

...

(6) Outdoor dining.

(a)

Intent. Outdoor dining other than in the form of a sidewalk cafe as defined in this chapter shall be permitted as an accessory use that is incidental to and in conjunction with an established permitted restaurant, bar or delicatessen as permitted in the DMU, CC and WF Districts, ***provided that the establishment of such an accessory use has no deleterious effect on the public health, safety or welfare, or negative effect on adjoining businesses.*** Outdoor cabarets and outdoor dining in conjunction with a cabaret are specifically prohibited.

(b)

Standards and requirements.

[1]

Areas utilized for outdoor dining shall comply with setback requirements for a principal building for the district in which such use is located.

[2]

Areas utilized for outdoor dining shall not be located within 50 feet of the boundary of any SFR, TFR or MFR District.

[3]

Areas utilized for outdoor dining shall be included in the calculation of required parking for the principal use.

[4]

All outdoor dining areas pursuant to this section shall provide a food menu, but this shall not be interpreted to prohibit the service of beverages only.

[5]

Operating restrictions. The Building Inspector or Planning Board may prohibit or limit the hours of operation of any activities that may impact an adjacent or nearby properties, such as the operation or use of musical instruments or sound reproduction devices, or any noise emanating from the outdoor dining area other than the conversational and service sounds.

(i) All windows and doors on the building or establishment holding a permit issued pursuant to this section shall be closed, and any furnishings used in association with the outdoor dining area shall be removed from the outdoor dining area, at or before 1:00 a.m. of the morning following an evening of food and beverage service.

(7) Sidewalk cafe.

(a)

Intent. Sidewalk cafes may be permitted by special permit of the Building Inspector, provided that such use is incidental to and in conjunction with an established permitted restaurant, bar or tavern, or take-out restaurant as permitted in the DMU, RMU and WF Districts, ***provided that the establishment of such an accessory use has no deleterious effect on the public health, safety or welfare, or negative effect on adjoining businesses.*** Sidewalk cafes and outdoor cabarets in conjunction with fast-food establishments are specifically prohibited.

(b)

Special permit; site development plan. The Building Inspector is authorized to issue a special permit renewable yearly to operate a sidewalk cafe on public property, provided that the standards and requirements set forth in Subsection **E(7)(c)** of this section have been complied with by the applicant. ***The Building Inspector may refuse a renewal of the permit (1) if in his judgment the use at that location has unreasonably interfered with vehicular or pedestrian traffic; or (2) if the premises has a history of lack of cleanliness as evinced by a conviction for***

a municipal violation for any property maintenance related charge; or (3) there is an outstanding violation of the site plan filed in connection with the permit; or (4) or for other good cause. Any decision to deny an application to renew a permit must be in writing, and shall be subject to review by the Zoning Board of Appeals.

(c)

Standards and requirements. The Building Inspector shall require a site plan to be filed as a part of each application and such plan shall conform in all respects to the following:

[1]

There shall be a minimum of five feet of clear distance from any obstruction adjacent to the area occupied by the sidewalk cafe. The free area must be free of all obstructions (such as trees, parking meters, multispace parking control systems, utility poles, etc.) in order to allow adequate pedestrian movement. When an extended building line places a permitted establishment within 20 feet of the corner of a block, a sidewalk cafe shall only be permitted when it is determined that the use will not create a hazard, a sight distance obstruction for motor vehicle operators or unduly impede pedestrian traffic. There shall be no tables within or blocking an entrance or exit doorway.

[2]

A sidewalk cafe may be located only directly in front of the establishment with which it is associated. Sidewalk cafes shall be placed adjacent to the building and where the sidewalk is of such width and design that it does not interfere with pedestrian or vehicular traffic.

[3]

A sidewalk cafe may not be located within 50 feet of the boundary of any SFR, TFR or MFR District.

[4]

A fully removable gateless fencing no higher than table height may be erected on the perimeter line and attached to the building if removed nightly. Otherwise, the perimeter of the outdoor cafe area shall be highlighted with an erasable or removable marking. Such fence or marking shall be applied by the permit holder at its sole cost. The permit holder shall be fully responsible for the proper application and removal of any such marking and shall be liable for any subsequent damage or permanent indication of such marking on the public sidewalk.

[5]

Furnishings shall consist solely of tables, table umbrellas, chairs and planters containing live plants. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property.

[6]

No permanent structure or enclosure to accommodate the storage of furniture, accessories or accumulated garbage may be erected or placed adjacent to or separate from the sidewalk cafe on public property.

[7]

A sidewalk cafe shall not interfere with any public service facility such as a telephone, fire call box, mailbox or public bench located on a sidewalk.

[8]

All sidewalk cafes pursuant to this section must provide a food menu, but this shall not be interpreted to prohibit the service of beverages only.

[9]

The permit holder of a sidewalk cafe shall maintain, at its sole expense, comprehensive general liability insurance coverage in an amount not less than \$1,000,000, with the Village named as additional insured.

(d)

Operating restrictions.

[1]

The establishment shall maintain all necessary licenses required by the State of New York.

[2]

The Building Inspector may prohibit or limit the hours of operation of any activities that may impact an adjacent or nearby properties, such as the operation or use of musical instruments or sound reproduction devices, or any noise emanating from the sidewalk cafe or outdoor vending area other than the conversational and service sounds.

[3]

When the associated indoor establishment is not open or the sidewalk cafe is not in daily use, all furnishings shall be removed daily from public property.

[4]

All alcoholic beverages to be served at sidewalk cafes shall be prepared in the interior of the establishment.

[5]

The restaurant shall not serve food or beverage to a patron at a sidewalk cafe unless that patron is seated at a table.

[6]

Sidewalk cafes and the public property on which they are located shall be kept neat and clean at all times and free from any substance that may damage the sidewalk or cause patron or pedestrian injury.

[7]

The total number of patrons at any outdoor cafe or at any sidewalk tables authorized under this chapter shall not exceed six patrons as of 12:00 midnight following an evening of food and beverage service.

[8]

All outdoor cafes and sidewalk tables authorized under this section, as well as any furnishings used in association with the outdoor cafe area, shall be removed from the outdoor cafe area at or before 1:00 a.m. of the morning following an evening of food and beverage service.

[9] All windows and doors on the building or establishment holding a permit issued pursuant to this section shall be closed at or before 1:00 a.m. of the morning following an evening of food and beverage service.

(e)

Enforcement. This section shall be enforceable by the Building Inspector, Village Code Enforcement Officer, the Orangetown Police or the Village parking enforcement aides.

This local law shall be effective immediately upon filing with the Secretary of State.

NYACK BUILDING AND ZONING DEPARTMENT
9 NORTH BROADWAY, NYACK, NEW YORK 10960
845-358-4249

FOR BLDG. DEPT. USE ONLY
Date of application:
Date Issued:
Expiration Date:
Application approved and Permit granted by:
Permit No:
Application Fee Paid: \$
Cert. of Insurance Amt. \$
Chief Building & Zoning Inspector

APPLICATION FOR SITE SPECIFIC PERMIT
OUT DOOR DINING DINING/SIDEWALK CAFÉ
OUTDOOR VENDING/DISPLAY
(RENEWABLE ANNUALLY)

FOR OUTDOOR DINING/SIDEWALK CAFÉ FOR OUTDOOR VENDING/DISPLAY
NAME OF ESTABLISHMENT:
LOCATION ADDRESS:
TELEPHONE NUMBER:
ZONING DISTRICT: SECTION: BLOCK: LOT:
APPLICANT'S NAME:
APPLICANT'S ADDRESS:
PROPERTY OWNER'S NAME:
PROPERTY OWNER'S ADDRESS:
TELEPHONE NUMBER:

A COPY OF THE APPLICABLE LAWS IS ATTACHED. PLEASE READ THE REQUIRMENT BEFORE FILING THIS APPLICATION
APPLICANT MUST SUBMIT THE FOLLOWING TO THE BUILDING DEPARTMENT:

- 1. Two Copies of this completed application with all accompanying documentation
2. A plan of the property (see reverse side), showing the following measurements and placements in feet/inches:
a. Width of property on which the sidewalk use is proposed.
b. Distance from building line to curb.
c. Location of entrance and/or exit doorways.
d. Precise placement, giving dimensions and number of all tables and chairs, umbrellas, planters, or goods to be displayed or sold, sandwich board signs, or any other objects placed on sidewalks.
e. Indicate precise location of any obstruction, such as trees, telephone poles, parking meters, public telephones, fire call boxes, mailboxes, or public benches.
f. For corner lots within twenty (20) feet of curb, indicate distance from building line to curb.
3. Where application is made by one other than the property owner, applicant shall submit a letter from the owner authorizing applicant to file such application for permit.
4. A copy of applicant's general liability insurance coverage in an amount not less than one million (\$ 1,000,000.) dollars, with the Village of Nyack named as additional insured.
5. Payment of annual permit fee as established by the Board of Trustees.

Applicant hereby agrees that upon approval of permit s/he will abide by all Standards, Requirements, and Opening Restrictions as set forth in the Local Law. (A copy of the applicable law is attached for your convenience).

Date:

Signature:

PLAN OF THE PROPERTY
AND PROPOSED OUTDOOR AREA

SCALE: (1/4 INCH) EACH SQUARE = 1 FOOT

