

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

March 30, 2015

Present: Catherine Friesen, Chair
John Dunnigan
Robert Knoebel, Sr.
Mary Ann Armano
Ellyse Berg
Roger Cohen (alternate)

In Memoriam:
Raymond O'Connell

The following resolution was offered by Member Knoebel, seconded by Member Berg, and carried based upon a review of the evidence presented at the public hearing held on March 30, 2015.

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

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In the Matter of the application of Pavion Holdings, LLC (60 Cedar Hill Avenue) for an Area Variance from Article IV VON Code Section 360-4.3 (Dimensional Standards Table 4-1) for 26 dwelling units, where 109 dwelling units are permitted and 135 dwelling units are proposed

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The Zoning Board of Appeals held a public meeting on the 30th of March, 2015, and due deliberations having been made this day;

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 set forth 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 Ira Emmanuel, Esq, and Drazen Cackovic, AIA, on behalf of the

- Applicant;
3. ZBA members knowledge of the site in question and site visits by all members of the ZBA;
 4. Minutes of the Planning Board dated December 1, 2014, January 5, 2015, February 17, 2015 and March 2, 2015;
 5. Positive recommendations from the Planning Board with respect to the grant of the variance;
 6. Building Inspector's Plan Review Summary dated March 30, 2015;
 7. Full Environmental Assessment Form, Parts 1, 2 and 3;
 8. Letter from the County of Rockland Department of Planning to the ZBA dated February 6, 2015;
 9. School Child Impact Study dated January 9, 2015; and
 10. There was no testimony from any members of the public.

THIRD: The site in question contains approximately 4 acres of lot area in the RMU zoning district and is owned by 5000, Inc. It is bounded by South Franklin Street on the west, Hudson Street on the north, Florence Street and other properties to the east, and Cedar Hill Avenue on the south. The Nyack Brook runs beneath the site.

FOURTH: The Applicant, Pavion Holdings LLC, is the contract vendee of the property and has the consent of the owner to make the application. The Applicant proposes to demolish the existing industrial buildings on the site, to remediate any environmental contamination, and to construct a new mixed use development consisting of apartments, townhouses, live-work units, and commercial units. The proposed development will consist of 135 residential units and commercial space in two buildings. Ten percent (13) of the units will be affordable, as defined by the Zoning Code, and the applicant will be incorporating green infrastructure practices into the development to create LEED certifiable buildings. The applicant also proposes, among other public improvements, to "daylight" a portion of Nyack Brook, extend the existing bicycle lane onto South Franklin Street from the Raymond G. Esposito trail in South Nyack and install a sidewalk on South Franklin Street. The Applicant intends to deed a portion of its property on South Franklin Street (a strip approximately 30 feet wide) to the Village.

FIFTH: With a density of 18 units per acre in the RMU zone, 70 dwelling units are permitted under the Code. In this instance, a 40% increase in the number of dwelling units is permitted for taking advantage of the green infrastructure incentives of the Code, adding another 29 dwelling units along with a 10 dwelling unit increase for providing affordable housing. The applicant is thus permitted to construct 109 dwelling units.

SIXTH: Based on a FAR of 1.0, the total allowed building size is 171,420 square feet. The applicant estimates that, if 109 units were constructed (based on an average unit size of 1,174 square feet), approximately 43,504 square feet would remain that could be either retail or commercial space. While 2,730 square feet of retail space and another 5,908 square feet of live/work units are proposed, the developers contend that the remaining building area would be better used as residential space. The applicant thus requires an area variance for 26 dwelling

units in order to construct the proposed 135 units.

SEVENTH: The applicant proposes to construct the larger building of the development in a “U” shape which will permit parking to be hidden from the street. No variance would be required for parking if the 135 units are constructed as proposed.

EIGHTH: In support of its variance request, the Applicant observes that the districts surrounding the property on the north, east and west sides all permit densities much higher than the RMU. Under the allowable FAR and density calculations, the Applicant could construct fewer, bigger units, but such construction would meet the needs of neither the Village nor the Applicant’s prospective tenants. The Applicant notes in particular that, under the existing density calculations, the Code penalizes the construction of the work-life units, as well as the diversity of sizes and types of dwelling units, even though they are permitted by the RMU zoning district and are beneficial to the Village.

NINTH: The Applicant conducted marketing studies which concluded that use of the remaining 43,000 square foot area as either commercial space or larger residential units was not commercially feasible. Mark Glasel, the listing broker for the property, further testified to the lack of interest in space for manufacturing or commercial purposes.

TENTH: After extensive hearings which included input from the Village of South Nyack, the Superintendent of the Nyack School District, the Village Engineer, the Rockland County Planning Department, the Village Traffic Consultant, and the Village Planner, the Planning Board issued a positive recommendation with respect to the variance request. In making its recommendation, the Planning Board noted that it had “weighed the testimony of the applicant, reviewed the site plan, and makes this recommendation upon the grounds that the Applicant is going to lease various size apartments to a wide range of apartment seekers from loft artisans to three (3) bedroom families. In particular we note and find convincing the various arguments why the FAR in this zone unnecessarily limits the number of units at the site”. From a planning perspective, the Board found the use of the space as residential preferable to its permitted use as commercial, and noted that the “Applicant has offered more than sufficient parking, exciting green infrastructure components, a great variety of units ... [and] is installing a neighborhood mix of housing that includes 13 units of affordable housing, and modernizing almost 4 acres of Village property”.

ELEVENTH: The Planning Board declared itself lead agency with respect to SEQRA, and following review of the Long Form EAF, Part 1, answering the questions on Part 2 of the EAF, and, as reflected in Part 3 of the EAF, evaluating the magnitude and importance of the project’s impacts in making a Determination of Environmental Significance, issued a negative declaration, finding that no significant environmental impact will result from the proposed action.

TWELTH: The Zoning Board finds that the proposed development is consistent with the Nyack Comprehensive Master Plan of 2007. The Plan notes that “[t]he preferred use of this property is mixed residential and commercial, especially along Franklin Street, with complete residential use a possible alternative. The housing provided must include “affordable housing” as required by

Village Code. The proportion of commercial use should not be so great as to cause an excessive increase in downtown traffic. Open pedestrian access to the streets of any development is required. Any redevelopment design of the site should be compatible in scale, density and orientation with existing development in surrounding areas of the Village.” The Applicant testified that the area around the daylighted portion of Nyack Brook would be open to the public.

Findings of Fact moved and passed 5-0.

CONCLUSIONS OF LAW:

The Zoning Board considered the factors set forth in Section 7-712-b(3)(b) of the Village Law of the State of New York as follows:

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

FIRST: That the proposed variance does not create an undesirable change in the character of the neighborhood or a detriment to nearby properties. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 4, 7, 8, 9, 11, and 12. (5-0).

SECOND: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variance. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 8 and 9. (5-0)

THIRD: That the variance is not substantial in light of the current conditions on the site. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 7, 8 and 10. (5-0)

FOURTH: That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 10 and 11. (5-0)

FIFTH: That the hardship is self-created. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 3 and 4. (5-0)

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 applied for should be GRANTED with the following condition:

1. The directives of the Planning Board and Architectural Review Board are followed.

On a roll call, the vote was as follows:

Ayes: 5 (Friesen, Knoebel, Armano, Dunnigan, Berg)

Nays: 0

Abstain: 0

Catherine H. Friesen
CATHERINE H. FRIESEN, Chairperson
Zoning Board of Appeals, Nyack