

**Members Present:**

Peter Klose (Chairman)  
Daniel Jean-Gilles  
Alan Englander  
Glen E. Keene  
Donald Wilen-Alternate

**Also Present:**

Walter Sevastian  
Don Yacopino, Building Inspector  
Bob Galvin—Village Planner

**Absent:** Peter Voletsky  
Alternate Seth Kestenbaum

**Other Business:** Motion to approve the April 13, 2015 Minutes-- second by Jean Gilles-- Vote 5-0 approved.

**1. 159 Main Street. Alicia M. Crowe Esq. for Avida Wine Bar. Continuation of Site Plan application for outdoor seating in rear yard. Property is in DMU Zoning District.**

*Application has been modified from earlier proposal which included cooking in rear yard. Request is currently for a rear yard area of 19' x 25' (475 sq. ft.) to accommodate 12 patrons at three tables. Per Article III VON§360-3.2E(6)[3] areas used for outdoor dining shall be included the calculation of required parking for the principal use. Per Article IV VON§360-4.5 C(2)-Table 4-2 a parking variance for three off-street parking spaces is required.*

*Village Planner-- May 23, 2014 Memorandum-- The Applicant is Ricardo Cerdeira, the owner of the Avida Wine Bar, Inc. He appeared before the Planning Board on May 7, 2014, requesting site plan approval to use the rear yard for outside dining/drinking. He is also seeking a positive recommendation from the Planning Board for a parking variance of three off-street parking spaces in conjunction with the increased outdoor seating. The applicant previously received a variance for two off-street parking spaces in connection with the inside seating.*

*I conducted a site visit with the Village's Fire Inspector on May 23, 2014 with specific attention to the rear yard. The subject property consists of a 2 ½ story structure with two residential units above the ground floor wine bar and the adjacent pet shop (Dog Place). The upstairs bedroom windows look directly onto the rear yard and the three proposed outdoor tables. These windows are only some 7 - 9 feet above the level of the yard and less than 9 feet distant from the three proposed tables.*

*The subject property is bordered by the French bakery on the west, on the east is the remainder of the building's rear yard with entrance from Main Street used by residents, beyond this is the Wells Fargo Bank. To the north across Main Street is a Village parking lot and to the south is an existing warehouse at 150 Burd Street. This property has been the subject of a previous application for residential multi-family use. This is likely to be revisited as a result of the recently enacted DMU zoning changes. A new multi-family building would have residential units directly adjacent to the proposed outdoor dining use in the rear yard. The Church of Zion is located approximately a block away from the subject property. A member of the Church provided public comment at the Planning Board meeting objecting to serving alcohol in the premises' rear yard.*

*The applicant indicated at the Planning Board meeting that he would adhere to noise attenuation regulations but made no specific mention of specific measures except that no amplified music*

would be allowed and the rear yard would be closed at 11 PM. The applicant indicated that his license allows him to serve alcohol (primarily wine) in the rear yard but he cannot set up a service area in the rear yard.

However, the sketch plan provided shows a counter set up between the three tables and a barbeque. It is unclear if this is a service area and is allowable under his license. The yard itself is 25 feet across and 37 feet long. A 1,000 square foot shed is located 19 feet from the building and 8 ½ feet from the rear property line. There is a large tree located between the shed and the rear fence. The rear yard is surrounded by a new fence with a latched gate on the east side providing access to Main Street. The three tables provide seating for 12 persons.

The barbeque and its open flame are not only problematic from the Fire Inspector's view but would also present a potential nuisance relative to odors for the building's residents who overlook the rear yard. The access from the wine bar to the backyard is approximately 6 feet in width but there is also a step down in the exit access. The Fire Inspector also noted the following comments:

- BBQ, the building is wood construction, there is a shed that is wooden in the yard and there is now a wooden stockade fence surrounding the rear yard. I believe that the entire area is too close quartered for any open flame.
- The stockade fence gate section would have to be outfitted with panic hardware.
- Has the occupant been informed that whatever the occupancy is established for the backyard, the overall occupancy does not increase. For example, the Night Owl (the bar around the corner) has an occupancy load of 45 people; the side yard (outdoor area) has occupancy of 19, this does not mean that the total occupancy becomes 64. It means that 19 people from the indoor occupancy can inhabit the outdoor area.
- The applicant requests a patio with three tables for outside seating. The application specifies a 19 x 25 foot patio with lighting. The patio is not shown on the plan and does not indicate the material to be used. Using the applicant's state dimensions, the patio would take up over ½ of the yard and would use the entire width of the yard and extend from the building all the way to the existing shed at the rear. The installation of the requested patio would have potential storm water management issues with no information provided to make any type of decision. Additionally, no information is provided for lighting which can result in a negative spillover impact on the upstairs apartments. At this point, the Board does not have sufficient information regarding lighting to decide if it is dimly lighted or too well lighted with resulting nuisance or safety problems.

To summarize, the application has serious deficiencies and issues:

- The proposal represents a serious nuisance potential for the building's two upstairs apartments which are closely located to the activity in the rear yard
- Potential nuisance issues include: lighting, noise, odors from cooking and generally bedroom windows are too closely located to the rear yard (only some 9 feet distant and realizing that noise rises).
- Residents should have an expectation for the reasonable quiet enjoyment of their homes.
- The Sketch does not provide details of the patio regarding location and materials with serious questions for storm water management and drainage. It appears that the patio would take up approximately ½ of the rear yard consisting currently of grass.

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- *Open flame barbeque, latched gate and other issues called out by the Fire Inspector. Fire Inspector is especially concerned with the barbeque indicating that the quarters are too close for any open flame.*
- *Applicant has indicated in his statements before the Planning Board that he has a license to serve alcohol in the rear yard but cannot set up a service area. However, the applicant's sketch plan shows a counter located between the tables and barbeque. What is the applicant's intention for the use of this counter? Does he intend to amend his license to use this counter for serving alcohol in the rear yard?*

*For the reasons stated above, I would recommend that the Planning Board not approve the site plan for this proposed use.*

**SEQRA** *This proposed action is a Type II action under NYSDEC 617.5 ( C ) (7) "construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities";*

**LWRP Consistency** *Under the Village Code, Type II actions are considered to be consistent with the Village's LWRP policies.*

**Applicant--** application for additional rear seating-- no seating currently. No longer involves any of the prior application broadness. Plan has been changed to only permit optional seating. Service is only for wine bar patrons. Wants to reduce the seating to reduce up to twelve people 19 by 25 feet-- Building Inspector still considers it to be a need for three (parking spaces). Needs three additional parking spaces-- patrons need parking-- adding more square feet. Still only accommodate the Not the number of people but the square feet. No parking from other establishments-- stop sending to find additional parking-- spaces are not for rent. The wine bar is located there is a village lot--can be used for parking for the wine bar-- does not have evidence of how the permit operates. Would need a permit from the Village, and is unlikely to get one.

Chairman Klose tabled any discussion of the Site Plan on the ground that the three parking space location is too much a requested variance to suggest that additional rear yard alcohol consumption should be permitted. Under the current code, the only way to address this would be through plan and parking. Chairman Klose is against additional rear yard alcohol consumption because the neighborhood will soon gentrify and the Village residents will suffer the problems of other bars on Main Street-- does not want residential over rear bar use. The Village planner suggested that sometimes there is a way that legislation could address the situation through renewable special permits.

**Public Comment** - Maria Whittingham ( Maria Luisa's)-- comment that this is the right situation-- for adult drinkers and is not too concerned would support the application

**Board--** member Keene concerned about hours of operation-site plan concern. Tenants have not offered any letters of support and stated that one of the upstairs neighbors objects -- **APPLICANT ADMITTED THAT THE UPSTAIRS NEIGHBORS ARE THEMSELVES AGAINST THE EXPANSION OF USE that would now require additional parking.**

**Motion by Chairman Klose--** Move to close the public hearing as to the recommendation to the ZBA--

seconded by Keene, passed 5-0, as to the public discussion of the recommendation to the ZBA only. **SITE PLAN REMAINS OPEN.**

*Variances-- RESOLUTION By motion of Chairman Klose and seconded by Englander that the planned improvements are not in keeping with the nature and use of the rear yard in the Village, that similar applications have been denied; that Police Department is adamantly against additional seating in the rear yard (Memo dated December 2, 2013) and there appears to be no public benefit to granting more rear yard drinking establishments so the Planning Board hereby makes a **negative recommendation** to the ZBA with respect to the **area variance** from Article III VON§360-3.2E(6)[3] areas used for outdoor dining shall be included the calculation of required parking for the principal use; Per Article IV VON§360-4.5 C(2)-Table 4-2 a parking variance for three off-street parking spaces is required. **Vote: 3 – 2 in favor of issuing a negative declaration. Members Klose, Englander and Wilen against the expansion of rear yard drinking establishments and variances based upon that.***

**Site Plan-- REMAINS OPEN SUBJECT TO THE REVIEW BY THE ARB AND THE ZBA. PLANNING BOARD SPECIFICALLY HOLDS FURTHER HEARING OVER TO CONSIDER ALL ISSUES ASSOCIATED WITH SUCH PROPOSED USE.**

- 2. 2-6 North Midland Avenue. Joseph Lagana. Site Plan application to demolish existing structure, construct a three story multi-family dwelling and request a recommendation to Zoning Board of Appeals.**

**Applicant--** Barry Terach-- did not appear, however, the applicant is directed to modify the plans and to provide additional site plans, view sheds and elevations. Members of the Board are significantly concerned by the very narrow sidewalks proposed by the building, especially in light of the prior building at the Adair. This building does not propose any entrance to Main Street and that is a significant concern to some of the members also. Chairman Klose would like the Village Planner to render an opinion about that particular planning.

Member Klose would like the promised Viewshed Studies down main street, up and down Midland Avenue, and would like a height elevation study of the surrounding buildings.

**Public Comment - None**

**Board-- None -- Adjourned without appearance.**

- 3. 32 Tallman Avenue. Jay Greenwell for Bernard Weintraub and Ingrid Hopkins. Application for a subdivision to convert one lot into two lots. Property is in SFR-1 Zoning District. There is no application for Site Plan and nothing of that nature will be considered.**

*Building Inspector-- Proposal complies with zoning requirements. Although the proposed building envelope is shown and appears to comply with zoning requirements, this is not a site plan application. Proposal complies with zoning requirements. Although proposed building envelope is shown and appears to comply with zoning requirements, this is not a site plan application.*

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*Notification was sent to County of Rockland, Town of Clarkstown, Village of Upper Nyack and Town of Orangetown Department of Environmental Management & Engineering on March 13, 2014. To date replies only from County of Rockland Department of Planning and the Town of Clarkstown Department of Planning have been received. Revised Subdivision Plat received and included.*

*SEQRA-- The proposed action is an Unlisted action which has been circulated to involved agencies including the Town of Clarkstown and Upper Nyack. Letter was received from the Town of Clarkstown indicating that the action is a matter of local determination with no comments. The Village Planner has been requested to review the EAF and prepare a draft recommendation for a Neg. Dec for this action. The Draft Neg Dec.-- no significant impact on the environment, proposed by Klose and seconded by Keene -- vote --5-0.*

*LWRP Once the Planning Board completes its SEQRA determination, it can review the Coastal Assessment Form and make a determination regarding consistency with the Village's LWRP policies. Village Planner also finds consistency with the LWRP-- made by Klose and seconded by Keene -- vote of 5-0 in favor.*

***Applicant--*** Village of Upper Nyack -- 4-28-15-- application .8 acres-- GML review has no concerns-- local determination-- planning board secretary. addressed all village engineer-- set of plan- moved all comments of Village engineer

***Public Comment - NONE.***

*Klose moves to close the public hearing on the Sub-Division- Jean-Gilles seconds-- 5-0 passed.*

***Board--*** *The proposed action is an Unlisted action which has been circulated to involved agencies including the Town of Clarkstown and Upper Nyack. Letter was received from the Town of Clarkstown indicating that the action is a matter of local determination with no comments. The Village Planner has been requested to review the EAF and prepare a draft recommendation for a Neg. Dec for this action. The Draft Neg Dec.-- no significant impact on the environment, proposed by Klose and seconded by Keene -- vote --5-0.*

*Klose moves to approve the Subdivision Plan dated 11-7-2014 revised 4-17-15 to prepare for final approval-- and to grant authority to chair to sign the final plan. Second by Jean Gilles-- vote 5-0, approved, with site plan to return when and if it is developed.*

- 4. *73 South Broadway. Kier Levesque for "73 South Broadway, LLC." Site Plan application for demolition of one story addition at rear of building.*** *Property is in DMU zoning district. Proposal is to demolish a rear addition with structural issues. Due to an oversight on the part of the Building Inspector, applicant has not yet appeared before ARB.*

*SEQRA The proposed action is a Type II action under NYSDEC 617.5 ( C ) (2) "replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;"*

*LWRP As a Type II action, the application is considered by the Village Code to be consistent with*

*the Village's LWRP policies.*

**Applicant--** Kier Levesque for the Applicant seeking to demolish existing structure without impacting Nyack Brook. settlement crack and deteriorating roof with citation to remove the structure-- on site inspection to remove it. plan just to take walls and roof down. access ladder for the fire escape--

**Public Comment** - *Maria Whittingham (Maria Luisa)- owns next door-- basement-- concerned about the removal of the wall-- wall adjacent to her building-- must coordinate with owner of adjacent owner.*

**Board--** None

*Klose moves to close the public hearing for the site plan-- second by Englander-- 5-0 approved.*

**Board Actions and Resolutions:**

**Site Plan** -- RESOLUTION by motion of Chairman Klose and [seconded by Keene] The Planning Board hereby grants site plan approval for **demolition of one story addition at rear of building** on plans dated April 13, 2015 subject to the applicant complying with all reasonable recommendations of the Village Engineer and ARB. **Vote: Passed in favor 5– 0.**

5. **15 Tallman Place. Kier Levesque for David and Deborah Alter. Site Plan application for new patio, steps and walkway. Property is in TFR Zoning District. Proposal complies with zoning requirements.** Drainage calculations submitted.

**SEQRA** *The proposed action is a Type II action under NYSDEC 617.5 ( C ) (10) "construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;"*

**LWRP** *As a Type II action, the application is considered to be consistent by Village Code with the Village' LWRP policies.*

**Applicant--** Kier Levesque for the Applicant expanding pervious service-- installing a drywell to locate on the property-- if it overflows it overflows into the drain-- area of the roof water and the new patio -- zero Net increase.

**Public Comment** - *Deborah Flacco-- property is adjacent to the property. one concern-- just addressed to handle the additional property-- they are going to percolate water on the site-- new drywell.*

**Board--** None--

*Klose moves to close the public hearing for the site plan-- second by Wilen-- 5-0 approved.*

**Board Actions and Resolutions:**

**Site Plan** -- RESOLUTION by motion of Chairman Klose and [seconded by Englander/Wilen] The Planning Board hereby grants site plan approval for plans dated April 13, 2015 subject to the applicant complying with all reasonable recommendations of the Village Engineer. **Vote: Passed in favor 5– 0.**

6. **42 Main Street. Sage Nyack, LLC. Application to convert 598 sq. ft. of basement storage space to office use and recommendation to ZBA for parking variance for only one space required. Proposal is to convert an unused portion of basement storage area to a 600 sq. ft. office occasioning the requirement for an additional parking Per Article IV VON§360-4.5 B (3) an area variance is required for one off street parking spaces from Article IV VON 360-4.5C (2)-Table 4-2.**

*SEQRA* The proposed action is a minor expansion which is a Type II action under NYSDEC 617.5 (c)(7) “construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;”

**LWRP** As a Type II action. the application is considered to be consistent with the Village’s LWRP policies.

**Applicant**-- consolidating the storage and wants an office use.- had a variance of three spaces--

**Public Comment** - Kathy O’halleran-- people are parking on gedney-- there is already an overflow of parking from Main Street.

**Board**-- None

Klose moves to close the public hearing for the consideration of the Variance request plan-- second by Voletsky-- 5-0 approved.

**Board Actions and Resolutions:**

**Board**-- very small change of use to existing space, not associated with drinking establishments.

**Variations**-- RESOLUTION By motion of Chairman Klose and seconded by Englander that the planned improvements appear to have so the Planning Board hereby makes a positive **recommendation** to the ZBA with respect to the **area variance** from **convert an unused portion of basement storage area to a 600 sq. ft. office occasioning the requirement for an additional parking Per Article IV VON§360-4.5 B (3) an area variance is required for three off street parking spaces from Article IV VON 360-4.5C (2)-Table 4-2. Vote: 5 – 0 in favor of the requested variances.**

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**OTHER BUSINESS**-- Motion to adjourn by Chairman Klose, seconded by member Keene - passed by a vote of 5-0. Meeting adjourned at 8 PM