

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

August 31, 2015

Present: Catherine H. Friesen, Chair
John Dunnigan
Ellyse Berg
Roger Cohen (alternate)

In Memoriam:
Raymond O'Connell

Absent: Robert Knoebel, Sr.
Mary Ann Armano

The following resolution was offered by Member Berg, seconded by Member Cohen, and carried based upon a review of the evidence presented at the public hearings held on June 22, 2015 and August 31, 2015.

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

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In the Matter of the application of NYLO Nyack, LLC
(400 High Avenue) for a freestanding sign not permitted
in the Manufacturing (M) Zoning District

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The Zoning Board of Appeals held a public meeting on the 22nd Day of June 2015, and August 31, 2015, and due deliberations having been made on August 31, 2015.

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, NYLO Nyack LLC, petitions the Zoning Board of Appeals for the variance 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 John Krupa on behalf of the Applicant;

3. ZBA members knowledge of the site in question and site visits by all members of the ZBA;
4. Letter from the County of Rockland Department of Planning to the Zoning Board of Appeals dated June 29, 2015;
5. Positive recommendation from the ARB dated May 20, 2015
6. There was no testimony from any member of the public.

THIRD: The site in question is located in the “M” zoning district, and is owned by 400 NYLO Nyack, LLC. The applicant is constructing a hotel on the premises which is a unique property in the Village of Nyack because it is bordered on one side by the Thruway, one side by the cemetery, one side by forest and one side by residential properties.

FOURTH: The Applicant seeks to construct a 55 foot tall freestanding sign advertising the hotel’s name (“The Time Hotel”) at the southwestern corner of the property adjacent to the Thruway on a portion of the property bordering woods and swamp. The proposed sign will be approximately 9’9” feet wide and 8’11” feet tall.¹ The Applicant’s representative testified that the illuminated portion of the sign is low-output and will contain fixed lettering, without moving images or words. The illumination proposed is 13,781.5 lumens, but that level may be reduced if required by the Thruway Authority. A variance is required from VON Code Section 360-4.11(2)(c) for freestanding pole sign. The proposed illumination is permitted pursuant to VON Code section 360-4.11G.

FIFTH: The Applicant testified that a sign in this location is necessary to permit motorists who are travelling northbound or southbound on the Thruway to identify the hotel. The Applicant further testified that the height of the pole is necessary to provide a clear line of sight on the Thruway due to the property’s topography which slopes. The Applicant provided proof that the residences of the apartments located to the northeast of the hotel will not be able to see the sign.

SIXTH: The ARB approved the application and issued a positive recommendation with respect to the grant of the necessary variance at its meeting on May 20, 2015, subject to certain conditions agreed to by the Applicant.

SEVENTH: The NYS Thruway Authority, the Town of Clarkstown and the Rockland County Department of Planning were notified of this application on June 4, 2015, under GML requirements. To date, the NYS Thruway Authority and the Town of Clarkstown have not responded to the Building Department. The Thruway Authority has corresponded directly with the Applicant and has the ultimate authority to permit or disapprove the sign.

EIGHTH: By letter dated June 29, 2015, the County of Rockland Department of Planning recommended that the application be disapproved on the grounds that the proposed sign height exceeded the permitted height by over 815%, that the application sought, in effect, a use

¹ At the time of the ZBA’s June 22nd meeting, the applicant had not provided sign dimensions. A plan dated August 10, 2015, was subsequently submitted by the applicant.

variance, and that that the applicant had not provided the proposed sign dimensions and setback requirements. As noted, the Applicant has now provided this information which the ZBA has considered in making its determinations today.

NINTH: It is the determination of the Village Building Inspector that the present application does not require a use variance, but requires an area variance for a nonconforming sign in the M (Manufacturing) district.

TENTH: This is a Type II action under SEQRA which has no environmental impact.

The above Findings were moved and passed. (4-0)

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 and 5. (4-0).

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 3, 4 and 5. (4-0)

THIRD: That the variance is 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 paragraph 3, 4 and 8. (5-0)

FOURTH: That the proposed variance will not 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 3, 4, 5, 6 and 10. (4-0)

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. (4-0)

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 to which the Applicant has agreed: The directives of the Architectural Review Board are followed.** To the extent that this decision is in conflict with the findings of the County of Rockland Department of Planning, their objections have been considered and overridden by the Board.

On a roll call, the vote was as follows:

Ayes: 4 (Friesen, Dunnigan, Berg, Cohen)

Nays: 0

Abstain: 0

Catherine Friesen

CATHERINE H. FRIESEN, Chair
Zoning Board of Appeals, Nyack