

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

September 28, 2015

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

In Memoriam:
Raymond O'Connell

Absent: Mary Ann Armano

The following resolution was offered by Member Knoebel, seconded by Member Dunnigan, and carried based upon a review of the evidence presented at the public hearings held on September 28, 2015.

**BOARD OF APPEALS
VILLAGE OF NYACK, COUNTY OF ROCKLAND**
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In the Matter of the application of Nyack Retail Corp.
(45 North Highland Avenue) for an area variance from:

- 1) VON Code § 360-4.11E(2)(a) to permit signage, other than for pricing, of 23.33 sq. ft. where 20 sq. ft. per face is permitted;
- 2) VON Code §360-4.11G(2) to permit LED signage

-----X

The Zoning Board of Appeals held a public meeting on the 28th Day of September, 2015, and due deliberations having been made that 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, Michael Gensinger, for Nyack Retail Corp., 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 Michel Gensinger representing the Applicant;
3. ZBA members knowledge of the site in question and site visits by all members of the ZBA;
4. Positive recommendation from the ARB dated July 15, 2015
5. Comments in favor of the application by Christopher and Marilyn Taylor (237 High Ave.) on August 31, 2015.

THIRD: The site in question is located in the DMU zoning district, and is owned by Nyack Retail Corp. which operates a gas station on the premises. The site is at the western edge of the DMU zone, and the lot across the street is in the CC zone.

FOURTH: The Applicant seeks to replace an existing sign with signage containing more energy efficient and convenient LED pricing numbers. The existing support structure and location of the sign will not be changed, and the total surface area of the sign will remain the same. The Applicant wishes to install LED lighting to make the prices more visible to motorists so that they have sufficient time to decide whether to utilize the station's services and to enter safely.

FIFTH: The ARB approved the application and issued a positive recommendation with respect to the grant of the necessary variance at its meeting on July 15, 2015.

SIXTH: The proposed LED lighting on the signage in question would be permitted across the street in the CC zone pursuant to VON Code Section 364-4.1E(1)(d).

The above Findings were 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 3, 4, 5 & 6. (5-0).

SECOND: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variances. 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)

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 paragraph 3 and 4. (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 4, 5 & 6. (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 variances applied for should be GRANTED with the following condition:

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

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

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