

Members Present:

Peter Klose (Chairman)
Daniel Jean-Gilles
Alan Englander
Donald Wilen-Alternate
Elijah Reichlin-Melnick-Alternate

Also Present:

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

Absent: Seth Kestenbaum & Peter Voletsky

Other Business: Motion to approve the November 2015 Minutes-- second by Jean Gilles-- Vote 3-0 approved. Englander, Klose and Jean-Gilles only

1. 176 North Franklin Street. Rocco Perini. Application for removal of twelve trees. Arborist's letter included. Property is in TFR zoning district. Application has been referred to Nyack tree commission.

SEQRA – this is a Type II action under SEQRA NYS DEC 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 Village Code considers this to be consistent with the policies of the Village’s LWRP. Tree committee has met with applicant and his arborist and is the process of changing permit application but the process is not yet complete. Arborist claims the trees are not hazardous at this time.

Applicant-- -- NO APPEARANCE, EXCEPT BY MARCI DENKER LATER IN MEETING-- APPLICATION IS APPARENTLY ON HOLD WHILE THE TREE COMMITTEE GETS ORGANIZED **Public Comment - NONE Board-- APPLICATION IS OPEN**

2. 2 N. Broadway. Kier Levesque for Maureen’s Jazz Bar. Application for recommendation to ZBA for parking variance required for change of use from Office-General to Bar/Tavern. Property is in DMU zoning district.

BUILDING INSPECTOR-PLANNER-- Per Article IV VON§360-4.5B(3) for 4 additional parking spaces required by a change of use from General Office space to Bar/Tavern.

SEQRA/LWRP – Request is for a Planning Board recommendation to ZBA for a parking variance for 4 additional parking spaces required by a change of use from General Office to Bar/Tavern. The Planning Board is not the lead agency on this proposed action since it is only making a recommendation. The Planning Board therefore has no responsibility under SEQRA. The ZBA would act as Lead Agency since they are the only agency which can take action on the requested parking variance. This would be an unlisted action under SEQRA since it is not an area variance for a single, two or three family residence and does not involve the granting of individual setback and lot line variances. Since the ZBA is the only agency which can grant the requested variance, it does not need to do a coordinated review and can make a SEQRA determination on the application at their meeting if they choose to do so. They would also need consider the consistency of the variance application with the LWRP policies and make a consistency determination on the application.

*Guide-- In determining whether to grant an application for an area variance, a **zoning board** is required to engage in a balancing test, weighing the benefit to the applicant against the detriment to the health, safety, and welfare of the neighborhood or community if the variance is granted (see Town Law § 267-b[3][b]; "(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" (Town Law § 267-b[3][b]).*

Applicant-- Needs four (4) additional parking spaces-- patrons need parking-- Not adding more square feet. No parking identified from other locations in the Village from other establishments-- stop sending to find additional parking-- spaces are not for rent. Building Code -- occupancy load-- Members concerned-- by the building code issues--

Chairman Klose -- Concerned about the continued pressure to grant additional bar/club/restaurant spaces in downtown Nyack-- would like additional comment by the Village Planner as to the impact on the neighborhood

Public Comment - Beth Riso-- feels that there are enough bars in this town and opposes granting variance--

- Patricia Patterson- says she normally would oppose more bars, but she thinks this jazz club sounds like a good idea, and notes the fact that the Carnegie Room Jazz series is fully subscribed. Notes that the demographic who would go to a jazz club is very different, and less rowdy, than the demographic that would fill many other bars in town.
- Henry Rand- Wonders how the fire code could permit up to 49 people in so small a space. Wondering about the building code ramifications.

Board-- concerned by the planning aspect of this change of use without any additional parking, but feel that the size of this particular location is small, the demographics who would patronize a jazz club are likely to be older, and the live entertainment acoustic music in the basement of the premises is unlikely to create significant spillover impacts on the neighborhood. It was also noted that the applicant's plan to host community recitals and educational programming there, provided some community benefit. Some members stated their concern that even if this proposed uses was not objectionable, a future use of the property as a traditional bar (if the current applicant's business venture does not succeed) could pose more significant noise and other concerns, however, due to the very small size of the space, which can admit

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only 49 people, it was judged that a future use as a traditional bar was unlikely.

Motion by Chairman Klose-- Move to close the public hearing as to the recommendation to the ZBA-- seconded by Jean-Gilles, passed 5-0, as to the public discussion of the recommendation to the ZBA only. .

Variances-- Member Jean Gilles proposes a positive RESOLUTION AS to the recommendation to the ZBA as to whether to grant a Per Article IV VON§360-4.5B(3) for 4 additional parking spaces required by a change of use from General Office space to Bar/Tavern on the grounds stated above being that it is a very small limited space and believes that the parking issues can be ameliorated by Village Board the proposed use and character of the demographics of the space--is small in relation to the other places and potential community benefits would be encouraged by this type of development.-- Vote of 5-0 for a positive recommendation to the ZBA. Site Plan-- Not applicable.

- 3. 78 S. Broadway. Kier Levesque for Nick Predescu. Site Plan Application for recommendation to ZBA for parking variance of 3 spaces and an increase in FAR from 1.55 to 2.1 required for change of use of basement storage area to retail space. Property is in DMU Zoning District.**

BUILDING INSPECTOR *Per Article IV VON§ 360-4.3 Dimensional Standards Table 4-1 an area variance is required for an FAR of 2.1 where 2.0 is permitted and Per Article IV VON §360-4.5B(3) for 3 additional parking spaces required by a change of use from storage to retail.*

*SEQRA – Planning Board has responsibility for SEQRA determination for its site plan action. The proposed action before the Planning Board for site plan review is a Type II action based on NYS DEC 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.” **The proposed expansion of FAR changing the basement storage area from storage into retail is below the 4,000 sf threshold and thereby qualifies as a Type II action for the Planning Board’s site plan review.***

The Planning Board has no SEQRA responsibility for its recommendation to the ZBA for the area variance and the parking variance of 3 spaces. The ZBA would be the lead agency under SEQRA and would be an unlisted action for the requested parking variance and area variance for a commercial use. It would only be a Type II action if it were an area variance for a single, two or three family residence and/or involved the granting of individual setback and lot line variances. Since the ZBA is the only agency which can grant the requested variance, it does not need to do a coordinated review and can make a SEQRA determination on the application at their meeting if they choose to do so. They would also need consider the consistency of the variance application with the LWRP policies and make a consistency determination on the application.

Applicant-- Needs three (3) additional parking spaces-- patrons need parking-- adding more square feet. No parking from other establishments (i.e.-- leases or parking lots or agreements with neighbors)-- stop sending to find additional parking-- spaces are not

for rent.

Chairman Klose -- This is in a retail section of town, where they are looking to have additional retail. Controls the rear yard, seems to be no reason not to approve the pre-existing conditions relating to FAR and basement retail in a retail section. Parking is not perceived as a large problem in this particular area.

Public Comment - NONE

Board-- members generally positive about the retail nature of this.

Motion by Chairman Klose-- Move to close the public hearing as to the recommendation to the ZBA-- seconded by Englander, passed 5-0, as to the public discussion of the recommendation to the ZBA only.

Variances-- Chairman Klose makes a RESOLUTION for a positive recommendation to the ZBA as to whether to grant a variance from Per Article IV VON§ 360-4.3 Dimensional Standards Table 4-1 an area variance is required for an FAR of 2.1 where 2.0 is permitted and Per Article IV VON §360-4.5B(3) for 3 additional parking spaces required by a change of use from storage to retail. Second by Elijah Reichlin-Melnick -- Vote to make a positive recommendation 5-0.

- 4. **2-6 North Midland Avenue. Barry Terach for Joseph Lagana. Site Plan application to demolish existing structure and construction of a three story multi family apartment building. Property is in DMU zoning district. Architectural Review Board offered a positive recommendation for demolition at 12/17/2014 meeting.**

Member Englander recuses himself from this application.

Building Inspector-- Mike Galante, the Village’s Traffic consultant from FP Clark, has submitted his traffic review of the applicant’s Traffic Study conducted by Harry Baker & Associates. Mr. Galante will be presenting his traffic review at the Planning Board meeting.

Tax maps and prior Site plan drawings indicate this to be a two parcel property. A subdivision and special permit will be required to merge properties. Applicant has submitted information indicating properties have previously been merged. I am not sure that it is accurate. a Site plan of existing conditions should be provided.

Density calculations indicate 41 dwelling units are permitted @ 50 units per acre. With a 10% increase in density for Affordable Housing (+4), a 10% increase for Brownfield Cleanup (=4) and a 10% increase for exceeding NYS Energy Code requirements (+4), 53 Dwelling units would be permitted. Applicant must provide details outlining how requirements will be met for the requested additional dwelling units. Proposal is for 48 DU’s.

PARKING

The following Parking requirements have been calculated for 48 Dwelling Units:

26 1 bedroom units @ 1.25 spaces per DU= 36.25 spaces required.

19 2 bedroom units @ 1.70 spaces per DU= 32.3 spaces required.

68.55=69 spaces required.

67 off street parking spaces are being provided. Per Article IV VON§360-4.5B (3), the previous use of an 8,000 sf retail space would have required 20 parking spaces (8,000/400 =20). With a change of use the zoning code requires off street parking to be met by calculating the difference of parking requirements between previous and new use. In this case, proposed use requires 69 spaces, previous retail use required 20 spaces.69-20=49 required spaces with 67 provided. **Parking requirements are deemed to be met.**

Building Height -- Proposal presents as a 4 Story building where 3 Stories are permitted which would require an area variance. Applicant is unable to lower ground floor because of potential flooding issues caused by Nyack Brook as it traverses his property. An area variance will be required from Article IV VON§360-4.3 Dimensional Standards Table 4-1 for a four story building where three stories are permitted.

“BASEMENT”--*That portion of a building that is partly below grade. A basement shall be considered as a story for purposes of height measurement where the finished floor above the basement is:*

- A. *More than six feet above the grade plane;*
- B. *More than six feet above the finished ground level for 50% or more of the total building perimeter; or*
- C. *More than 12 feet above the finished ground level at any point.*

STORY- *That portion of a building between the surface of any floor and the surface of the floor above it or, if there is no floor above it, then the space between the floor and ceiling next above it. A basement shall be counted as a story for purposes of height measurement if the floor-to- ceiling height is more than six feet above the grade plane, more than six feet above the finished ground level for 50% or more of the total building perimeter, or more than 12 feet above finished ground level at any point.*

There is a conflict between the definition of **“Story” and “Basement”** as boldfaced above. The building was designed to and meets the specifications found in the definition of a Story. The requirements found in the definition of a Basement which determine whether a basement shall be considered a story for height measurement are more restrictive and cannot be met, given the location of the Nyack Brook.

Article I VON§360-1.8B, Conflicting Provisions states: “Conflict with other Village regulations. If the provisions of this chapter are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the Village, the more restrictive provision will control. The more restrictive provision is the one that imposes greater restrictions or more stringent controls on development.”

An area variance will be required from Article IV VON§360-4.3, Table 4-1 for a building in the DMU Zoning District proposed to be 4 stories in height where 3 stories are permitted.

The applicant is attempting to redesign the structure to comply with the Zoning Code but intends to appear to discuss traffic, drainage and any other outstanding issues.

Proposed action is more than 500 ft. from State Road Rte. 9W. The action does not meet any other GML threshold and therefore it does not need to be referred to Rockland County Planning under GML.

SEQRA - This is an unlisted action. The Planning Board is now Lead Agency for the SEQRA review of this action. **LWRP** - The Planning Board is responsible for the determination of consistency with the LWRP policies for this application. Such determination would be made after the Planning Board makes a SEQRA determination.

Escrow – Applicant has been requested to open an escrow account in the amount of \$9,500 for review of the application. This will include engineering and traffic review.

ARB granted approval, with conditions, of this design at its March 18, 2015 meeting.

Traffic analysis and site plan submitted. Workshop was held on September 11, 2015 with owner and his representatives and the Village Planner, Mike Galante, the Village traffic consultant from FP Clark and myself to discuss traffic study and site plan issues.

Village Traffic Consultant- December 1, 2015 Letter--latest Traffic Impact Study prepared by the Applicant's Traffic Consultant, Harry Baker and Associates, dated October 5, 2015 and the Engineering Plans, which are dated November 13, 2015 and prepared by Pietrzak and Pfan.

- 1- It is our recommendation that the Applicant, as part of the development of the subject property, provides all new sidewalks along the site's frontage on Main Street and North Midland Avenue. These sidewalks should be a minimum of five feet in width and provide the appropriate handicap accessible ramps at the intersection of Main Street and North Midland Avenue and at each of the site's proposed access drives. The Site Plan indicates that this will be provided.
- 2- The findings of this analysis indicate that the additional 23 and 28 vehicle trip ends during a typical weekday morning and weekday afternoon peak hour, respectively, will not have significant impact on overall traffic operations within the Study Area. *However, we do recommend that to minimize potential impacts along the site frontage along North Midland Avenue all on-street parking be eliminated on the west side of North Midland Avenue from the signalized intersection of Main Street to Catherine Street. The appropriate NO STANDING ANYTIME signs should be installed along the site's frontage to prohibit motorists from parking and waiting in the vehicle and have a negative impact on traffic flow along this section of North Midland Avenue. All signs should follow the criteria set forth in the Manual of Uniform Traffic Control Devices*

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(MUTCD), published in 2009.

- 3- Signage on ingress and Egress to be provided
- 4- *Site Access Considerations* -- Assuming on-street parking is removed from the site frontage on North Midland Avenue, appropriate intersection sight distance (ISD) will be provided for exiting the subject property from the proposed egress drive. This plan should clearly denote where entrances to the building will be provided, that appropriate sidewalks are provided for residents and guests. The overall plan should include appropriate lighting for nighttime activities.
- 5- *Pedestrian Circulation and Access Considerations* – As previously noted the existing traffic signal located at the intersection of Main Street and North/South Midland Avenue does not provide any pedestrian signals. The Village should consider providing these pedestrian signals as an upgrade to the existing traffic signal operation in the future. With the increase in pedestrian activity at this intersection due to the development, pedestrian signals and appropriate crosswalks, as well as the sidewalks, as noted above, are important to the overall safety of pedestrians and residents in the area. The location of the existing traffic signal pole at the northwest corner (site corner) will block pedestrian movements and; therefore, should be considered in the final design of the building to maintain a five-foot wide sidewalk.

Village Planner-- Memorandum dated December 7, 2015-

Project Background *The Applicant is Montclare Apts LLC., which has submitted an application dated January 16, 2015 for the construction of a three story, multi-family apartment building. The Project known as The Montclare is located at 2 -6 North Midland Avenue, located at the intersection of Main Street and North Midland Avenue. The subject property is 35, 723 square feet (0.8 acres) and is located in the DMU District. The covered Nyack Brook runs west to east through the middle of the property. The subject property is bordered on the north by Catherine Commons, a 7 unit condominium, along Catherine Street in the TFR District.*

The application included the demolition of an existing structure on the property as well as the site plan for the construction of the apartment building. The Planning Board provided an approval to demolish the existing structure early on in the application process. The applicant has demolished the structure and cleared the property, surrounding it with a chain link fence. The Project in the latest drawings dated November 18, 2015 shows 47 units (28 1-bedroom units and 19 2-bedroom units). The Project's parking requirements have been met based on the Building Inspector's review. The proposed use requires 67 parking spaces with 20 spaces grandfathered and 47 being physically provided on-site. The Applicant has added a door on Main Street at the southwest corner of the building based on comments by the Planning Board and Building Inspector.

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The Application process has been lengthy with the Applicant appearing before the Planning Board at public hearings on January 5, 2015, February 17, 2015, April 13, 2015, September 14, 2015, November 2, 2015 and is scheduled to appear on December 7, 2015. The Applicant was also referred to the ARB and appeared at the Board's January 21, 2015 and March 18, 2015 meetings. The ARB approved the application on March 18, 2015 after the applicant made certain revisions including lowering the building. A workshop was also held with the Applicant and his representatives, the Village Planner, Building Inspector and the Village Traffic Consultant on September 11, 2015 to discuss the traffic study and site plan issues before the Planning Board.

Review *The Building Inspector has reviewed the application several times during the application process. His review indicates that the applicant has submitted information that the property's two parcels had previously been merged, if this is accurate then the application would not require a subdivision. His review highlights that the Code has a conflict between the definition of "Story" and "Basement" for height measurement. The definition for "Basement" is more restrictive and the building as designed based on this more restrictive definition cannot meet the maximum of three stories permitted in the DMU. This essentially is the result of conflicting definitions in the Code but per Code the building must comply with the more restrictive definition. This has been brought to the attention of the architect who is attempting to redesign the structure to comply with the Code. If the architect is unsuccessful in his efforts, the applicant would need an area variance from the ZBA. The Applicant's latest drawings (November 18, 2015) prepared by their new engineering firm, Pietrzak & Pfau, show the building height to be 36.83 feet where 40 is the maximum allowed. The Building Inspector has also requested that the architect provide FAR calculations for each floor in order to verify the 1.99 FAR reported for the overall Project (2.0 is the maximum FAR allowed in the DMU).*

The Applicant provided a Traffic Study prepared for the Project by Harry Baker & Associates. This was submitted for review together with the latest site plan to Michael Galante of FP Clark, the Village's traffic consultant. Mr. Galante has completed his review and submitted it to the Planning Board and Applicant's traffic engineer. Mr. Galante will present his findings and recommendations at the Planning Board's December 7th meeting. It appears that many of the initial concerns which were raised at the workshop meeting with the Applicant regarding the parking lot design, on-site vehicular circulation, aisle widths, parking space dimensions, driveway locations and width have been addressed. The Village's Traffic Consultant will present other comments and recommendations to the Planning Board at their December meeting.

The Village Engineer has presented preliminary comments earlier in the process, primarily directed at stormwater management and the treatment of the Nyack Brook. She is now reviewing the civil drawings (November 18, 2015) prepared by a new engineering firm, Pietrzak & Pfau, and will attend the Board meeting on December 7, 2015 to discuss drainage and stormwater issues.

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*A problem which has plagued the review of the Project is the width of the sidewalks adjacent to the proposed building primarily along Main Street. The existing sidewalk is quite narrow especially along Main Street which has a bus stop in proximity to the building. The Board requested as part of the Traffic Study that pedestrian counts be conducted in this area. The pedestrian counts were conducted from 7 am to 9 am and 4 pm to 6 pm @ 15 minute intervals at the Main Street/North Midland Avenue and other nearby intersections. The pedestrian counts are presented in the Applicant's Traffic Study (Appendix C). Based on these counts, the highest pedestrian counts were at the Main Street/North Midland Avenue intersection. The west crosswalk had a pedestrian count in the morning peak of 18 at the west crosswalk and 20 in the evening peak at the north crosswalk. These are considered to represent a moderate level of pedestrian traffic. This may be attributable in part to the location of the adjacent bus stop on Main Street. The Applicant has responded to the Planning Board's concerns by submitting the latest civil drawings showing new 5 foot concrete sidewalks along both Main Street and North Midland Avenue with ADA curb at the intersection. There is an existing Village signal pole close to the corner of the intersection. Based on field measurements, it appears that the signal pole is approximately 7.5 feet from the pole to the property's perimeter fencing. **I would recommend that no less than a 5 foot sidewalk and preferably closer to the existing 7 – 7.5 foot distance be maintained around the pole to provide unencumbered access for pedestrians at the intersection.***

Since relocation of the signal pole was mentioned during the November Planning Board meeting, I explored this with the Village Administrator and the Village Traffic Consultant. Any future option would consist of developing a single arm pole to be located on the southeast corner. This would include pedestrian signalization similar to downtown. The cost to implement this development would be from \$100,000 to \$200,000 and the Village does not have sufficient funding resources and would need grants targeted to this type of street improvement.

*I would also recommend a detailed **landscaping plan noting specific plant types, species, quantity, size, spacing and location.** The landscape plan should include appropriate sized trees along North Midland Avenue. Although smaller street trees could be placed along the North Midland curb, these should probably be situated closer to the façade in the landscaping bed, thereby, avoiding the overhead wires. The Village can provide to the Applicant's architect a listing of recommended street trees appropriate to this location. This addition will assist in visually softening the North Midland Avenue façade of the building.*

Recommendations *In summary, I have listed several specific recommendations based on the review of the latest site plan drawings and the Village Traffic Consultant's Traffic Review:*

- Consider the recommendations contained in the FP Clark Traffic Review.*
- Provide no less than a 5 foot sidewalk and preferably closer to the approximately 7- 7.5 foot distance from the Village signal pole to the property's perimeter fencing be maintained around the pole to provide unencumbered*

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access for pedestrians at the intersection.

- Provide a detailed landscaping plan including appropriate sized trees along North Midland Avenue which will assist in visually softening the North Midland Avenue façade of the building.
- Work with Village Engineer to finalize drainage, stormwater management and treatment of Nyack Brook. Include a Construction, Inspection and Maintenance Agreement for on-site stormwater improvements acceptable to the Village Engineer and Village Attorney as a condition of any final site plan approval.

Amended site plan and traffic studies have been submitted.

Applicant-- AT APPLICANT'S REQUEST THE MATTER WAS REMOVED FROM TONIGHT'S CONSIDERATION

Public Comment - none

5. **20 South Broadway. Jan Degenshein for Brickhouse. Application for recommendation to ZBA for variances required by change of use from a retail establishment to a restaurant. Property is in DMU zoning district.**

Building Inspector-- Originally the premises was to operate with a market as the principal ground floor use under a restrictive covenant with the Village. That covenant was extinguished by Village Board Resolution No. 2015-29, adopted May 14, 2015 (enclosed). The following area variances are required:

Per Article III VON§ 360-3.2 B(7)(b) for a bar or tavern closer than 200 feet from a Place of Worship and a Community Center, the Nyack Center at the corner of Broadway and Depew Avenue.

BAR or TAVERN *A place of business duly licensed for the sale and on-premises consumption of alcoholic beverages by the drink as the principal or primary use, whether or not food service is also provided. For the purposes of this chapter, a "bar" shall also be deemed a "restaurant" only if food is prepared, served and consumed on the premises.*

RESTAURANT *An establishment where food and drink are prepared, served and consumed, mostly within the principal building. A bar shall also be deemed a restaurant only if food is prepared, served and consumed on the premises. A fast-food establishment or a take-out restaurant shall not be considered a restaurant.*

Although a distinction is drawn between bar/tavern and restaurant, a bar is a component of both enterprises. It is not at all clear to me that when a bar becomes a restaurant by definition it becomes exempt from the required distance separation from

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church and community center The applicant is challenging my determination before the Zoning Board of Appeals.

Per Article III VON 360-3.2E(7)(c)[3] for outdoor dining and a sidewalk café located within 50 feet from MFR-3 zoning district.

Per Article IV, VON§360-4.5 B(3) and 360-3.2E(6)[3], Change of Use, a variance will be required for 17 required parking spaces.

The applicant presents a parking analysis similar to that used in the original application for a marketplace with residential units above, for which a parking variance was granted on June 28, 2004. Among other issues that variance referenced a parking agreement between the Nyack Parking Authority, the Nyack Village Board and the applicant for the marketplace and residential units. That variance determined the parking requirements for the marketplace with dwelling units above. It is my determination that the following code section applies in this instance:

VON Code 360-4.5B(3) discusses how required parking places are to be calculated based on a change of use. Basically, when the number of spaces required by the new use exceeds the number of spaces required by the use that most recently occupied the building, “the owner must provide (or receive a variance for) parking equal to the difference between the parking requirement for the existing use and the parking requirement for the new use, not the difference between the actual existing parking and the parking requirement for the new use.”

Based on a calculation of 4042 sq. ft. :

*The restaurant would require 27 spaces @ 1 per 150 sq .ft.
The existing retail requires 10 spaces @ 1 per 400 sq. ft.
A variance is required for 17 parking spaces.*

The applicant is challenging my determination before the Zoning Board of Appeals.

Applicant-- By Ira Emanuel and Jan Dagenstein-- Narrative 22 S BROADWAY, LLC (BRICKHOUSE FOODS, LLC) 20-28 South Broadway, Nyack New York Tax Lot 66.38-1-54. This is an application is to allow a restaurant with on-premises liquor and beer sales, outdoor dining and a sidewalk cafe.

The property is the former Tappan Zee Playhouse site at 20 South Broadway. It is located in the DMU zoning district. After many years of vacancies, the site was finally redeveloped as a retail grocery market with apartments above. Within the market, a restaurant was operated as an accessory use. Unfortunately, after two attempts, the market project failed. This left the ground floor space vacant. The futility of operating a market in this location was recognized by the Village Board, when it voted to extinguish a recorded covenant requiring a market in this location. Village Board Resolution No. 2015-29, adopted May 14, 2015. The current proposal is to convert the entire ground floor commercial space to a restaurant. Thus, the accessory restaurant use is to become the principal ground floor use. No enlargement of the building footprint is proposed. The use is permitted as of right in the DMU district. However, the restaurant use has different bulk requirements, and thus

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variances are needed for parking, outdoor dining within 50 feet of a residential district, a sidewalk cafe within 50 feet of a residential district, and a bar within 200 feet of a place of worship. Each of these variances is analyzed below.

Parking The applicant's architect-planner, Jan Degenshein, AIA, AICP, has argued : Recapitulating the foregoing:

<u>Use</u>	<u>Required Parking</u>
Basement food prep	4.000
Basement mechanical and storage	3.726
Restaurant	26.947
Residential units	<u>10.000</u>
Total required	44.673, say 45
Theater (grandfathered)	30
Existing	<u>10</u>
Total provided	<u>40</u>
Deficit	5

VoN Zoning Code § 360-4.5.E(1).

Outdoor dining and sidewalk café The variances required to allow outdoor dining area:

- parking per ViN Code 360-4.5 b (3) for restaurant & VoN 360-3.2E(6)[3] for outdoor dining are included in the parking variance discussed above.
- outdoor dining located within 50 feet of a residential district, per VoN Code 360-3.2E(6)[2].
- sidewalk cafe located within 50 feet of a residential district, per VoN 360-3.2(7)(c)[3].

Applicant argues Tallman Towers is set back from its lot lines. According to the approved site plan for Tallman Towers, the building is 20 feet from the shared lot line, at its nearest. The Tallman Towers front entrance, on South Broadway, is 85 feet from the shared lot line, and therefore from the proposed sidewalk café area. Adjacent to the location of the outdoor dining area, at the rear of the building, is a lawn area. Solid fencing surrounds the rear of the subject building, enclosing both the outdoor dining area and a small parking lot.

Bar vs. Restaurant Use The applicant has been advised by the Building Inspector that it needs variances related to a bar. The variances required to allow a bar are:

- bar located within 200 feet of a place of worship per VoN 360-3.2B(7)
- bar located within 200 feet of a community center per VoN 360-3.2B(7).

The Nyack Center is on the far side of Tallman Towers from the subject site. As measured lot line to lot line, the distance is 177.5 feet. Measured entrance to entrance, the distance exceeds the 200 feet required by the Zoning Code.

Criteria for Variances Town L. § 267-b.3(b); Village L. § 7-712-b.3(b). The board heard arguments

The neighborhood is part of Downtown Nyack, which is known for its restaurants and antique stores. This mix of activities includes both indoor and outdoor dining and drinking. In particular, the First Reformed Church, across the street from the subject, has no objection to allowing a bar at the site. There is parking in various municipally-owned parking lots within close proximity to the site. In addition to the well-used Franklin Street lot, the Village also maintains the under-used Spear Street lot. This latter lot is

one block from the subject site. Because the downtown area is walkable, the Village should be encouraging the use of these lots.

Board Must consider -- a variance parking per VoN 360-4.5 b (3) for restaurant & VoN 360-3.2E(6)[3] for outdoor dining (___ spaces); a variance to allow outdoor dining per VoN 360-3.2E(6)[2] located within 50 feet of a residential district; a variance to allow a sidewalk cafe located within 50 feet of a residential district per VoN 360-3.2(7)(c)[3]; a determination that the subject use is a restaurant, and not a bar, or alternatively: variance to allow a bar located within 200 feet of a place of worship per VoN 360-3.2B(7); and a variance to allow a bar located within 200 feet of a community center per VoN 360-3.2B(7).

Public Comment - Letter from residents of the adjoining building, Tallman Towers, dated December 5, 2015 Objecting to the Site Plan Application and citing smoke from the brick oven used to make pizza,; Deliveries and Parking issues; Outdoor Dining issues; existing operation of the Restaurant Residential use of the apartments. Music --

Beth Riso and Henry Rand-- opposed to a variance to allow a sidewalk cafe located within 50 feet of a residential district per VoN 360-3.2(7)(c)[3]; Concerned about the recommendation for exterior dining-- claim to have spoken to residents of Remsen Street and Tallman Towers who say they are bothered by loud music late at night coming from the premises

Applicant recommending six tables in front and five or six tables in rear-- no amplified music outside-- closing kitchen -- serving pizza until midnight-- willing -- cut it back to outside-- not attached-- there is some separation and the rear of the building and the rear sitting area. Applicant is concerned about the sidewalk area-- tables don't get moved--

Board-- *After discussing the application, and reviewing the application it appears that the ZBA is going to need to weigh in on what type of use this is-- Bar or Tavern. IF there is opposition to one position and complaints relative to the use, then the opponents can argue one way or the other. The Planning Board is not taking a position as to the type of use. Depending upon the findings of the ZBA, the size of the variances may be lowered or extended, but it is not ripe for consideration. Applicant will take most issues to the ZBA and get determinations and make arguments to them.*

With respect to the outdoor dining within 50 feet of residential, it appears that the Planning Board may consider this application and may impose legal use base restrictions that are reasonably related to the of the property and any future variance granted by the ZBA. After testimony from the Applicant's experts and neighbors and Riso/Rand, it appeared to the Planning Board that the Applicant would benefit and the community would benefit from permitting carefully monitored and controlled outdoor dining.

Motion by Chairman Klose-- Move to close the public hearing as to the recommendation to the ZBA-- seconded by Englander, passed 5-0, as to the public discussion of the recommendation to the ZBA only.

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RESOLUTION by Member Klose to make a positive recommendation to grant an area variance from the restrictions against outdoor dining located within 50 feet of a residential district, per VoN Code 360-3.2E(6)[2], provided however, that the ZBA fashions reasonable restrictions rationally related to the operation of outdoor dining taking into consideration the residences above and near this establishment, and such restrictions should include, but not be limited to: the Applicant being subject to the Building Department regulation of the number of tables and chairs given the square footage the dining in both the front and rear of the building and preventing obstructions in the front (both views by vehicles and pedestrians walking on the sidewalk); the applicant shall comply with any and all applicable sidewalk regulations, including no amplified music, and removing tables and chairs from the outdoor dining by 11 PM [I think the distinction between "no table service" and "no tables" after 11PM is important, and my recollection was that we discussed and voted on a recommendation for "no tables" after 11pm. Even without tables service, if the outside dining area stays open at all past 11pm, patrons would use the space to drink/talk/generally make noise next to a residential area. I think requiring Brickhouse to actually bring in the tables by 11pm is reasonable, and what we discussed - ERM]; erecting greenery and other appropriate barriers to demark sidewalk dining from pedestrian traffic and to screen rear seating area from Tallman Towers, permitting no more than *four (4) tables in the rear with no more than three chairs per table second, together with any other reasonable conditions fashioned by the ARB or the ZBA.* Vote 5-0 to make a positive recommendation subject to those restrictions.

6. **WY Management. Application for subdivision to merge recently acquired property, amended site plan approval and recommendation to Zoning Board of Appeals for area variances required for additional building height. Property is in M zoning district.**

Building Inspector--*This is an application for an amended Site Plan approval and recommendation to Zoning Board of Appeals for an additional **height variance** for rooftop structures greater in height permitted by a previously issued variance and for changes to the appearance of the building without ARB or Planning Board approval.*

The M (Manufacturing) zoning district permits a building height of two (2) stories and 35 feet.

*On May 20, 2015 WY Management received an **area variance** for height of the building for both stories and feet from a grade plane as detailed on approved Site Plan drawing, page CIOO dated 1/2/2013, last revised 4/19/2013, in compliance with the following definitions of **Height** and **Grade Plane** outlining how building height is calculated, which established the allowable height to be 4 stories at 51.7 feet:*

GRADE PLANE *A reference plane representing the average of pre-construction ground level adjoining. The building at all exterior walls. When the finished ground level slopes away from the exterior walls, this reference plane shall be established by the lowest point within the area between the building and the lot line or, when the lot line is more than six feet from the building, between the building and a point six feet from the building,*

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HEIGHT *The vertical distance measured. In the case of flat roofs, from the grade plane to the highest point of the roof beams adjacent to the wall closest to the street, and, in the case of pitched roofs, from the grade plane to the average height of the gable. Where no roof beams exist there are structures wholly or partly above the roof, the height shall be measured from the grade plane to the highest point of the building~*

Excluded from building height calculations are rooftop bulkheads, elevator penthouses, and mechanical equipment comprising not more than 10% of horizontal area of roof and parapet walls four (4) feet or less in height from roof.

Since that time, an elevator shaft with mechanical room and mechanical equipment above as well as an additional structure attached to the elevator shaft, housing two bathrooms (most recent revision shows bathrooms removed, however necessary plumbing remains), elevator lobbies and a bar/storage area along with an eight feet high parapet wall to the north have been constructed in excess of the height permitted by the variance, without approval from this or other land use boards.

*The additional structure rises 20 feet above permitted roof elevation with mechanical equipment above. Per **Section 1509.2 of the Building Code of NYS**, penthouses or bulkheads used for other than shelter of shaft openings or mechanical equipment are considered to be an additional story," which shall not extend more than 18 feet above the roof'. In the event that local land use board approvals are granted for these additional structures. The additional story, the 8 feet high parapet wall and mechanical equipment on top of elevator shaft will require area variances for height per the Village of Nyack Zoning Code. **Since the Building Inspector does not have the authority to approve or issue a building permit for structures that do not comply with the Building Code of New York State a variance must be obtained from the New York State Department of State for the additional height, if the applicant chooses not to lower the roof.***

In 2015, WY Management purchased and demolished (with approval) the house at 297 High Avenue. A concrete retaining wall was subsequently constructed without PB and ARB approval, in violation of a Stop Work Order issued by the Building Department, for the purpose of creating additional parking spaces required due to the elimination of approved spaces to have been supplied by a multilevel ground floor parking design. Additionally an exterior swimming pool and hot tub have been installed without a permit or land use board approval in violation of a Stop Work Order issued by the Building Department.

These rooftop structures appear to have been constructed in anticipation of a Village ordinance permitting rooftop dining, not now in existence.

Assuming the local review boards are willing to approve the building modifications, at issue is whether Land Use Board approval can be granted for a structure that requires a variance from DOS and whether approval should be granted to access a space available to guests and the general public via the elevator to the roof which has no permitted use. The elevator itself requires a variance from the DOS because the car size is too small to accommodate the required ambulance stretcher per Section 3002.4 of the

Included in the packet are photos, copies of previously approved site plan and elevation drawings along with current amended drawings

ARB-- Applicant has previously met with ARB on 11/18/2015. Height of rooftop structure and rear parapet wall, location and screening generator and additional parking areas were discussed. ARB requested several design modifications as well as the removal of proposed upper level parking spaces north of the retaining wall at High Avenue and Cemetery Lane in order to provide a green buffer between parking area and residences to the north.

REVISED SITE PLAN -- *A review of the recently submitted Revised Site Plan reveals the following:*

- 1. The required 26 feet wide aerial access road on the north side of the building has been reduced to 20 feet in width, resulting in a significant potential threat to the life and safety of hotel guests and employees. Unless restored to the required width of 26 feet, as required by **Section 105.3** of the **Fire Code of New York State**, a variance will be required from NYS DOS before site plan approval can be granted*
- 2. Curbs have recently been installed on west side of High Avenue without a curb cut, restricting access of the Water Department to its property. (See Brooker Engineering review of 12/2/2015, item #4.*
- 3. Parking spaces on the East side of the building as shown on revised pages C100 and C101, indicated as "Compact Spaces" at 8' x 15' are less than the required 9' x 18' and require a **variance** from **Article IV VON§360-4.5F**. (Brooker review #11 addresses these issues and are the spaces the ARB requested be removed, to be replaced with a green buffer area.)*

SUBDIVISION *Subdivision is required to merge recently acquired properties: SBL 65.28-1-2; SBL 65.28-1-3; SBL 65.28-1-11 Deeds for all properties and a title search for one property has been submitted. Notably missing is the \$2,500.00 fee as well as a title abstract and municipal violations report indicating that the properties are free from violations as required by **Article V VON§360-5.8C(2)(a)[18]**.*

Applications have been referred to the Village Engineer and the appropriate agencies require by GML. Not all agencies have responded to date.

SEQRA – *The Planning Board has determined that the proposed action was an unlisted action and made a Neg Dec in April 2013. It also determined that the action was consistent with the Village's **LWRP. Subdivision** - In regard to the subdivision to merge the recently acquired property, this would be an unlisted action. It has been referred to Rockland County Planning under GML. We may not have received a referral letter back yet but that should not restrict the Planning Board from making their SEQRA determination.*

The subdivision application is a result of the rezoning approved by the Village Board of Trustees, an action which received a positive referral from County

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Planning. I would recommend that the Planning Board make a Neg Dec for this unlisted action (subdivision) at your December 7, 2015 meeting. The Board can refer to the Village Board's recent rezoning of the property to bring it into conformance with the M zoning district for the Hotel development site. The Board can also reference its previous April 2013 Neg Dec and indicate the proposed action remains in conformity with this previous Board decision.

The Planning Board had determined in April 2013 that the Hotel project was consistent with the Village's LWRP policies; the subdivision as part of the Hotel development is also similarly consistent with the LWRP.

Chairman Klose proposes that the Board adopt the subdivision proposal and take all steps necessary to adopt a final subdivision plat and site plan showing the final layout of the Site, The Applicant will provide additional documentation and the Site Plan to the Village Engineer

Amended Site Plan – *there are a number of issues that need to be determined before the Board can complete its site plan review. The Board can coordinate its SEQRA review for the unlisted action with the ZBA and if required, NYS DOS indicating that the Planning Board will maintain its function as lead agency. Once the Board receives communications back from the respective agencies, they can proceed to make a final determination on the amended site plan and close out SEQRA.*

Village Engineer-- Report dated 12-2-15 Eve Mancuso has performed a review of the materials re-submitted for the above captioned project consisting of the following documents:

- *"Engineering Plans entitled "Nyack NYLO Hotel", prepared by McLaren Engineering Group, dated 6/25/2013, sheets C-100, C-101, C-201, C-301, C - 302, C-401, C-501, C-502, C503, C-504, C-505, C-506 last revised 8/14/2015.*
- *Stormwater Pollution Prevention Plan, Supplement 1, prepared by McLaren Engineering Group, dated August 15, 2015.*

The Amended Site is being submitted to address the additional parcels that have been acquired and the resulting plan modifications.

We offer the following comments for your consideration:

1. *A revised Subdivision Plat should be submitted reflecting the new lot configuration including the state parcels that were added and the residential parcel, 65.28-1-3, that was added.*
2. *In addition to the new parcels that will be merged to the original parcel, there are a number of plan revisions indicated such as change in width of aisles, change in width of sidewalk, relocation of retaining walls, elimination of parking stalls along the north side and south side of the building. The applicant shall specifically outline all of the plan revisions that are currently being presented in this Amended Site Plan.*
3. *Compliant ADA ramps shall be constructed on both the east and west sides of High Avenue.*

4. *A dropped curb and concrete apron is required to provide access to the Pump Station.*
5. *The plan is now proposing 180 parking stalls whereas 182 were previously provided.*
6. *We have reviewed the stormwater management report submitted and find it acceptable. The peak rate of discharge from the 2, 10, 25 and 100 year storm events have been slightly reduced. Stormwater quantity and quality has been addressed by means of an additional detention system as well as an additional Contech CDS unit.*
7. *The current proposal indicates a connection to the existing drainage system on High Avenue. The condition and structural integrity of the existing CMP shall be evaluated. The CMP may require replacement along the High Street frontage prior to the Village permitting a connection to the pipe.*
8. *The full SWPPP should be updated as well as the Stormwater Maintenance Agreement to reflect the additional land area and corresponding additional stormwater infrastructure that will require long term maintenance by the property owner. A copy of an executed Maintenance Agreement shall be provided.*
9. *The proposed development of the newly acquired parcel includes proposed parking, retaining wall, trash dumpsters and a bike rack. Landscaping or buffering is lacking. The aesthetics of this proposal immediately along the ROW of Cemetery Lane and High Avenue should be discussed. Colored renderings have not been provided.*
10. *The proposed retaining wall appears to encroach upon the ROW of High Avenue and adversely impact the sidewalk width. This should be clarified.*
11. *The parcel has been fully developed with parking immediately adjacent to the property lines. The northern row of proposed parking relies upon the ROW of Cemetery Lane for access and egress. The vehicles parked within those spots will have to back out onto Cemetery Lane as opposed to an internal aisle as is the usual and customary design of parking areas. This layout introduces potential conflicts with vehicles traveling east on Cemetery Lane.*
12. *We recommend the PB consider resurfacing all of Cemetery Lane as a condition of approval due to the increased use of this road.*
13. *The proposed parking adjacent to High Avenue appears to encroach onto the sidewalk. Vehicles backing out of the stall have potential conflict with pedestrians.*
14. *Concrete sidewalk, concrete apron, curbs and dropped curbs should extend across the full length of the property frontage on High Avenue.*
15. *A revised Lighting and Landscaping Plan has not been submitted. A revised plan shall be developed to reflect the new layout of the amended site plan.*
16. *Signed, sealed structural calculations and plans prepared by a professional engineer shall be submitted to the building department for all retaining walls in excess of four feet in height. Certification from the professional engineer who inspected construction of the same confirming the retaining walls were constructed in accordance with the design will be required to be submitted to the building department.*

Applicant-- Will revise the plans, comply with the Engineer's comments and will supply additional documentation for consideration by the Board

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Public Comment - NONE

Board-- *SITE PLAN REVIEW AND SUBDIVISION APPROVAL REMAINS OPEN SUBJECT TO THE APPLICANT MEETING WITH ARB AND MOVING THE PROJECT FORWARD.*

OTHER BUSINESS-- Motion to adjourn by Chairman Klose, seconded by member Voletsky - passed by a vote of 5-0. Meeting adjourned at 9:00 PM