

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

January 25, 2016

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 Berg, and carried based upon a review of the evidence presented at the public hearings held on January 25, 2016.

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

In the Matter of the application of Brianne Higgins for
Maureen's Jazz Bar (2 North Broadway) for an Area
Variance from VON Code Section 360-4.5B(3) to permit a
deficit of 4 off street parking spaces

-----X

The Zoning Board of Appeals having held a public meeting on January 25, 2016, and due deliberations having been made;1

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 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;

1 Member Dunnigan, who was a noticed party, recused himself from consideration of this Application.

2. Testimony of Kier Levesque, Architect, on behalf of the Applicant, Brianne Higgins, Applicant and David Budway, in support of the Application;
3. Minutes of the Planning Board dated December 7, 2015;
4. Positive recommendation from the Planning Board;
5. ZBA members knowledge of the site in question, including site visits by all members of the ZBA;
6. There was no testimony from members of the public.

THIRD: The site in question, a basement level space of 863 square feet at 2 North Broadway, is located in the DMU zoning district. The Applicant is a potential lessee of the site, and has permission of the owner to make this application. The applicant proposes to convert the space, which was previously used as office space, into a jazz/music venue offering afternoon concerts, community recitals, educational programming and an evening bar/tavern for the “older jazz crowd.” The proposed bar/tavern use requires 6 parking spaces, leaving a deficit of 4 spaces for which a variance is required.

FOURTH: The site has a maximum capacity of 49 people, including staff members. The Applicant is not seeking a sidewalk permit, and the site has a separate entrance.

FIFTH: The Nyack Planning Board has issued a positive recommendation to this Board in relation to the variance request finding, although it is generally concerned with the change of use without providing additional parking, that the size of this location is small, that the demographics of the persons who are likely to patronize a jazz club are older, that live entertainment acoustic music in the basement of the premises is unlikely to create significant spillover impacts on the neighborhood, and that the Applicant is offering a potential benefit to the community with the concert space.

SIXTH: The proposed establishment is small and is anticipated to have a quiet atmosphere, with an estimated capacity of 49 patrons and staff. Its basement location and absence of outdoor service, front or back, will mitigate noise concerns, and the Applicant testified it was intending to install sound proofing in a location by the stairs where sound might impact the upstairs tenant.

SEVENTH: The ZBA has previously determined in similar applications that there are no available parking spaces from nearby establishments by which the Applicant could take advantage of VON Code Section 360-4.5(E). The ZBA further notes that the site in question is located within walking distance of metered public parking lots owned and maintained by the Village.

EIGHTH: This is an Unlisted Action under SEQRA with no environmental impact.

These Findings of Fact 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 3 4, and 5. (4-0).

SECOND: That the Applicant has demonstrated that there are no other means by which she could achieve her 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 paragraph 7. (4-0)

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. (4-0)

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 5 and 6. (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:

- (1) Soundproofing be installed on the ceiling above the stairwell;
- (2) The directions of the Planning Board are followed.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

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