

**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 Berg, seconded by Member Dunnigan, 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 WY Time Hotel, LLC (400 High Avenue) for area variances for additional 16’7” of building height required by construction exceeding previous height variance (for a total height of 72’6”), and from 360-4.2C(1)(2)(b) for HVAC equipment to be installed on top of the elevator shaft and not on top of the building; and from 360-4.2C(2)(C) to permit a parapet wall and cornice of 8’.

-----X

The Zoning Board of Appeals held a public meeting on the 25<sup>th</sup> Day of January 2016, 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, WY Time Hotel 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 Moissett and Michael Yanko on behalf of 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;
5. Positive recommendation from the Planning Board;
6. Letter from the Rockland County Department of Planning dated January 25, 2016;
7. 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 WY Time Hotel, LLC. The applicant is constructing a hotel on the premises which the Zoning Board has previously found to be 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 M zoning district permits a building height of 2 stories and 35 feet. On May 20, 2015, the Applicant received an area variance for height of the building, which established the allowable height to be 4 stories at 51.7 feet. Since that time, an elevator shaft with mechanical room and mechanical equipment above, as well as an additional structure attached to the elevator shaft, along with an 8 foot high parapet wall, have all been constructed in excess of the height permitted by the variance. In total, the Applicant requires variances from the Village of Nyack Zoning Code as set forth above.

**FIFTH:** The Applicant testified that the additional height was required for future use (if eventually permitted by the Village) and to comply with an Architectural Review Board requirement to mitigate an unattractive feature.

**SIXTH:** The Applicant has also filed an amended site plan application, and the Planning Board has declared itself lead agency with respect to SEQRA. At a hearing held on January 4, 2016, the Planning Board issued a positive recommendation to the ZBA to grant a variance permitting a building height of 71 feet, conditioned on the ARB approving the radius rooftop structures and cosmetic features of the design plan and that the elevator not open to the roof without an electronic lock out mechanism, that the exterior area be contained with safety finishes so that people could not walk out onto the roof, and prohibiting any use of the roof structures without NYS Building Code variances. The amended site plan application remains open.

**SEVENTH:** The ARB issued a positive recommendation with respect to the grant of the necessary variance at its meeting on December 16, 2015, subject to certain conditions agreed to by the Applicant, finding that the proposed alterations were in harmony with and compatible with the existing design and architecture of the Village.

**EIGHTH:** The Rockland County Department of Planning recommended four modifications with respect to the height.

The above Findings were moved and passed. (5-0)

### **CONCLUSIONS OF LAW:**

On oral motion, the Zoning Board voted to consider the variances in an omnibus fashion.

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 variances do 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, 6 and 7. (5-0).

**SECOND:** That the Applicant has not 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. (5-0)

**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 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 6 and 7. (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 variance applied for should be GRANTED subject to final site plan approval and the grant of any necessary variances by the New York Department of State,

with the following condition to which the Applicant has agreed:

- 1) The directives of the Architectural Review Board and Planning Board are followed ;
- 2) The elevator shall not open to the roof without an electronic lock out mechanism,
- 3) The exterior area shall be contained with safety finishes so that people could not walk out onto the roof, and
- 4) There will be no use of the roof structures without NYS Building Code variances.

The ZBA has considered the recommendations of the Rockland County Planning Department with respect to the grant of these variances. To the extent, if any, that the grant of the variances conflicts with the same, the Zoning Board overrides such recommendations specifically based upon the Findings of Fact set forth herein above and the Negative Declaration issued by the Planning Board.

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