

**NYACK PLANNING BOARD--April 11, 2016**

**Members Present:**

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

**Also Present:**

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

Absent: Peter Voletsky

Other Business: Motion to approve the March 4, 2016 Minutes-- second by Jean-Gilles--  
Approved by a Vote of 5-0.

Tonight's meeting was duly noticed and adjourned from April 4th 2016 because there was a sewer emergency at Village Hall and the regularly scheduled meeting could not convene.

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.**

***Applicant-- -- NO APPEARANCE, -- APPLICATION IS APPARENTLY ON HOLD WHILE THE TREE COMMITTEE GETS ORGANIZED Public Comment - NONE Board-- APPLICATION IS OPEN***

2. **42 Second Avenue. Dean Dyckman for Carol Brotherhood. Application to remove an Ash tree in close proximity to garage foundation. Property is in TFR zoning district. Arborist's letter enclosed.**

*SEQRA – this is a Type II action under SEQRA NYS DEC 617.5 ( c ) (14)"public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;"LWRP – As a Type II action, the Village Code considers this to be consistent with the policies of the Village's LWRP.*

***Applicant-- Applicant-- concerned about the tree in rear yard undermining the foundation of the garage, board agreed-- and saw no real threat to stormwater runoff***

***Public Comment-- none***

**BOARD--** Motion by Klose to close the public hearing. Second by Jean-Gilles -- Vote 5-0 to close. Klose moves to accept application dated March 14, 2016 with arborist letter to remove the tree subject to the applicant planting appropriate foliage and landscaping to ameliorate any stormwater runoff caused by the removal of old growth trees. Second by Don Wilen and vote-- 5-0 to approve.

3. **74 South Highland Avenue. Dean Dyckman for Judy Martin. Application to remove one Norway Maple tree. Property is in SFR-2 zoning district. Arborist letter included.**

*SEQRA – this is a Type II action under SEQRA NYS DEC 617.5 ( c ) (14)"public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;" LWRP – As a Type II action, the Village Code considers this to be consistent with the policies of the Village's LWRP.*

**Applicant--** judy martin--

**Members of the Public--**none

BOARD-- Motion by Klose to close the public hearing. Second by Jean Gilles -- Vote 5-0 to close. Klose moves to accept application dated March 2, 2016 with arborist letter to remove the tree subject to the applicant planting appropriate foliage and landscaping to ameliorate any stormwater runoff caused by the removal of old growth trees. Jean-Gilles Seconds and vote-- 5-0 approve.

4. **251 N. Midland Avenue. Nyack Community Ambulance Corp. Application for Site Plan approval and Special Use Permit. Property is in TFR Zoning District. Apartment accessory to not-for-profit ambulance facilities is a permitted use listed in Table 3-1, Permitted Uses which requires a special use permit pursuant to Article V, VON§ 360-5.9A, subject to the following requirements found in Article III VON§360-3.2E(9)(a):**

VON Code--360-3.2E(9)(a): Multifamily apartment accessory to not-for-profit ambulance facilities subject to occupancy restrictions. [Added 10-11-2012 by L.L. No. 11-2012; amended 7-16-2015 by L.L. No. 3-2015] (a) All multifamily apartments shall meet the requirements for residential dwelling units contained in the New York State Fire and Building Code. At least one on-site parking space shall be required for each dwelling unit. The Planning Board shall require such reasonable covenants and restrictions to ensure that occupancy of apartments accessory to not-for-profit ambulance facilities shall be limited to emergency service providers actively associated with the ambulance facility and their spouses and children. These accessory apartments shall be located on the same lot as the ambulance service facility or an adjacent lot to the facility.

**Village Planner comments** received and reviewed last month- We were Awaiting comments from Rockland County Planning Department (received 3/17/2016) parking issues addressed and Village of Upper Nyack/Clarkstown-- found it a "matter of local concern.". Board will need to wait for any comments and can make their final determination on the site plan and special permit application at their April meeting.

*SEQRA-- LWRP – A review of the policies as they apply to this application indicates that the proposed action does not hinder the achievement of any of the Village's LWRP policies. The Board can make a positive consistency determination for the proposed action.*

**Applicant--** Under section 360-3.2E(9) apartment accessory to not-for profit ambulance facilities subject to occupancy restrictions by the planning board. The site plan shows the parking

that is available on site and on the adjacent NCAC site for this apartment use. This application meets the minimum dwelling unit size of 750 sf as 950 sf is provided in each of the 4 units. Parking has been calculated at 2 spaces per each 2 bedroom dwelling unit. We are requesting a "special use permit" under the provisions of VoN 360-5.9 Special use permits and as noted in table 5.1 request the planning board to review and approve this application. The site plan and building plans are submitted for your consideration at the next regular meeting of the board.

*Public Comment - none*

BOARD-- Planning Board is inclined to grant the special permit with the condition that should the approval of the Special Permit shall be limited to the use of the property as an emergency first responder residence and that any further change of use or change of ownership shall void the Special Permit and on the Condition that the residents of the home are actually emergency first responders serving as volunteers at the applicant's location. Awaiting final GML review and the Applicant will return next month.

5. **2-6 N. Midland Avenue. Barry Terach for Joe Lagana.** Montclare apartments. Continuation of Site Plan application for the construction of a three story multifamily apartment building. Property is in DMU Zoning District. Member Englander recused himself from this application Revised drawings submitted.

**Village Planner-- SEQRA** – *The Village Planner has developed and recommended a Neg Dec for this proposed action which has been submitted to the Board for their review. The Board can make a determination that the Applicant has addressed and mitigated the issues raised by the Board and their Traffic and Engineering consultants and that the revised plans will have no significant environmental impacts resulting in a Positive Declaration, requiring the preparation of a EIS. LWRP - I have reviewed the Coastal Assessment Form and the Village's LWRP policies and I have reviewed applicable policies and provided commentary below for the Board's review. Since this is an upland site, very few of the policies apply. Policy # 13 (Stormwater) has been addressed in the commentary below. Based on this review, I believe that the Board can make a finding that the Application is consistent, to the maximum extent practicable, with the policies of the LWRP and that the Application will not substantially hinder the achievement of any of the policies set forth in the LWRP.*

**LWRP Policies**

Many of the LWRP policies do not apply to this property since it is an upland site. The following reviews the categories in Part III of the Coastal Assessment Form (CAF) which were all marked no impact.

- A. *Will the proposed action be located in, or contiguous to, or to have a significant effect upon any of the resource areas identified in the Local Waterfront Revitalization Program?*
  1. *Significant fish/ wildlife habitats* The proposed action is upland from the Hudson River. There are no significant fish or wildlife habitats on the site. This policy is not applicable.

2. *Flood Hazard Areas* The proposed action is not located in the 100 year and 500 year floodplain. This policy is not applicable.
3. *Tidal or Freshwater Wetland* The site is not adjacent or near to any tidal or freshwater wetlands. The Project is the redevelopment of an existing impervious property. This policy is not applicable.
4. *Scenic Resource* The proposed action is a redevelopment project located in the DMU/TFR Districts. The property is not adjacent to the Hudson River or any other area of scenic significance. This policy is not applicable.
5. *Critical Environmental Areas* Not applicable.
6. *Structures, sites or sites districts of historic, Archeological or cultural significance* Not applicable.

*B. Will the proposed action have a significant effect on any of the following?*

1. *Commercial or recreational use of the fish and wildlife resource* No construction or development activity is proposed within the Hudson River. This policy is not applicable.
2. *Development of the future or existing water-dependent uses* Not applicable.
3. *Land and water uses* The Nyack Brook runs through the property. The Village's consulting engineer has reviewed the project's SWPPP, drainage and erosion and control. Catch basins will be installed to prevent trash from entering Nyack Brook. A Stormwater Management, Maintenance and Inspection Agreement has been developed that will commit the property owner to required inspections and maintenance of the stormwater system. Under the Agreement, the property owner is responsible to maintain that portion of the culvert conveying the waters of the Nyack Creek as it traverses their property.
4. *Existing or potential public recreation opportunities* Not applicable.
5. *Large physical change to a site within the coastal area which will require the preparation of an environmental impact statement* Not applicable.
6. *Physical alteration of one or more areas of land along the shoreline, land underwater or coastal waters* The proposed action is a redevelopment of a site not located adjacent to the Hudson River. This policy is not applicable.
7. *Physical alteration of three or more acres of land located elsewhere in the coastal area-* The proposed action will affect 35,273 sf property and is not applicable.
8. *Sale or change in use of state-owned lands, located under water* This policy is not applicable.
9. *Revitalization/redevelopment of deteriorated or underutilized waterfront site* The proposed action is not adjacent to the waterfront but will redevelop a Main Street property upland from the River.

10. *Reduction of existing or potential public access to or along coastal waters.* Not applicable.

11. *Excavation or dredging activities or the placement of fill materials in coastal waters of Nyack--* The proposed action does not include such activities.

12. *Discharge of toxic, hazardous substances, or other pollutants into coastal waters of Nyack--* The proposed action does not include such activities.

13. *Draining of stormwater runoff either directly into coastal waters of Nyack or into any river or tributary which empties into them* See Response under Policy #3. All stormwater will be treated for water quality and flow rates will conform to DEC and local requirements. The Village Engineer will approve the final SWPPP as a condition of site plan. All significant stormwater and drainage issues have been addressed.

14. *Transport, storage, treatment or disposal of solid waste or hazardous materials.* Not applicable.

15. *Development affecting a natural feature which provides protection against flooding or erosion.* Not applicable.

*C. Will the proposed activity require any of the following:*

1. *Waterfront site* The proposed action is not adjacent to the waterfront and does not apply.

2. *Construction or reconstruction of a flood or erosion control structure* The proposed action does not include such activities and is not applicable.

Village Attorney-- *Any C.O. shall require signed and recorded Stormwater Maintenance Agreement as approved 6 North Midland Avenue, Nyack, New York with a tax map designation of: 65.36-2-16 and a street address of 6 North Midland Avenue, Nyack, New York, with authority to execute deeds, mortgages and other covenants; and*

**Applicant--** The Board and the Applicant went back and forth with the newly revised plans. The Traffic consultants will review these plans. Klose questioned the A/C units on the balconies and the lack of lighting in the landscaping plan

**Public Comment** - none--

*BOARD-- Klose moves to close public hearing second, Kestenbaum- 5-0 [Member Englander recused himself, Alternate member Wilen voting]*

BOARD-- Klose makes the motion to accept a Negative Declaration the LWRP and the EAF - Part III The proposed action is an urban redevelopment project located in the DMU District at the northwest corner of North Midland Avenue and Main Street. The property is not within the DMU Overlay and does not require the use of the ground floor for retail uses. The subject property is located on a 35,273 square foot property (0.814 acres) currently vacant and formerly used for retail use and an auto dealership. The proposed project is for

a three-story, 49 unit multi-family development. There will be 4 affordable units included in the project based on the Village's Affordable Housing requirements. There will be a total of 72 parking spaces provided at an average ratio of 1.5 spaces per unit. The project will include 8,483 square feet of porous pavement, approximately 30% of the total pavement area. The project is zoning compliant and does not require any variances. The subject property is bordered by the adjacent Catherine Commons to the north on East Catherine Street and retail uses to the east and west along Main Street. The site is not located within a wetland or adjacent regulated area, and is not within or in the immediate vicinity of any recognized environmental or historical resource. The applicant has submitted a stormwater management plan which has been reviewed by the Village Consulting Engineer. All of the stormwater, erosion control, Nyack Brook treatment and site drainage issues have been addressed and are on final plans. A Landscaping Plan has been submitted and reviewed. A review of the Applicant's Traffic Study has been conducted by FP Clarke which concluded that the proposed project would not result in major traffic or parking impacts and provides a 60'+ sight line at the intersection. The Village traffic consultant recommended and the applicant agreed to changes to internal circulation and on-street parking, relocation of stop bar, inclusion of ADA compliant ramps. and signal timing changes, all noted on their plans. The Applicant has reduced the bulk of the building at the corner of the intersection providing a ground level cutback and terraces on the upper floors (approximately 8' x 8'). This opens up the sidewalk at the corner both physically and visually for pedestrians. Applicant has provided 5' sidewalks along both streets. Based on the Board's review of the EAF, the traffic study review and recommendations by FP Clarke, a review letter from NYS DEC (3/20/15), review of ACOE jurisdiction by BlueShore Engineering (2/25/15), Village Consulting Engineer's reviews of the site and stormwater management plan, reduction in impervious surface and other information provided to the Planning Board, the proposed action is not expected to result in any significant adverse environmental impacts that would rise to the level of significance required for a Positive Declaration. Dan Jean-Gilles seconded the motion-- Vote 5-0. Englander abstained, Wilen voted.

Board -- With the Neg Dec adopted and the public meeting closed, Chairman Klose proposes to accept the application, and resolves to have the Building Department and Village Planner draft a final DRAFT resolution for acceptance by the Board at the next meeting Seconded Jean-Gilles-- Vote-5-0, subject to the draft resolution to be created. Englander abstained, Wilen voted.

6. ***283 High Avenue. Kier Levesque for Derek Davis. Site Plan application for renovations to existing single family house including a rear yard deck. Property is in RMU zoning district. Applicant previously received approval to convert to a two family residence but has abandoned that pursuit.***

**Building Inspector** --*Proposal complies with Zoning requirements. Applicant received ARB approval on March 16, 2016*

**Applicant--** This application is for construction of a new deck attached to an existing one family dwelling. The existing dwelling will be renovated and expanded on the second floor to make it conform to the current building code life safety requirements without a change to it's footprint. This application has been before the ARB and was approved as submitted. Please let me know if there is any additional information required prior to the hearing date.

**Public Comment** - none--

*BOARD-- Just the deck under consideration-- the prior changes adopted previously.*

BOARD-- Chairman Klose proposes to accept the modified plans and site plan dated June 25, 2015 revised March 3, 2016 to allow a deck and modifications to the Site Plan, With a second by Kestenbaum -- Vote 5-0 to approve the modification and accept the site plan.

7. **20 Prospect Street. Kier Levesque for SD&E Home & Design. Application to reinstate a nonconforming 4 family, discontinued since an 8/20/2016 structure fire, in the TFR zoning district, and a request for recommendation to Zoning Board of Appeals.**

*Pursuant to Article I, VoN 360-1.9D(3) a nonconforming use "shall not be reestablished if such use has been discontinued for any reason for a period of one year or more..."*

*A Use Variance will be required from Article III, VoN§360-3.1, Table of Permitted Uses for a non-permitted 4 family use in the TFR zoning district which permits one and two family homes.*

*Property is within 500' of South Nyack and requires GML review process. Awaiting Comments from Rockland County Planning and Village of South Nyack.*

**Village Planner-- 20 Prospect Street** *The Applicant, SD&E Home & Design is seeking to restore a 4 family residence that had been damaged by fire. It has lost its non-conforming status since it had been discontinued for over a year and had not been reestablished. It will therefore need to go before the ZBA to request a use variance to re-establish the former 4 family status. The property is a corner lot at the northwest intersection of Hudson Avenue and Prospect Street in the TFR zone. The residence is red-flagged and has been a severe blighting influence on the surrounding residences and neighborhood for several years. The Applicant's architect has presented a history of the project as well as an analysis of the multi-family character of the surrounding neighborhood. The architect has developed a street map profiling the adjacent homes by number of units, building floor area and lot size. This view highlights the multi-family character of the area especially along the west side of Prospect Street where the subject property is located. Of the 13 properties along Prospect in the vicinity of the subject property, only two residences are completely conforming. Six of these*

*residences have 4 or more units with 4 having 3 units, representing 75% of the housing stock in the immediate area of the subject property. The subject property can accommodate the required parking on-site. The added parking area will be maintained as gravel and is noted as such on the 20 Prospect Street Site Plan prepared by Kier B. Levesque, RA dated 3/14/16. A landscaped buffer has been added to buffer the additional parking area from the residence to the north.*

**SEQRA** *The Planning Board is not lead agency for this proposed action. This will be the ZBA's responsibility. Property is within 500' of South Nyack and requires GML review process for the variance request from the ZBA. Awaiting comments from Rockland County Planning and Village of South Nyack.*

**Recommendation** *The Planning Board should provide a positive recommendation to the ZBA to grant the applicant's request to re-establish the 4-family residence. From a planning perspective, while this is a use variance, it is very important to rehabilitate this residence and remove a severe blighting influence from the Prospect Street neighborhood. It has been left as an eyesore for far too long and has had negative impacts on adjacent residences. The subject property has a lot size of 0.25 acres and includes a 4,244 square foot building. The property is sufficiently large enough to accommodate the required parking. There should be a separate landscaping plan provided for the entire site adding and/or renovating the property's shrubs and foundation plantings.*

**Applicant--** Project history: 20 Prospect Street was a nonconforming 4 family residence with a certificate of occupancy prior to a fire about 10 years ago. At the time of the loss, it was legally occupied with four families. The current owner purchased the property in December of 2015 and intends to renovate the building to maintain it as four families. The current condition of the building has been a blighted condition on this neighborhood for many years, and now there is an opportunity to reinvigorate this area by renovating this property. The property is located in the TFR (2 family) residential zone. The VoN Zoning Code section 360-1.9 D (4) Nonconforming uses - states that the building cannot be restored for other than a conforming use. Since the owner's wish to maintain the multi family occupancy they will be required to obtain a **use variance from the VoN Zoning Board of Appeals**.

Under the provisions of the VoN Zoning Code the planning board must review this application and refer it to the zoning board for variances. The neighborhood is made up of multi family and single family homes many of which are nonconforming to both lot area and number of dwelling units. The attached street map indicates the locations of the multi family lots, their size and number of dwelling units. As you will note most of the multi family residences are on the west side of Prospect Street. The site plan shows that the parking requirements for 4 dwelling units can be accommodated and a landscape buffer is noted on the north side of the parking area. In an effort to reduce additional storm water runoff we will maintain the added parking area as gravel.

The **existing building is 3 stories where 2 are permitted**, this will require an area variance. All other aspects of the site are conforming The current character of the neighborhood will not be adversely impacted if this property is permitted to become a four

family dwelling once again by the zoning board. We request conditional approval and a recommendation from the planning board for this application. Please let me know if there is any additional information required prior to the hearing date.

ADJACENT PROPERTIES TO 20 PROSPECT STREET  
Number of units, building floor area and lot area

<p><b>1 Prospect</b> 4 units (Sq footage not listed on tax record) Lot size .14</p> <p><b>6 Prospect</b> 2 units 2094 sq ft Lot size .1</p> <p><b>10 Prospect</b> 4 units 2937 sq ft Lot size .11</p> <p><b>14 prospect</b> 4 units 2700 sq feet Lot size .11</p> <p><b>15 Prospect**</b> 2 units 1248 sq ft Lotsize .16</p>	<p><b>19 Prospect **</b> 1 unit 1912 sq ft Lot size .26</p> <p><b>44 Prospect</b> 3 units 2059 sq ft Lot size .18</p> <p><b>20 Prospect</b> 4 units 4244 sq ft Lot size .25</p> <p><b>30 Prospect</b> 5 units 3216 sq ft Lot size .13</p>	<p><b>32 Prospect</b> 8 units 5439 sq ft Lot size .12</p> <p><b>36 Prospect</b> 3 units 2193 sq ft Lot size .12</p> <p><b>40 Prospect</b> 3 units 1913 sq ft Lot size .07</p> <p><b>41 Prospect</b> 3 units 3175 sq ft Lot size .23</p>
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\*\* Non conforming use-- not conforming 10 years ago-- before the family

Seven years ago-- 2011 there were people living in there--it was a four family dwelling. The applicant will show the ZBA C/Os going back to at least 1958 for a four family. The fire was the cause of the loss of use as a four family. There are existing c/os going back sixty (60) years.

South Nyack -- letter dated 4-11-16 all one bedrooms -- they wanted 8 parking spaces-- but our code requires less. For years operated as a four family house-- there seems to be a % for .

**Public Comment** - Yani Tsakos-- 103 Hudson St., next door to property-- says the condition of 20 Prospect St. has negatively impacted his quality of life. general condition being dealt with the area around there wants to improve the mosquitos-- constant odor of mildew because of the house-- redevelopment a good thing-- dog drop off point.-- had to call police for teenagers.

Naaz Hosseini -- lives across the street on Prospect St. would love to see two family at the site but says that four family is fine too as anything will be great improvement  
Fire was a few years ago-- danger- in the dwelling staying empty.

*BOARD-- Member Englander- average size is each of them is more than 950 square feet--*

*Member Kestenbaum-- needs to be enclosed-- been broken off three times-- need approval-  
- nothing to keep the place away.*

BOARD-- Alternate Reichlin-Melnick proposed that the Planning Board resolve to make a positive recommendation from a planning perspective as set forth in the Planner's opinion, and given the fact that this place was legally used as a four family residence since at least 1959, he would vote make a positive recommendation from the Planning Perspective for the ZBA to grant the proposed variance. Second by Englander vote-- 5-0.

8. **245 North Midland Avenue. Kier Levesque for Paul Tong.** *Site Plan application for the conversion from one nonconforming use to another nonconforming use. Property is in TFR zoning district. Application is to abandon ground floor offices and workshop and replace with 3 ground floor apartments, creating a 5 family multifamily building. Parking Requirements are demonstrated to be met. Applicant has appeared before the ARB and has ongoing exterior finish material issues. Application has been sent out for review under GML requirements. Comments are not expected to be received until ZBA hearing on April 19, 2016.*

**SEQRA** – *this is a Type II action under SEQRA NYS DEC 617.5 ( c ) (9) "construction or expansion of a single-family, a two-family or a three-family residence on an approved lot"* **LWRP** – *As a Type II action, the Village Code considers this to be consistent with the policies of the Village's LWRP.*

#### **Village Planner 245 North Midland**

*The subject property consists of 6,595 square feet in the TRF zone. It is a corner lot at the intersection of Sixth Avenue and North Midland Avenue. The 2-story building has been used as an office and workshop on the first floor with two apartments upstairs. The proposal is to renovate the first floor by adding three new apartments and maintain the second floor with its two apartments. The site has 7 parking spaces which will be maintained and complies with the more restrictive RMU parking requirements. The property is adjacent to the 3-story Rose Gardens along Francis Avenue. It is across Sixth Avenue from the Nyack Ambulance Corps, and the residential building to the south.*

*The request is for a change of one nonconforming use to a less intensive non-conforming use. The building on the property needs to be upgraded and made visually appealing. The present property is not aesthetically pleasing and represents a blighting influence on properties along North Midland Avenue. The architect is planning to*

*change the exterior of the building and add new trim and roofing as well as new windows. All exterior stone work will be repointed and cleaned up. The proposal is an opportunity to upgrade the property and provide a more updated, visually aesthetic building.*

*SEQRA This is an unlisted action under SEQRA. The Planning Board can indicate that it will be the lead agency and wait for comments from Rockland County Planning which will be provided before forthcoming. It can provide recommendations to the ZBA and then once ZBA has acted, it can undertake an uncoordinated review under SEQRA, close out SEQRA and act on the application.*

*Recommendation The Planning Board should make a positive recommendation to the ZBA for the proposed action which would result in upgrading the property and building and provide a more aesthetic appearance to this very visible corner on N. Midland and Sixth Avenues. It would result in a less intensive use and would provide the necessary parking on-site. It would also remove a potential blighting influence on properties along N. Midland.*

**Applicant--** This application is for the renovation of an existing mixed use building currently housing a workshop, offices and 2 second floor apartments. We are planning to renovate the first floor by adding 3 new apartments and removing the office and workshop uses. The second floor entry near the parking area will be relocated to meet a code requirement and the existing entry off of N. Midland Ave. to the second floor North apartment will remain. We are making an application to this board for a change of use from one nonconforming use to another less intense non-conforming use which will require special permit. The proposed multi family use is in keeping with the multi-family uses adjacent to this property and is a less intensive use than a commercial space and offices. Note, the building is located on the property lines at each street front which prevents the planting of landscaping as a buffer on those two street lines. The existing macadam placed against the building is needed to facilitate stormwater drainage and it is located on village property. The current parking arrangement will be maintained as is. We used the more restrictive parking requirements of the RMU zone to determine parking compliance. There are 4 one bedroom apartments requiring 5 spaces and 1 two bedroom apartment requiring 2 spaces. There are 7 on site spaces current and proposed. We are seeking conditional approval from this board so that we can apply for a special permit from the village zoning board. Additionally we will need area variances for existing front and side setbacks as there are existing non-conforming conditions for the TFR zone. Please let me know if there is additional information required prior to the hearing.

Looking for a total of 5 apartments in keeping with the other buildings-- have the parking. One parking space will be-- existing parking met-- reconfigured an entrance within area -  
- accommodate--

**Public Comment** - none--

*BOARD-- Klose makes a motion to close that portion of the Planning Board's hearing with respect for to the ZBA application-- second, Kestenbaum-- Vote 5-0 to close, for that ZBA portion, however, the Site Plan remains open for GML review.*

*BOARD-- Klose moves to make positive recommendation to the zoning board to make the proposed change from non-conforming to non-conforming use --Motion is seconded by Jean Gilles Vote to make a positive recommendation to the ZBA from a planning perspective for the reasons enumerated by the Village Planner-, Vote- 5-0 in favor.*

*Klose moves to declare PB as lead agent for SEQRA-- second by Englander-- Vote 5-0 to declare its intent to be Lead Agent.*

- 9. 12 South Franklin Street. El Tequila.** *Application for referral to Zoning Board of Appeals for 6 off street parking spaces required by a proposed bar/tavern. Property is in DMU zoning district. Last known use of this space was as part of the retail space on Franklin Street prior to the establishment of current building layout.*

**Building Inspector-** *Pursuant to Article IV, VoN 360-4.5B(3), with a change of use, "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..."*

**PARKING ANALYSIS:** *Parking required for proposed bar use- 1307 sq.ft. @ 1 space per 150 sq.ft.=9 spaces. Parking required for retail space- 1307 sq.ft. @ 1 space per 400 sq.ft. =3 spaces Required off street spaces = 6*

**SEQRA** – *this is the responsibility of the ZBA. Only area variances for lot and setback variances or those related to single, two or three family residences are Type II actions, exempt from SEQRA. All others would be an unlisted action to be determined by the ZBA as part of their review and with advice of counsel.*

**Village Planner El Tequila – 12. S. Franklin 145 Burd Street--**

*The subject property is the ground floor of a 2-story building located at the corner of S. Franklin and Burd Streets. The space and the entrance are located on Burd Street. The proposed bar/restaurant/billiard room is around the corner from Hello Delly and is across Burd Street from the Wells Fargo parking lot. The proposed space is adjacent to a warehouse on Burd Street that houses party rentals. There are three apartments located on the second floor above the proposed bar/restaurant/billiard room. The work being done will consist of interior renovations. There is no kitchen space being included. There is a food prep station. The Applicant indicated to the Building Department that all food such as sandwiches will be brought in from outside. There is no outside space.*

*The space has been vacant for over 14 years. The storefront is 1,307 square feet. The bar area is 310 square feet with a restaurant/billiard room of 836 square feet with the remainder being restrooms and utility closet. Last known use of this space was as part*

*of the retail space on Franklin Street prior to the establishment of current building layout. The review of the plans show ten tables with room for 40 customers. **We did not see a billiard table on the plans although the applicant calls out "billiard room" on his chart. This should be clarified with the applicant at the meeting.***

*SEQRA This is the responsibility of the ZBA. The application would be a Type II action under NYSDEC 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, but not radio communication or microwave transmission facilities."*

**Recommendation** *The request to the ZBA is for a parking variance. Don has calculated that the applicant would need 6 spaces per code. On one hand, the space has been vacant for over 14 years. It would be nice to get it filled and not remain vacant. The space was last known as being used as part of the retail space on Franklin. The proposal is in a small space (1,307 square feet) that will be used as a bar with 8 seats and a restaurant with ten tables. There are also three apartments upstairs. The entrance to the bar/restaurant and the three apartments (with separate entrances) is from Burd Street. It would be helpful to know the business hours of the bar/restaurant/billiard room. **The operation of the billiard area and its area size should be clarified. The architect should also be required to provide sound attenuation in the ceilings and there should be a restriction on loud amplified music.***

**Applicant--** Miguel Castaneda-- ten tables on the diagram and emphatically states that this is not a pool hall - ten tables on the revised plan March 25, 2016; Applicant agrees that all operations shall only be from Noon to 10 PM with -- hot sandwiches in a food prep area not a full kitchen-- there's no concerns stated from above tenants. And allegedly the Owner of the property-- AJ Property management-- owner-- willing to limit the use of the application to the owner-- Member Kestenbaum concerned about the distance of this proposed bar from the Church up the street, and the owner must find out the 200 feet area is appropriate. Before the ZBA meeting the Building department must review the distance to a church--

**Public Comment** - none--

**BOARD--** *Applicant agrees to restrictions on the operating hours and sound attenuation issues. There are no parking requirements remove all references to the Billiard -- we need revised -- Revised plan Bar and notes to remove the annotations about Billiards.*

**BOARD--** Motion by Kestenbaum to make positive recommendation to the ZBA to grant the requested parking variance subject to reasonable conditions imposed by the ZBA, including conditions related to the hours of operation from (to no later than 10 PM), the use of the space not to include billiards and requiring sound attenuation for ceiling and walls as

needed, required approval by the NYS Liquor Authority and further review of the application by the building department as to the distance from a church under Village of Nyack Code. Second by Englander (4-1) Klose against.

10. **273 Main Street. Gateway Lofts. Site Plan application to construct a four story multi-family dwelling, subdivision for the merger of two lots and request for recommendation to the Zoning Board of Appeals.** *Property is in the DMU zoning district.*

*Building Inspector --An **area variance** will be required for a height variance from **Article IV VON§360-4.3, Dimensional Standards Table 4-1** for a four story building where three stories are permitted. This analysis has taken into account the definitions of **GRADE PLANE, HEIGHT, STORY, BASEMENT, CELLAR, FLOOR AREA and FLOOR AREA RATIO.***

**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.*

**CELLAR** *That portion of a building that is partly or entirely below grade and having less than three feet of its floor-to-ceiling height above grade. A cellar is not considered a story for the purpose of height and setback regulations. A cellar is exempt in the calculation of floor area ratio in single- and two-family dwellings in SFR-1, SFR-2 and TFR residential zones unless the structural headroom is 7 1/2 feet or more.*

**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.*

**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 or 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.*

**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*

**Building Inspector** -- *37'6" above grade plane measured at the façade facing Highland Avenue, the height of the building complies with the Dimensional Standards*

requirement in the DMU zoning district of 40' maximum allowable height in feet. The definitions of **BASEMENT** and **STORY** offer methods of determining when a Basement "shall be counted as a story for purposes of height measurement". However, the definitions conflict with one another. Article I VoN § 360-1.8 B indicates that if the provisions of this chapter are inconsistent with one another, "the more restrictive provision will control. The more restrictive provision is the one that imposes greater restriction or more stringent controls on development."

Briefly, the **BASEMENT** definition requires measurements be made to the "finished floor above the basement" where the definition of **STORY** indicates the measurements are to be made from "floor to ceiling". I consider the definition of **BASEMENT** the more restrictive and applies in this case. If the parking level is considered a **CELLAR** for purposes of **HEIGHT** calculations, it is not a factor. If the first floor above the parking garage, which includes apartments, is considered a **BASEMENT** because it is partially below grade, then that floor is considered a story for the purposes of height calculations because "the finished floor above the basement" is 18'9" above finished ground level at the NE corner of the building which is greater than the 12' permitted by the requirements found in letter "C" in the definition of **BASEMENT**.

It is my determination that this is a four story building requiring an **Area Variance** with regard to the number of stories.

On February 17, 2016 the ARB granted conditional approval to the proposal but declined to offer a recommendation to the Zoning Board of Appeals. Awaiting responses from Rockland County Planning, NYS Department of Transportation and NYS Thruway Authority.

**SEQRA** – This is an unlisted action requiring notice of intent to be lead agency to be sent to involved and interested agencies. The GML referral has already been sent to Rockland County Planning. The Board will be able to assume lead agency status for the review of this application at their May meeting. The ZBA can hear this application for an area variance but will either need to wait for SEQRA to be closed by the Planning Board before they can make any determination or the ZBA can undertake their own uncoordinated review of the application for a variance.

*Applicant-- Roberto Macias KBA Architects-- 22000 square feet DMU -- 50 units per acre  
With sustainable bonus- affordable housing bonus-- up to 33 units-- front building  
20 feet from the front of the building to the street-- setbacks on the main street  
15 foot setback on rear-- have 30 feet. Maximum height of 40 feet-- 39.5 feet from  
maximum height-- underground parking for 49 cars-- mixed use apartments 1 and 2  
bedroom Basement bottom floor-- 6 apartments on the ground floor-- underground  
parking and four on the rear of the building three stories on the front of the building.*

Because of the terrain-- need a variance because of the definition of "Basement"  
Because of the Drop--

*For purposes of ZBA, it appeared to most of the Board that the requested "story" variance should be considered positively because of the steep location, the fact that it only really applies to a very small portion of the building, and the fact that the actual height of the building will still be below the height requirement for the site; so Chairman Klose resolves that the Planning Board issue a positive recommendation that the ZBA issue a conditioned area variance to permit relatively small variance from the VON code for to permit 4 "stories" -- in the DMU because the actual height of the building is within the prescribed code and there appear to be no other necessary variances for this unique and unusually steep lot -- Second by Reichlin-Melnick, Vote- passed by a vote of 5-0.*

OTHER BUSINESS-- Motion to adjourn by Chairman Klose, seconded by member Jean-Gilles-passed by a vote of 5-0. Meeting adjourned at 9:15 pm.