

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

May 23, 2016

Present: Catherine H. Friesen, Chair
Mary Ann Armano
Ellyse Berg
John Dunnigan
Roger Cohen

In Memoriam:
Raymond O'Connell

The following resolution was offered by Member Berg, seconded by Member Cohen, and carried based upon a review of the evidence presented at the public hearing held on May 23, 2016.

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

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In the Matter of the application of Paul Tong on behalf of
245 North Midland, LLC, (245 North
Midland Avenue) for a Special Permit in accord with
VON Code 360-1.9D(2) to permit a change from one non-conforming
use to a different non-conforming use

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The Zoning Board of Appeals held a public meeting on the 23rd day of May, 2016, and due deliberations having been made thereon;

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, Paul Tong, petitions the Zoning Board for a Special Permit in accord with VON Code Section 360-1.9D(2) to permit a change from one nonconforming use in the TFR (residential zoning district) to another nonconforming use.

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 Paul Tong, Applicant, and Kier Levesque, Architect, on behalf of the applicant;
3. ZBA members knowledge of the site in question;
4. Site visits by all members of the ZBA
5. Building Inspector's Plan Review Summary dated May 23, 2016;
6. Minutes of the Planning Board from their meeting held May 9, 2016,
7. Minutes of the Architectural Review Board dated March 16, 2016;
8. Letter from the Town of Clarkstown Department of Planning dated April 7, 2016, deeming the matter for local determination;
9. Letter from the County of Rockland Department of Planning Dated April 21, 2016,
10. Testimony of the following members of the public: None.

THIRD: The site in question is located in the TFR (residential) zoning district at the corner of 6th Avenue and Midland Avenue. The owner of the property, 245 North Midland Avenue, LLC, purchased the property in November 2015, pursuant to the local zoning regulations.

FOURTH: The Applicant proposes to change the current non-conforming use of the building (which has an office and workshop on the first floor, with 2 apartments upstairs) to a less-intensive non-conforming use by replacing the office and workshop with three additional apartments. The site currently has 7 parking spaces (which the Applicant proposes to remain unchanged) and is in a state of disrepair. The property, which consists of 6,595 square feet, is adjacent to the 3-story multi-family Rose Gardens apartments along Francis Avenue and across the street from the Nyack Ambulance Corps.

FIFTH: Upon its review, the Rockland County Department of Planning recommended modifications suggesting, in its view, that the Village of Nyack Zoning Code required 10 parking spaces. The Building Inspector has determined, to the contrary, that the Code does not contain parking requirements for multi-family use in the TFR zone, and that the Applicant has demonstrated that it complied with the more restrictive parking requirements of the RMU zone.

SIXTH: Following a public hearing at which the Village of Nyack Planning Board received input from the Village planner, Bob Galvin, the Planning Board made a positive recommendation to the ZBA that the variance be granted for the reasons given by Mr. Galvin. Mr. Galvin noted that the proposed use was less intensive, and would result in upgrading the property, providing a more aesthetic appearance to the corner, and removing a blighting influence. The Planning Board declared itself lead agency with respect to SEQRA and the site plan application remains pending before it.

SEVENTH: VON Code 360-1.9D(2) provides that a nonconforming use shall not be changed to another nonconforming use without a special permit from the Zoning Board of Appeals and then only to a use that, in the opinion of said Board, is of the same or a more restricted nature.

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

CONCLUSIONS OF LAW:

As to the application for a Special Permit, the Zoning Board of Appeals has first considered whether the proposed residential use is of “the same or a more restricted nature” than the current use of the space at that location as required by VON Code 360-1.9D(2), and has concluded that the proposed use is of “a more restricted nature” because only residential use (as opposed to both commercial and residential use) will be permitted. (5-0)

In addition, the Zoning Board of Appeals has considered the factors set forth in VON Code 360-5.9(C) and makes the following Conclusions of Law:

FIRST: That the applicant has shown that all proposed structures, equipment and material will be readily accessible for fire and police protection.

SECOND: That the applicant has shown that the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.

THIRD: The applicant has shown that the location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with said district or conflict with the normal traffic of the neighborhood.

FOURTH: The applicant has shown that the location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof. (5-0)

The Board has weighed the findings of fact and the conclusions of law as required under VON Code 390-5.9(C) *et. seq.* and finds in the interest of justice that the Special Permit should be GRANTED with the following conditions to which the Applicant has agreed.

1. Any conditions or requirements set forth and mandated the Architectural Review Board and the Planning Board during its analysis shall be deemed requirements and conditions upon the Special Permit as if set forth by this Board.

To the extent that this decision is in conflict with the findings of the County of Rockland Department of Planning, their objections have been considered and overridden by the Board.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

Catherine H. Friesen

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