

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

September 26, 2016

Present: Catherine Friesen, Chair
John Dunnigan
Ellyse Berg
Roger Cohen

In Memoriam:
Raymond O'Connell

Absent: Mary Ann Armano

The following resolution was offered by Member Cohen, seconded by Member Berg, and carried based upon a review of the evidence presented at the public hearings held on September 26, 2016.

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

-----X

In the Matter of the application of Peter Pappas (116A Main Street) for an Area Variance from VON Code Section 360-4.5B(3) to permit a deficit of 5 off street parking spaces

-----X

The Zoning Board of Appeals held a public meeting on the 26th Day of September 2016, and due deliberations having been made this 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 Peter Pappas petitions the Zoning Board for the Variance as set forth 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 Peter Pappas, Applicant, and Julio Leder-Luis, Architect.
3. ZBA members knowledge of the site in question;
4. Site visits by all members of the ZBA;
5. Testimony of members of the public: none.
6. Planning Board Minutes dated September 12, 2016.

THIRD: The site in question is located in the DMU zoning district. The Applicant leased the property in 2016 pursuant to the local zoning regulations. Proof has been provided to the Building Department that the owner of the property, Eddie Teitel, consents to the application. In 2010, the subject premises received a variance from the Zoning Board to permit a deficit of 1 parking space in order to convert the use from retail to takeout restaurant.

FOURTH: The Applicant seeks to convert the space from takeout restaurant to a 1700 square foot restaurant where food is consumed on the premises, as well as to continue takeout from the premises. The proposed hours of operation are from 10am-11pm Sunday through Thursday, and from 10 am to 12:30 am on Friday and Saturday. The applicant has not applied for a liquor license.

FIFTH: The Nyack Planning Board declined to issue a recommendation to this Board in relation to the variance request.

SIXTH: 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.

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

The above Findings 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 creates 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 and 4. (4-0).

SECOND: That the Applicant has demonstrated that there are no other means by which he could achieve his 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 and 4. (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 4 and 7. (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:

Hours of operation will be from 10 am through 11 pm Mondays through Thursday, and from 10 am to 12:30 am on Friday and Saturday.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

/s/ Catherine H. Friesen
CATHERINE H. FRIESEN, Chair
Zoning Board of Appeals, Nyack.