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**REGULAR MEETING
ZONING BOARD OF APPEALS**

VILLAGE OF NYACK
BUILDING
MAY 24 2017
DEPARTMENT
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Nyack Village Hall
Nyack, New York

May 22, 2017

Present: Steven P. Knowlton, Chair
Robert Knoebel, Sr.
Ellyse Berg
Roger Cohen

**In Memoriam:
Raymond O'Connell**

Absent: Paul Curley
Glen Keane

Voting alternate: Richard Gressle

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 22, 2017.

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

-----X
In the Matter of the application of El Cunao (233 Main Street) for an Area Variance from VON Code Article IV, §360-4.5B(3) [Table 4.2] for one additional parking space.
-----X

The Zoning Board of Appeals held a public meeting on the 22nd of May, 2017, 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 El Cunao petitions the Zoning Board for the Area Variance 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. Chief Building Inspector's notes;

3. The testimony of Robert Silarski, architect for the applicant;
4. ZBA members knowledge of the site in question and site visits by all members of the ZBA;
5. There was no public comment

THIRD: The site in question is located in the DMU zoning district. The Applicant leased the property in May 0f 2016 pursuant to the local zoning regulations.

FOURTH: The Nyack Planning Board has issued a positive recommendation to this Board in relation to the variance request.

FIFTH: The applicant wishes to provide take out Mexican cuisine in addition to retail sales. The business that occupied the space prior to the Applicant was retail sales and a take-out delicatessen. The take out restaurant is a permitted use in the DMU zone, and due to the more restrictive parking requirement (retail requires 1 space per 400 sq. ft.; take-out requires 1 space per 300 sq.ft.) the variance for 1 parking space is required to legitimatize the take-out use.

These Findings of Fact were moved and passed unanimously.

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 neighborhood. 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 FIRST through FIFTH. (5-0)

SECOND: That no detriment to nearby properties will result from granting the 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 FIRST through FIFTH. (5-0)

THIRD: That the Applicant has demonstrated that there is 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 FIRST through FIFTH. (5-0)

FOURTH: 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 paragraphs FIRST through FIFTH. (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 SECOND, THIRD and FIFTH. (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(s) applied for should be GRANTED.

On a roll call, the vote was as follows:

Ayes: 5

Nays: 0

Abstain: 0

Steven P. Knowlton
STEVEN P. KNOWLTON, Chairman
Zoning Board of Appeals, Nyack.

DATED: May 24, 2017