

VILLAGE OF NYACK
BOARD OF TRUSTEES

GEDNEY STREET PROJECT
41 & 55 Gedney Street, 25 & 26 Lydecker Street

SPECIAL PERMIT COMPLIANCE NARRATIVE
July 31, 2017



The Village of Nyack Code provides for certain development incentives, which are available pursuant to a special permit to be granted by the Board of Trustees. The requirements for this special permit as set forth in VON Code § 360-2.5.B(2).

A special permit, "gives [a property owner] permission to use property in a way that is consistent with the zoning ordinance, although not necessarily allowed as of right."¹ The Board is reminded that, under New York law, if the Applicant can show that it complies with the requirements stated in the Zoning Code for a special permit, the special permit must be granted.² The board is without discretion to withhold it.³ A special permit may be denied only if the record contains substantial evidence that the proposed project is "substantially deficient" compared to the criteria governing the issuance of special permits.⁴ Special permits, once granted, run with the land, and do not attach to any particular individual or entity.

Following is the applicant's description of its compliance with the special permit requirements for development incentives in the WF District.

WF District
Special Permit Requirements VON Code § 360-2.5.B(2)

(c)Development incentives by special permit. In order to encourage development which promotes the purposes for which the WF District has been established and to achieve the design guidelines outlined in § 360-2.5B(2)(c)[6], the following exceptions to the bulk requirements set forth above and in the lot and bulk regulations for the WF District may be permitted by the Village Board by the issuance of a special permit approving the same. Any development incentives approved by the Village Board are applicable only to the site plan application for which they have been approved. Such site plan application and special permit application must be accompanied by an environmental assessment form (EAF) that evaluates the environmental impacts of the exceptions to the bulk regulations. Viewsheds shall be preserved per § 360-2.5(B)(2)(b)[4].

The required EAF, Parts 1 and 2, and an expanded Part 3 are provided to the Village Board as a part of this application. Village of Nyack Planning Board, as Lead Agency under SEQRA, reviewed

¹ *Matter of Retail Prop. Trust v Board of Zoning Appeals of Town of Hempstead*, 98 N.Y.2d 190, 195 (2002)

² *Sunrise Plaza Associates, LP v. Town Board of Town of Babylon*, 250 A.D.2d 690, 673 N.Y.S.2d 165 (2d Dept. 2002)

³ *North Shore Equities, Inc. v. Fritts*, 81 A.D.2d 985, 440 N.Y.S.2d 84 (3d Dept. 1981); 2 Salkin, *New York Zoning Law and Practice* (4th ed.) § 30:15.

⁴ *Sullivan v. Town Board of Town of Riverhead*, 102 A.D.2d 113, 476 N.Y.S.2d 578 (2d Dept 1984)

the environmental impacts of the subject project from January 2017 to July 21, 2017, and after an extensive review, deliberations, significant public participation, and the assessment of Village consultants, concluded that the subject project will not create any significant adverse environmental impact and granted a Negative Declaration pursuant to the SEQRA at its July 21 meeting.

[1] Building height may be increased to no more than 52 feet under the conditions as follows:

[a] Maximum height may be increased by five feet for each five-percent reduction of maximum permitted average building width, up to a maximum of 52 feet (e.g., if average building width is 45%, maximum permitted height is 35 feet; if average building width is 40%, maximum permitted height is 40 feet); and

[b] For any front yard step back, at a height of 22 to 24 feet, the building must step back five feet and at a height of 40-42 feet the building must step back an additional five feet. Alternatively, the building may step back a total of 10 feet at a height of 40 to 42 feet.

[c] Notwithstanding the provisions of this subsection, in the case of a building exceeding 40 feet in height, the exceptions to height limitations set forth in § 360-4.2C(2), as amended, shall be limited to four feet except for a stairwell bulkhead.

Dimensional compliance with the zoning code was reviewed by the Village of Nyack Building Inspector and was found to be in conformance with the zoning code requirements (Reference attached June 5, 2017 Village of Nyack Planning Board Minutes of the Meeting)

[2] Building width may be increased to a maximum of 60% of the width of a parcel if the parcel provides two view corridors, and a maximum of 70% of the width of a parcel if the parcel provides three or more view corridors as required in § 360-2.5B(2)(b)[4].

Dimensional compliance with the zoning code was reviewed by the Village of Nyack Building Inspector, who determined that building width does not exceed 60% of the parcel or 297.5 feet, and that the proposed width of 297 feet was compliant with the zoning code requirements (Reference attached June 5, 2017 Village of Nyack Planning Board Minutes of the Meeting)

[3] Floor Area Ratio (FAR) and density. FAR may be increased to no more than 1.50 if the site development plan:

[a] Provides special waterfront improvements open to the public specifically incorporating the Development Incentives set forth in § 360-2.5B(2)(c)[5];

The proposed waterfront improvements are discussed in detail below.

[b] Incorporates the design guidelines for the waterfront as set forth in § 360-2.5B(2)(c)[6][a] through [c].

The project's compliance with the design guidelines for the waterfront are discussed in detail below.

[c] Notwithstanding the provisions of this subsection, residential density shall not exceed 35 residential units per acre. Additionally, any density bonus sought under Village Code § 360-4.14 shall be subject to the limit of 35 residential units per acre set forth in this subsection, and must meet at least three of the sustainability amenities set forth in § 360-4.14E.

The total residential density of the proposal, after taking into account the development incentives sought by this special permit application, is 35 units per acre.⁵ The following 3 sustainability amenities are provided as set forth in §360-4.14E:

- i. Thirty-percent permeable surfaces. Over 50% of proposed paving is proposed to be permeable.
- ii. Provision of rain gardens. Rain gardens are proposed along Gedney Avenue to treat storm water runoff from walkways and patios.
- iii. Provision of green extensive eco-roof. Green roof is proposed on top of the underground garage, fully visible to public.

[4] Parking located underground.

The Applicant proposes to construct a 2-story underground parking facility for the motor vehicles belonging to the residents of TZ Vista and to resident's guests. Underground parking will be also provided for the 22 parking spaces now on the property and belonging to residents of Clermont Condominiums. For safety and security of residents, access to this facility will be electronically controlled. This facility will be available 24 hours a day. Each dwelling unit will have one dedicated parking space, including 22 dedicated Clermont parking spaces, while the remainder of the parking will be available on a first come, first serve basis. Underground parking will be constructed and made available in 3 phases corresponding to the phases of construction. Parking constructed in each phase will be sufficient for the dwelling units built in that phase. Detailed analysis of parking can be found in Part 3 of the Environmental Assessment Form (EAF). Detailed drawings of garage parking phasing are provided in project documentation on sheets C-106.1 and C-106.2 and in the Parking Table on Sheet TS-001.

[a] Required parking spaces per unit, when provided underground, shall be:

[i] Per EU: 1.0.

[ii] Per one-bedroom: 1.50.

[iii] Per two-bedroom: 1.75.

[iv] Per three-bedroom or greater: 2.0.

The proposed unit configuration is as follows:

<u>Bedroom count</u>	<u>No. of units</u>	<u>No. of parking spaces required</u>
E.U.	0	0
One bedroom	6	9
Two bedroom	95	166
<u>Three + bedroom</u>	<u>27</u>	<u>54</u>
Total Residential	128	229
<u>Clermont Condos</u>		<u>22</u>
TOTAL UNDERGROUND P.S.		251

[b] All resident parking in excess of one space per unit shall be unreserved and available for shared parking use.

Agreed.

[c] In addition to the resident parking spaces required by § 360-2.5B(2)(c)[4][a], a minimum of 10% additional public parking spaces shall be provided on site or within 200 feet of the site.

⁵ 3.3243 acres x 35 units per acre = 116.35 units. 10% Affordable Bonus Density = 11.635 units. Total of 128 units

Public parking spaces and café parking spaces, will be provided on two surface parking lots on the northeast and southeast corner of Lydecker and Gedney Streets. The full extent of this parking will be made available with the issuance of the Certificate of Occupancy for Phase I of the project. The two parking lots serve the needs of the public park and the café, and their hours of operation will correspond with the hours of operation of the park and the café. The Applicant proposes parking limit of 2 hours during daytime hours to encourage turnover, and a prohibition on overnight parking. Alternate means of parking regulation may be enacted with the consent of the Village Board of Trustees, to deter violations and to encourage turnover, including the installation of parking meters. New lighting will be provided on the two lots, and the lights will be on from dusk to dawn. The ownership and maintenance of the two parking lots will remain with the project owner.

Under the Code, the applicant is required to provide 229 parking spaces for residents, thus requiring 23 parking spaces for the public. The Applicant is also proposing to locate 7 parking spaces required for the café in the surface parking lots for the ease of ingress and egress. Total in surface parking lots is thus 23+7, or 30 parking spaces.

The applicant is providing a total of 283 parking space, of which 231 spaces for residents of the new community and 22 spaces for the Clermont Condominiums will be in the underground parking garage, and 30 parking spaces for the public will be provided in surface lots on Lydecker Street. These surface lots are directly across Gedney Street from the project, and therefore comply with the 200 foot distance requirement.

Public on-street parking along Gedney Avenue is proposed to remain without change.

[5] Waterfront access. Waterfront access shall be provided per requirements in the WF design guidelines, including a pedestrian walkway, one water-dependent amenity (consisting of a kayak launch, pier, boat launch, or overlook), and a retail, restaurant, coffee shop or other food-and-beverage-related use located adjacent to the pedestrian walkway. Setback from the Hudson River shall comply with section § 360-2.5B(2)(b)[3] but shall specifically meet the following:

[a] Minimum fifty-foot setback of any buildings from the normal high-water line of the Hudson River.

[b] Of the 50 foot setback, 30 feet must be open to the public.

[c] Of the 30 feet open to the public, a fifteen-foot wide continuous walkway must be provided.

[d] For the above public space, the area shall be dedicated to the Village of Nyack and maintained by the Village as parkland in perpetuity. Some variation in the location and precise width of the walkway may be allowed at the discretion of the Village Board if the flexibility enhances the operation of a water-dependent use, such as a boat club, pier or boat launch.

To promote the WF district requirements the applicant shall dedicate the public space required in VON Code §360-2.5B(2)(c)[5][d] to the Village of Nyack. The required public space consists of a 30' wide strip of land along the waterfront. The Applicant proposes one of the following two options for the public space dedication, as elected by the Village Board of Trustees:

A 30' wide strip along the waterfront, the westerly edge of which coincides with the fire apparatus lane, and a strip of land along Main Street, the northerly edge of which coincides with the fire apparatus lane; or

The land listed in paragraph above, together with all rights of the Applicant to land under the Rip-Rap, and the riparian rights, westerly of the public access space. (These rights would be delineated in the surveyor's description, but they approximately extend to the line drawn through the end of Clermont pier).

The property included in the public space will be defined by the description prepared by the Licensed Land Surveyor.

The Applicant shall transfer the public space into a temporary easement held by the Village of Nyack after the receipt of the Final non-appealable Site Development Plan Approval and prior to the issuance of the Building Permit for Phase I. Upon completion of construction for each phase, and as a condition for the issuance of Certificate of Occupancy for each phase, the Applicant shall transfer the property rights to such improved public space to the Village of Nyack. The deed for each phase of waterfront access shall be limited to the improved portion of the waterfront access and the Village of Nyack will retain temporary easement over the unimproved area of the waterfront public space. The Certificate of Occupancy for each phase will be conditioned on the Applicant providing a performance bond to the Village of Nyack guaranteeing the construction of remaining area of public waterfront access, together with an irrevocable offer of dedication for the affected portion of the waterfront access. The terms of the bond will allow the Applicant a period of 3 years for each of the subsequent phases of waterfront improvements. In case of Applicant's default for either one of the phases, Village of Nyack will be allowed to use the proceeds of the bond to complete the improvements of the subsequent phases, and to effect the transfer of property rights to the Village.

In the period between the issuance of Certificate of Occupancy for a phase of the project and the expiration of 3 year time limit for the completion of the subsequent phase, the Applicant will provide a temporary access path along the waterfront as outlined in project documentation on sheets C-106.1 and C-106.2. Hours of operation and terms of access to the path will coincide with the terms for the permanent access outlined below.

Operation and maintenance of the public space shall coincide with the ownership. The applicant shall operate and maintain the area up to the time of deed transfer to the Village of Nyack, at which time Village of Nyack shall assume operation and maintenance.

§360-2.5B(2)(c)[5] requires one water-dependent amenity "...a kayak launch, pier, boat launch, or overlook." The Applicant proposes to construct three water-dependent amenities: an overlook, a kayak launch, and kayak rentals.

An overlook is proposed to be constructed by the Applicant at the eastern most point of the land, and will be conveyed to the Village of Nyack as set forth above.

The kayak launch amenity is proposed to be constructed by the Applicant as either a removable metal ramp over the Rip—Rap down to the water, or as a reconstructed lower level of Clermont condominium pier. The ownership and operation of kayak launch shall be either by the Village of Nyack, or by the Applicant, as elected by the Village Board.

Kayak rentals are proposed to be provided by the Applicant through the café on the premises. After the transfer of the public space to the Village of Nyack, kayak rentals, as elected by the

Village Board, may continue to be provided by the Applicant, or the rental operation may be transferred to the Village of Nyack through a permanent rental of 300 sf storage space at the Applicant's premises.

§360-2.5B(2)(c)[5] requires "...a retail, restaurant, coffee shop or other food-and-beverage-related use adjacent to the pedestrian walkway. The Applicant proposes to construct a coffee shop on the south-east corner of the building, adjacent to the gathering area, waterfront access, and in the proximity of Clermont pier. The Applicant proposes to operate the coffee shop either with its own personnel or through a lease with a vendor. The coffee shop will serve beverages, light snacks and ready to eat meals (anticipated to be provided by the Culinary Arts Center at the corner of Main Street and Broadway Avenue). Hours of operation are proposed to be 7 AM to 9 PM, but may be reduced on some days or seasons.

Hours of operation of the public space shall coincide with the hours of operation for public parks in the Village of Nyack, as such may be amended from time to time. Signage to this effect is proposed in the Site Development Plan, and will be erected at each of the three park entrances.

No gates to the park of any kind are proposed to be constructed at this time. The Applicant agrees to construct and provide portable picket fences, decorative chain fastened to bollards, or other means of overnight pedestrian deterrent as may be requested by the Police Department or the Village Board.

A delineation of public vs private space along the waterfront access will be visually achieved with an elevation difference of approximately 2 feet between the westerly edge of public space at elevation of 9.5, and the private space in front of townhomes at the elevation of 11 to 11.5. Vertical transition will be achieved with stone walls, steps, earth embankment, and other landscape features. A plan delineating public and private space at the waterfront was provided in the project documentation on sheet LS-101.

The lighting of the public space will be provided from dusk to dawn.

[6] Design guidelines. In determining whether to approve the development Incentives identified in § 360-2.5B(2)(c)[1] through [5], the Village Board of Trustees will consider the extent to which the following design guidelines are achieved.

[a] Gedney Street.

[i] Location.

[A] Buildings should be set back a minimum of 12 feet and a maximum of 15 feet from the property line.

[ii] Landscape treatment.

[A] Front yards should be landscaped with appropriate transition elements between the sidewalk and the adjacent ground-level private dwelling units.

[B] Front yards should be designed in a manner consistent with the front yards of other residential front yards in the area north of Main Street.

[iii] Building facades and massing.

[A] Building facade materials should be comprised of stone, stone veneer, brick, fiber cement board or panels, or wood. Stucco, exterior insulation finishing systems (EIFS) are discouraged.

[B] Facades along Gedney Street may have a maximum of 50% glass below 35 feet and a maximum of 65% glass above 35 feet.

[C] Visual impact of larger windows should be reduced through the use of vertical subdivision of frames or other methods to reduce the visual impact.

[D] Reflective glass (excluding low-E glass, Solarban, and similar lightly tinted glass types) is prohibited.

[E] Parking structures facing a public street or other publicly accessible area should be architecturally integrated into the principal building using techniques such as an exterior clad in brick, architectural metal panels, a window-like facade treatment, or "liner" buildings, i.e., buildings located in front of the parking garage that screen the garage from public view.

[b] Main Street.

[i] Location and orientation.

[A] Buildings should be set back a minimum of 10 feet from the sidewalk.

[B] Buildings along Main Street shall address the corner of Main Street and Gedney Street while allowing for access and views out to the river from Main Street approaching the corner of Main Street and Water Street.

[ii] Landscape treatment.

[A] Main Street frontage should have a maximum of one curb cut for garage access and refuse vehicles.

[B] Curb cuts should be a maximum of 24 feet wide.

[C] Landscaped area along Main Street should be designed to orient and distribute pedestrians to either the Claremont Pier or the new waterfront walkway and create a gateway to both of these riverfront places.

[D] The entrance to the pedestrian access to the riverfront should be designed to clearly communicate the public nature of the pedestrian path. The entrance may include a landscape feature such as a gate, trellis, and/or a small seating area.

[E] Access lanes for fire trucks and other public safety vehicles may be incorporated into the pedestrian paths and are encouraged to incorporate grass-crete/cellular grass paving system or similar treatment to avoid the appearance of excessive pavement.

[iii] Building facades and massing.

[A] Buildings along Main Street should step back a minimum of 10 feet over a height of 35 feet from the adjacent grade.

[B] Materials should be comprised of stone, stone veneer, brick, fiber cement boards or panels, or wood. Stucco, exterior insulation finishing systems (EIFS) are discouraged.

[C] Facades along Main Street may have a maximum of 50% glass below 35 feet and a maximum of 65% glass above 35 feet.

[D] Visual impact of larger windows should be reduced through the use of vertical subdivision of frames or other methods to reduce the visual impact.

[E] Reflective glass is prohibited. Parking structures facing a public street or other publicly accessible area should be architecturally integrated into the principal building using techniques such as an exterior clad in brick, architectural metal panels, a window-like facade treatment, or "liner" buildings, i.e., buildings located in front of the parking garage that screen the garage from public view.

[c] Waterfront.

[i] Access.

[A] Pedestrian access to the riverfront should be provided a minimum of every 200 feet from the nearest adjacent east-west street, and preferably align with streets east-west intersecting with Gedney.

[B] A public waterfront area shall be provided of a minimum of 30 feet wide along the entire length of the waterfront. Within that public area, a pathway shall be provided of a minimum of 15 feet or as dictated by the fire department to ensure access for emergency vehicles.

[ii] Soft shoreline treatment.

[A] In providing resilience to sea level rise, storm surge, and flooding, soft or vegetated shorelines and rip rap should be used instead of vertical sheet pile bulkheads where possible.

[iii] Landscape treatment.

[A] Entrance to the pedestrian access to the riverfront should be designed to clearly communicate the public nature of the pedestrian path. The entrance may include a landscape feature such as a gate, trellis, and/or a small seating area.

[B] Access path should: incorporate a small seating/passive recreation area a maximum of 75 feet from Gedney Street right of way; use landscape elements such as planting, grading, garden walls, or decorative fencing to establish an implied transition between the public right-of-way and adjacent private dwelling units; incorporate trees/planters for shade and pedestrian comfort, a minimum of every 30 feet.

[C] Vertical transition to the riverfront should employ steps incorporating landscaping, terraces, and garden walls.

[iv] Building facades and massing.

[A] Facades located more than 35 feet from Gedney Street may have a maximum of 65% glass.

[B] Visual impact of larger windows should be reduced through the use of vertical subdivision of frames or other methods to reduce the visual impact.

[C] Reflective glass is prohibited.

[D] Penthouses should be incorporated into the overall massing concept of the building.

[E] Buildings should be massed to create a distinctive roof silhouette characteristic of downtown Nyack buildings

[F] Parking structures facing a public street or other publicly accessible area should be architecturally integrated into the principal building using techniques such as an exterior clad in brick, architectural metal panels, a window-like facade treatment, or "liner" buildings, i.e., buildings located in front of the parking garage that screen the garage from public view.

To preserve the aesthetics and ambiance of the area in the WF district, Design Guidelines are specified in §360-2.5B(2)(c)[6]. A detailed description of the Applicant's response to each item of the Design Guidelines can be found in the Project Narrative in the Appendices of the Part III of the Environmental Assessment Form (EAF).

Zoning section §360-2.5B(2)(c)[6][c][i][A] of the Design Guidelines, requires "Pedestrian access to the riverfront shall be provided a minimum of every 200 feet from the nearest adjacent east-west street..." The Applicant has provided such access over the underground parking garage and down the steps to the waterfront public space. A delineation of pedestrian access will be visually achieved with an elevation difference of approximately 1 foot between the path pavers and the adjacent green roofs. Further delineation will be provided with the edge planting in the green roof consisting of low bushes and shrubs. Access will be provided during the hours of operation of the waterfront park, but will be closed overnight for safety, security and privacy of the residents. Pedestrian access will be lit dusk to dawn. The ownership, operation and maintenance of two pedestrian access paths required by this paragraph will remain with the project owner.

The Architectural Review Board (ARB) at its meeting on July 26, 2017 reviewed and evaluated proposed project design, specifically to assess the extent to which the design incorporates Design Guidelines. The ARB report will be provided to the Village Board of Trustees.