

Members Present:

Ted Sestak – Acting Chairman
Daniel Jean-Gilles
Peter Voletsky
Don Hammond
Glenn E. Keene - alternate member
Allan Englander – acting member

Also Present:

Don Yacopino, Chief Building Inspector
Walter Sevastian, Village Attorney

Absent: Peter Klose (Chairman)

Acting Chairman Sestak called the meeting to order at approximately 7:35 p.m. Mr. Englander, alternate Planning Board member, was asked to sit in Mr. Klose's absence.

1) **Item 1: 117-125 Main Street. Adam O’Gorman for Millbrook Properties/Kumo Hibachi Lounge.** *Request for recommendation to ZBA for a variance of 20 Parking spaces associated with a change of use from retail space to restaurant required by Article IV VON 59-45B(3). Existing retail space of 4726 sq.ft. requires 12 spaces. Proposed restaurant of 4726 sq.ft. requires 32 spaces.*

The applicant, Adam O’Gorman was represented by his attorney Burt Dorfman.. As part of his opening statement Burt Dorfman first spoke about the history of Nyack Plaza, its establishment and general operations. He then stated that after research into village records, there appeared to be no record of there ever being a parking count for the plaza. Don Yacopino confirmed that he was also unable to find a record of the parking count for the plaza as distinguished from any other nearby locations for which counts were available. Mr. Dorfman went on and suggested in that in his opinion not appropriate to require any parking requirement for a Plaza operation as it abutted upon the central parking lot for the village and that over the years numerous restaurants and other uses had been traditionally found at this location. Mr. Dorfman included in his remarks a summary a description of the planned use of the site as being fundamental that of a restaurant with a bar operation in support of that activity. He again reiterated that there should be no need for the establishment of any additional parking spaces and that a variance of 20 parking spaces was appropriate.

Mr. Yacopino offered that regarding the theater it could be rationalized that an excess of parking spaces was now available. Walter Sevastian stated that history aside, current code requires parking spaces or variances.

The applicant spoke stating that the restaurant with bar would close by 2am. Possible enforcement mechanism and their practical efficacy were discussed by various Board members. The general consensus being that any variance should be linked to performance of the specific operation granted the variance and that otherwise the variance should not “run with the land”. Possible triggers for revocation of parking variance – sale of business, open beyond stated limits, stops basic restaurant operations, no new patrons after midnight but open till 2am. Peter Voletsky questioned whether the Board felt that they had enough direction from the Village Board on the issue of issuing the type of variance being requested. Walter Sevastian suggest that on review that the new code specifically provided for Village Board to set a price for

parking spaces, had elected not to do, apparently leaving the matter up to the Planning Board/Zoning Board to determine on the basis of requests for variances.

Member Voletsky stated that he was concerned about the apparent lack of clarity in Village Board's position for action.

Public Comment: The matter was open for public comment – the only speaker being the owner of Wasabi restaurant who questioned if the operation really intended to be only a restaurant given their stated intention of staying open till 2am. After these comments, Mr. Dorfman on behalf of the applicant offered that as a condition of approval that the restaurant would agree to close at mid night rather than 2am and that there would be no live music.

A motion to close the public hearing was made by Ted Sestak, seconded by Daniel Jean-Gilles and passed unanimously.

Resolution:

A motion made by Ted Sestak, and seconded by Don Hammond for a positive recommendation to the Zoning Board subject to an express condition of the variance agreed to by the Applicant that the variance shall be limited to the applicant's establishment of a restaurant use at the premises serving food and beverages between the hours of 11AM and 12AM. The Applicant has agreed to return to the Zoning Board to renew the variance, which shall otherwise lapse or expire as a result of this condition should the Applicant, or any successor in interest to the Applicant, establish a bar or restaurant use where the service of alcohol to patrons continues after the kitchen closes, and alcohol continues to be served past the hour of 12 AM following a night of food service at the premises. The motion passed 4-0-1 with P. Voletsky abstaining

Other Business:

A motion was made by Acting Chairman Sestak, seconded by Member Voletsky, to accept the minutes of the February 2011 Planning Board meeting. The motion passed by a vote of 5-0. no vote by member Klose (not present).

The meeting adjourned at 8:20PM.