

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

December 1, 2014

Present: Catherine Friesen, Chair
John Dunnigan
Robert Knoebel, Sr.
Mary Ann Armano
Ellyse Berg

In Memoriam:
Raymond O'Connell

Absent: Roger Cohen (alternate)

The following resolution was offered by Member Berg, seconded by Member Armano, and carried based upon a review of the evidence presented at the public hearing held on December 1, 2014.

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

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In the Matter of the application of David Durandisse & Schenley Vital (48 South Franklin Street) for an area variance from Article I VON Code 360-1.9E for the alteration or enlargement of a Building that is nonconforming with respect to the following dimensional and developmental standards: existing rear yard setback of 1' where 15 feet is required

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The Zoning Board of Appeals held a joint public meeting with the Planning Board on the 1st Day of December, 2014, and due deliberations having been made that 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: The Applicant petitions the Zoning Board for area 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 Schenley Vital, 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 December 1, 2014;
6. Draft minutes of the ARB dated November 19, 2014,
7. Testimony from Nas Huseinni, 15 Prospect Street, raising concerns about the application.

THIRD: The site in question is located in the DMU Overlay zoning district.

FOURTH: The Applicant proposes to renovate the existing mixed use building, which is presently non-conforming with respect to its rear yard setback. The proposed renovations will not increase, enlarge or extend the existing non-conformity in any way or create any new non-conformities because the bulk of the second floor will be reduced and both the second and third floor will be constructed more than 15 feet from the rear property line.

FIFTH: The Nyack Planning Board issued positive recommendations to this Board in relation to the variance request. The site plan application remains pending before both the ARB and the Planning Board.

SIXTH: The Planning Board declared itself lead agency under SEQRA.

These Findings of Fact were moved and passed. (5-0)

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 create 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 4 and 5. (5-0).

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 paragraph 4. (5-0)

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 4 and 5. (5-0)

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 5. (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 3 and 4. (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 applied for should be GRANTED with the following conditions:

1. The directives of the Planning Board and Architectural Review Board are followed;
2. Confirmation that proof of mailing has been received by the Building Department.1

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

Catherine H. Friesen

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

1 The Nyack Building Department subsequently confirmed proof of mailing had been received.