

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

May 20, 2013

Present: Catherine H. Friesen, Chair
Mary Ann Armano
John Dunnigan
Robert Knoebel, Sr. (April 29th)
Ellyse Berg
Roger Cohen (alternate)

In Memoriam:
Raymond O'Connell

Absent: Robert Knoebel, Sr. (May 20th)

The following resolution was offered by Member Armano, seconded by Member Dunnigan, and carried based upon a review of the evidence presented at the public hearing held on April 29, 2013.

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

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In the Matter of the application of WY Management
(400 High Avenue) for:

- (1) A special permit in accord with VON Code Section 360-5.9 (Table 3-1, Table of Permitted Uses) for a hotel as a Principal use in a Manufacturing (M) zone;
- (2) An appeal from the determination of the Chief Building Inspector that swimming pool is required as a use-specific requirement of VON Code Section 360-3.2B(4) in a hotel providing more than 100 guest rooms; and
- (3) Area variances as follows:
 - a. From § 360-4.3 Dimensional Standards Table 4-1 for (1) a non-conforming front yard of 9.1 feet where 20 feet is required, (2) minimum side yard setback of 14.4 feet where 20 feet is required, and (3) a buffer area from residential property of 14.4 feet where 15 feet is required;
 - b. From § 360-4.3 Dimensional Standards

Table 4-1 for (1) a building 51.7 feet high where 35 feet are permitted; (2) a building four stories high where 2 stories are permitted;

- c. From § 360-3.2B(4) for not providing a swimming pool; and
- d. From § 360-4.11E(8) for a ground floor window sign of 46 feet where 36 feet is permitted (north elevation)
- e. From § 360-4.11E for a 512 sq. ft. parallel sign where 80 sq. feet is permitted (east elevation)
- f. From § 360-4.11E(1)(a) &(b) for two parallel signs on a wall not fronting a street (west elevation)
- g. From § 360-4.11E(1)(b) for two perpendicular signs where one is permitted (south elevation);
- h. From § 360-4.11E(1)(b)(4) for a perpendicular sign on the façade of the building of 86 sq.ft. where 15 sq.ft is permitted (south elevation)
- i. From § 360-4.11E(1)(a) for more than one parallel sign where one is permitted (south elevation);
- j. From § 360-4.11E(3) for nineteen directional signs greater in size than 2 sq. ft. (1 stop sign, 10 one-way signs, and 8 Do Not Enter signs)

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The Zoning Board of Appeals held a public meeting on the 29th Day of April, 2013 and due deliberations having been made on 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: Applicant, WY Management LLC, seeks reversal of a determination made by the Chief Building Inspector in the above captioned action, and also petitions the Zoning Board of Appeals for the special permit and area variances noted above.¹

¹ In light of the Board's decision on the appeal, the request for a variance from § 360-3.2B(4) for not providing a swimming pool is moot.

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 applications for special permit and area variances, and supporting documents submitted, including:
 - a. Letter from Dennis D. Michaels, Esq., to the Zoning Board of Appeals dated April 26, 2013;
 - b. Letter from Joseph Siegel to Donald Yacopino, Building Inspector, dated April 2, 2013, amending the January 31st application;
 - c. Nyack Hotel Survey (2 sheets) dated September 20, 2012;
 - d. Subdivision Plat dated March 14, 2013 and revised April 19, 2013;
 - e. Site Plan related drawings (7 sheets: C-100, C-101, C-201, C-401, C-501, C-502, C-503), dated January 2, 2013 and revised April 19, 2013;
 - f. Landscaping and lighting related plans (3 sheets: L-100, E-100, E-101) dated January 30, 2103, and revised April 19, 2013.
 - g. Table of required variances and set of color drawings (numbered 9, 10, 13, 14, 15, 16, 17, 22, 23, 24) prepared by the Applicant for the April 29th ZBA meeting.
2. Testimony of the following individuals on behalf of the applicant: Dennis Michaels, Esq., Michael Yanko, Kerry Wellington, Howard Dean, Steven Grogg (McClaren Engineering), Richard Pearson, Joseph Siegel and Michael Mueller;
3. Testimony of Donald Yacopino, Chief Building Inspector;
4. ZBA members' knowledge of the site in question and site visits by all members of the ZBA;
5. Building Inspector's Plan Review Summary dated April 29, 2013;
6. Planning Board minutes dated February 4, 2013, March 4, 2013, and April 1, 2013;
7. ARB minutes dated January 16, 2013; February 20, 2013 and March 20, 2013;
8. Positive recommendation to the ZBA from the Planning Board and the ARB with respect to the grant of the variances;
9. Letter from the County of Rockland Department of Planning to the ZBA dated February 25, 2013;
10. Letter from John Meyers Consulting Inc to Planning Board dated April 17, 2013;
11. Letter from Nyack Planning Board to Nyack ZBA dated February 5, 2013 giving notice of its intent to assume the role of lead agency for purposes of SEQRA review;
12. Memorandum of Bob Galvin, Village Planner, to Chair and Members of the Planning Board dated April 21, 2013;
13. Long-Form Environmental Assessment Form (EAF) dated January 2, 2013, and revised March 15, 2013;
14. Environmental Assessment Form, Part 3, Nylo Hotel, Prepared by McClaren Engineering Group for WY Management LLC, dated January 2013 and revised March 12, 2013;
15. SEQRA Negative Declaration dated April 3, 2013;
16. Comprehensive Master Plan of the Village of Nyack adopted by the Nyack Village Board of Trustees January 11, 2007;
17. The Local Zoning and Planning Law of the Village of Nyack (referred to herein as

“VON Code”)

18. Testimony from the following member of the public in support of the application:
Raymond King.

THIRD: The site in question is located in the “M” zoning district, and is owned by 400 High Avenue LLC. WY Management, the Applicant, is the contract vendee of the property and has the permission of the owner to make this application. The 2.8 acre site contains an existing two-story, 40,000 square foot general office and light industrial building, which has been largely vacant for almost 3 years. The Applicant proposes to redevelop the existing steel structure into a four story 132 room boutique, loft-style hotel that includes 1,426 square feet for offices and shops, a one level parking deck, an indoor fitness center, and outdoor amenity space for hotel functions containing a soaking pool. The proposed hotel will add two stories and 16.7 feet to the height of the existing structure, and does not require a parking variance.

FOURTH: The applicant initially appeared before the Planning Board on February 4, 2013, at which time the Planning Board found the application was an Unlisted Action and declared its intent to assume the role of Lead Agency for purposes of SEQR. At that same meeting, the Planning Board issued a positive recommendation to the Zoning Board of Appeals with respect to the grant of the height and story-related variances, finding that the applicant was seeking an increase in the height of the structure to accommodate additional rooms, better vistas, and more amenities, and that the overall site plan will be benefitted by the increase of the height as it will attenuate the noise of the Thruway for the condominiums and improve the site view for the neighbors to the north. The Planning Board further noted that the slope of the property would mitigate the visual impact of the increased height on the north side which is where residents of the Village would be affected. The Planning Board also issued a positive recommendation to the Zoning Board of Appeals with respect to the requested set-back and buffer variances on the ground that the conditions were pre-existing, were not proposed to be increased, and that reuse of the existing steel structure was an environmentally sound practice.

FIFTH: Following its review of the application, the County of Rockland Department of Planning recommended that a special permit and variance be granted only for a three story hotel because of the site’s size and limitations. Its letter dated February 25, 2013 noted that the “the height variance and number of stories will have a visual impact to the surrounding area, particularly the nearby residential area. The hotel is uphill and will have a greater visual impact due to its elevation and proposed height. The Village of Nyack should analyze the visual impact on the surrounding neighborhood, and the State Environmental Quality Review should also evaluate the visual impact that will be created with the extra height and stories”.

SIXTH: The Environmental Assessment Form, Part 3 prepared by McClaren Engineering contains a visual analysis section stating, in pertinent part, that: “[a]s shown on the building elevations, the structure will be sensitively designed and detailed to take into consideration its surrounding buildings. The project will have a minimal impact with respect to view from offsite areas. The increased height will not have an adverse effect on the surrounding buildings. The footprint of the proposed building will coincide with the existing warehouse. By keeping the

footprint of the building the same, this will limit the visual impact on the surrounding buildings”.

SEVENTH: The Applicant observes that proposed building site is the only lot within the “M” zoning district. The site abuts the MFR-1 and the MFR-2 zones, which allow a maximum building height of 40’ and 50’ respectively and a maximum number of stories of 3 and 4, respectively. To the east, the site also abuts the RMU zoning district which allows a maximum building height of 32’. The topography of the site rises 20’ from the south to the north, and another approximately 15 feet to the adjacent Highview Condominium units. As a result of this slope, the hotel will appear to be three stories high from the adjacent residential area to the northeast. Most of the lot to the north of the proposed building is occupied by a cemetery.

EIGHTH: At the Applicant’s first appearance before the Architectural Review Board, the ARB expressed concerns about the length and scale of the north elevation facing the residential areas. Its February minutes reflect that “in response to the board’s request that the appearance of the north elevation (most visible to the residential neighbors) be a more appropriate residential scale, the mass has been relieved by moving the central pavilion forward (increasing the projection of the central section). Following additional discussions, the ARB approved the building proposal in its entirety with certain conditions at its meeting on March 20, 2013.

NINTH: Part 2 of the Long Form EAF includes a finding that the project will not affect aesthetic resources. In issuing its SEQR Negative Declaration, the Planning Board noted that “[a]fter reviewing the visual analysis of the proposed action, including elevations, materials and considering the site’s topography and impact on adjacent properties, the ARB approved a certificate of appropriateness for the site”.

TENTH: Issues pertaining to potential traffic concerns and ensuring adequate access for the Fire Department were subject to extensive review before the Planning Board which retained its own consultant (Adler) to review the Applicant’s traffic study. At the ZBA hearing, the Applicant offered testimony that all issues related to fire safety access had been resolved to the satisfaction of the Fire Inspector and the Building Inspector, and any changes were reflected on the most recent plans submitted for the ZBA’s consideration, except that a fire hydrant located on the utility plan will be shown on the site plan. The Applicant further offered testimony that no new issues with respect to traffic or parking were raised in the letter dated April 17, 2013 from John Meyer Consulting, PC, to the Planning Board, and that all issues discussed in the letter had been resolved to the satisfaction of the Planning Board at its April 1st meeting. In issuing its SEQR Negative Declaration dated April 3, 2013, the Planning Board noted that “[a] Traffic Study conducted by JMC Consulting was reviewed by Adler Consulting for the Village. The study and review concluded that the proposed project would not contribute to an alteration in the Village’s traffic patterns nor result in major traffic or parking impacts. The Applicant agreed to recommend actions including developing a left turn lane on westbound High Avenue, and working with the Village and DOT on traffic signal timing improvements and the extension of a crash barrier along Rt. 59 near its intersection with Polhemus Street”.

ELEVENTH : With respect to the proposed height of the hotel and financial need for four stories, NYLO CEO Michael Mueller testified that the proposed project is three stories on the north side of the building and four stories on the south side, that a thirty-five foot, two story hotel could only contain forty to fifty rooms, and that a three story hotel could only contain 80 rooms, which was not enough for the project to be financially viable. He testified that 150-175 rooms would represent the project's "sweet spot". According to Mr. Mueller, the proposed construction of 132 rooms is less than optimal, but is what could fit into the existing footprint of the building if four stories were permitted and is the minimum the project requires to make it viable based on financing.

TWELTH: The Comprehensive Master Plan ("CMP") of the Village of Nyack includes the observations that "Nyack had numerous hotels in the late nineteenth century and early twentieth century" and that "properly designed new inns and hotels could be an asset to the Village and provide a valuable service". The CMP cautioned that "[o]vernight accommodations should have adequate parking, attractive buildings and landscaping design and convenient access for visitors," and that the Village should "promote appropriately scaled overnight accommodations, such as small-scale lodging near the waterfront and in downtown and larger hotels in the Thruway area". The CMP also recommended that the Village encourage the provision of recreational facilities for hotel guests that could also be available to the public.

THIRTEENTH: VON Code Section 360-3.2B (4) provides as use-specific standard for hotels and motels as follows: "Hotels or motels providing more than 100 guest rooms shall include recreational facilities on site such as swimming pools, gymnasiums and other typical health club facilities, and open space recreation areas." The Code further provides certain rules of construction, including the following section governing "lists and examples" (VON Code Section 360-1.6(G)): "Unless otherwise expressly indicated, lists of items or examples that use "including," "such as," or similar terms are intended to provide examples only. They are not to be construed as exhaustive lists of all possibilities."

FOURTEENTH: In reviewing the application, the Building Inspector determined that the application did not satisfy the use-specific standard set forth in VON Code Section 360-3.2B(4) because the proposal did not include a swimming pool. The Applicant appealed, arguing the facilities listed in the section are illustrative only, not compulsory, and that the proposal contained adequate recreational facilities including a 12' by 12' by 4' recreational bathing pool, a health club/fitness center, a library/game room, and an open space recreational area with fire pit, to satisfy this section.

FIFTEENTH: At its April 1st meeting, the Planned Board made a finding of fact that the applicant had provided a health and fitness facility, an open space area, and an "area for wetting oneself".

SIXTEENTH: At the April 29th ZBA meeting, the Applicant identified each sign on the plans which requires a variance from various sections of the Zoning Code. While the number of directional signs for which variances are requested is large (19), the Applicant offered testimony that they are all required to ensure safe passage for vehicles and pedestrians in and around the

site, and that all signs would conform to the NYCRR, Title 17, Chapter 5, Uniform Traffic Control Devices, latest revision and MUCTD. The size of the non-directional signs is based on the size of the property and the scale of the building, and they are proportional to the building. Internal illumination is proposed for only two signs – both on the Thruway side of the building – and the DOT did not object to the lighting. The minutes of the ARB meeting dated February 20, 2013, indicate that it reviewed the proposed signs in detail without taking a formal vote. During its subsequent March 20th meeting, the ARB considered both the signs and the lighting, approved the application with certain conditions, and issued a positive recommendation to the ZBA with respect to certain signs requested by the applicant that required variances.

SEVENTEENTH: At the request of the Planning Board, the Village Engineer, Eve Mancuso, reviewed both the landscaping plan and the lighting plan submitted by the Applicant. The Planning Board minutes dated April 1, 2013, reflect that the Applicant thereafter made certain changes to the building mounted light fixtures at Mancuso’s recommendation, and that the Applicant and the Planning Board reached agreement with respect to any landscaping issues. In issuing its SEQR Negative Declaration, the Planning Board noted that “Green Infrastructure Practices provide more substantial landscaping, minimize land disturbance and will reduce runoff.”

The above Findings were moved and passed. (5-0)

CONCLUSIONS OF LAW:

1. Appeal

As to the applicant’s appeal from the determination of the Chief Building Inspector that VON Code 360-3.2B (4) requires installation of a swimming pool, the Zoning Board of Appeals reaches the following Conclusions of Law:

First: It is black-letter law that statutory interpretation by a judicial body requires the evaluation of the statute using the plain-language meaning of the words comprising the statute. (5-0)

Second: Having considered VON Code Section 360-3.2B (4) in light of the rules of construction set forth in VON Code Section 360-1.6(G), the Zoning Board of Appeals finds that the list in the section following the words “such as” that includes the word “swimming pool” is intended to provide examples only of the types of recreational facilities required to satisfy the use-specific standard.

Thus, based on the above, the Zoning Board of Appeals finds that in the interest of justice the appeal of the building inspector’s determination is **SUSTAINED**.

2. Special Permit:

As to the application for Special Permit, the Zoning Board of Appeals has considered the factors set forth in VON Code 360-5.9C and makes the following Conclusions of Law:

FIRST: That the applicant has shown that all proposed structures, equipment and material will be readily accessible for fire and police protection.

SECOND: That the applicant has shown that the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.

THIRD: The applicant has shown that the location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with said district or conflict with the normal traffic of the neighborhood.

FOURTH: The applicant has shown that the location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

FIFTH: The application is consistent with the use-specific standards for hotel facilities set forth in VON Code 360-3.2B(7), specifically that it includes adequate recreational facilities on site and open space recreation areas.

SIXTH: The ZBA has considered the recommendations of the Rockland County Department of Planning with respect to the issuance of the special permit, and to the extent that this decision overrides the recommendations, the Zoning Board relied on (a) the Planning Board's recommendations, (2) the fact that the visual impact of the increased height and number of stories required for the hotel's operation was considered during the State Environmental Quality Review and a Negative Declaration was issued, (3) the specific Findings of Fact set forth hereinabove as paragraphs #4, #6, #7, #8, and #9, (4) the Zoning Board's determination that the overall improvement on the site is a benefit to the health, safety and welfare of the community and the adjacent neighbors, and (5) the provisions of the Comprehensive Master Plan which support the type of redevelopment proposed by the Applicant.

The Board has weighed the findings of fact and the conclusions of law as required under VON Code Section VON Code 360-5.9C *et. seq.* and finds in the interest of justice that the Special Permit should be **GRANTED** with the following conditions:

1. That all applicable regulations and laws be fully complied with prior to the issuance of the Special Permit;
2. The conditions placed by the ARB and the Planning Board on this application be followed. Any deviation from, or failure to adhere to such conditions will void the Special Permit.

3. **Variances for Building Height and Stories**

On oral motion, the Zoning Board of Appeals voted to consider these two variances in an omnibus fashion.

With respect to the application for variances for building height and stories, the Zoning Board considered the factors set forth in Section 7-712-b of the Village Law of the State of New York as follows:

FIRST: That the proposed variances do not create an undesirable change in the neighborhood. (5-0)

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

THIRD: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variances. (5-0)

FOURTH: That the variances are substantial in light of the current conditions on the site, but are a positive improvement over existing conditions. (5-0)

FIFTH: That the hardship is self-created. (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** with the following conditions:

1. All conditions set forth above in connection with the issuance of the Special Permit be followed.
2. The conditions placed by the ARB and the Planning Board on this application be followed. Any deviation from, or failure to adhere to such conditions will void the variances.

The ZBA has considered the recommendations of the Rockland County Planning Department with respect to the grant of these variances. To the extent, if any, that the grant of the variances conflicts with the same, the Zoning Board overrides such recommendations specifically based upon the Findings of Fact set forth hereinabove, the grounds for the issue of the Special Permit granted herein, the Negative Declaration issued by the Planning Board, and the provisions of the Comprehensive Master Plan which support the type of redevelopment proposed by the Applicant.

4. **Variances for Setbacks and Buffer**

On oral motion, the Board voted to consider the variances for the pre-existing conditions pertaining to setbacks and buffer zones in an omnibus fashion:

With respect to the application for the variances pertaining to setbacks and buffer zones, the Zoning Board considered the factors set forth in Section 7-712-b of the Village Law of the State of New York as follows:

FIRST: That the proposed variances do not create an undesirable change in the neighborhood. (5-0)

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

THIRD: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variances. (5-0)

FOURTH: That the variances are not substantial in light of the current conditions on the site. (5-0)

FIFTH: That, on balance, the hardships are not self-created. (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** with the following conditions:

1. All conditions set forth above in connection with the issuance of the Special Permit be followed.
2. The conditions placed by the ARB and the Planning Board on this application be followed. Any deviation from, or failure to adhere to such conditions will void the variances.

The ZBA has considered the recommendations of the Rockland County Planning Department with respect to the grant of these variances. To the extent, if any, that the grant of the variances conflicts with the same, the Zoning Board overrides such recommendations specifically based upon the Findings of Fact set forth hereinabove, the grounds for the issue of the Special Permit granted herein, the Negative Declaration issued by the Planning Board, and the provisions of the Comprehensive Master Plan which support the type of redevelopment proposed by the Applicant.

5. Variances for Signs

On oral motion, the Board voted to consider the variances pertaining to signs in an omnibus fashion:

With respect to the application for the variances pertaining to signs, the Zoning Board considered the factors set forth in Section 7-712-b of the Village Law of the State of New York as follows:

FIRST: That the proposed variances do not create an undesirable change in the neighborhood in that the proposed signage is intended to improve traffic flow, safety and navigation. (5-0)

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

THIRD: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variances in that the number and size of the signs are necessary to ensure safety and improve traffic flow, and because of the size of the building. (5-0)

FOURTH: That the variances are not substantial in light of the current conditions on the site. (5-0)

FIFTH: That, on balance, the hardships are self-created. (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 variances applied for should be **GRANTED** with the following conditions:

1. All conditions set forth above in connection with the issuance of the Special Permit be followed.
2. The conditions placed by the ARB and the Planning Board on this application be followed. Any deviation from, or failure to adhere to such conditions will void the variances.

The ZBA has considered the recommendations of the Rockland County Planning Department with respect to the grant of these variances. To the extent, if any, that the grant of the variances conflicts with the same, the Zoning Board overrides such recommendations specifically based upon the Findings of Fact set forth hereinabove, the grounds for the issue of the Special Permit granted herein, the Negative Declaration issued by the Planning Board, and the provisions of the Comprehensive Master Plan which support the type of redevelopment proposed by the Applicant.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

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