

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Via ZOOM PLATFORM
Nyack, New York

January 31, 2022

Present: Steven P. Knowlton, Chair
Jack Dunnigan
Richard Gressle

**In Memoriam:
Raymond O'Connell**

Abstain: Ellyse Berg,

Absent: Roger Cohen

Member Berg requested to recuse herself from this Application as she is a member of the Nyack Library Board of Trustees, a contiguous neighbor. The request was granted.

The following resolution was offered by Member Knowlton, seconded by Member Dunnigan, and carried based upon a review of the evidence presented at the public hearing held on November 29, 2021 and January 31, 2022

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

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In the Matter of the application of Art Cafe (65 South Broadway) for Area Variances from VON Code:

1. Article III, §360-3.2E(1)(c) for an accessory structure not located in a side or rear yard;
2. Article III, §360-3.2E(1)(f) for an accessory structure closer than 25 feet from the street line;
3. Article III §360-3.2E(1)(e) for an accessory structure not located at least 4 feet behind the front façade of the principle building;
4. Article IV §360-4.5 (Minimum Parking Requirement Table) for 7 parking spaces.

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The Zoning Board of Appeals held a public meetings on the 29th of November 2021, and January 31, 2022 and due deliberations having been made;

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 petitions the Zoning Board for the variances listed 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;
2. The testimony of Sarah Murray from DR Pilla, Architect, for the Applicant;
3. ZBA members knowledge of the site in question;
4. Site visits by all members of the ZBA;
5. Chief Building Inspector's notes and summary;
6. Public testimony from Angela Strong, Nyack Library Director in support of the Application;
7. The decisions of the Architectural Review Board and the Planning Board made a part of the record.
8. November 1, 2021 correspondence from the Rockland County Department of Planning.

THIRD: The site in question is in the DMU-1 zoning district. The Art Café has used this space for outdoor dining and service since approximately 2005. Information maintained by the Nyack Building Department indicates that since at least 2019, the originally 480 sq. ft. area that was the subject of a 2019 application with “4 tables” has been substantially enlarged without being permitted or approved by the Village Building Department or the Village Land Use Boards. See plans submitted for this Application.

FOURTH: The Applicant wishes to construct a wooden pergola 40' by 24' with integrated heater and outdoor lighting over a part of the existing garden used for outdoor dining. The applicant wishes to provide additional outdoor dining amenities for its patrons considering the Covid pandemic.

FIFTH: The Nyack Planning Board issued a positive recommendation to this Board in relation to the variance requests except for the Parking Variance, as per that Board's practice. The Architectural Review Board approved the application. The decisions and notes of these two boards are incorporated by reference herein.

SIXTH: GML review was sought from the Village of South Nyack on October 15, 2021. No response has yet been received, and as the 10-day time to notice was complied with under GML § 239nn without response, the Board will render a decision on this Application without a response from South Nyack.

The above Findings of Fact were moved and passed (3-0)

CONCLUSIONS OF LAW:

On motion, the Zoning Board elected to deliberate on the variance requests in an omnibus fashion.

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 grant of the proposed variances do not create an undesirable change in the neighborhood. This conclusion was reached based upon deliberations of the Zoning Board at the public hearings, and based upon the factual findings set forth above in paragraphs SECOND, FOURTH and FIFTH. (3-0)

SECOND: That no detriment to nearby properties will result from granting the variances. This conclusion was reached based upon deliberations of the Zoning Board at the public hearings, and based upon the factual findings set forth above in paragraphs SECOND, FOURTH and FIFTH. (3-0)

THIRD: That the Applicant has shown that there are no other means by which it could achieve its purpose without the requested variances. 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 FOURTH. (3-0)

FOURTH: That the variances are 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 SECOND, THIRD and FOURTH (3-0)

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 paragraph SECOND and THIRD (3-0)

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, to which the Applicant has agreed:

1. The directives of the Architectural Review Board and the Planning Board be followed.
2. The Planning Board is specifically directed to examine the following factors during its site

plan review process:

- a. The proposed exterior lighting, and any spillover or other effect that may affect neighboring properties or the public right of way;
 - b. The proposed exterior heating elements to be used, including any electrical or other concerns;
 - c. The proposed new structure not increase or create any difficulty related to handicap accessibility;
3. Any deviations from the November 1, 2021 Rockland County Planning Department letter be remedied.
 4. The pergola will remain open to the air and light and will not be roofed or walled.
 5. Any additional future improvements in the outdoor dining area must be subject to Building Department review.

On a roll call, the vote was as follows:

Ayes:	3
Nays:	0
Abstain:	1

s/Steven P. Knowlton, Esq.
Steven P. Knowlton Chairperson
Zoning Board of Appeals, Nyack.