

**VILLAGE OF COXSACKIE
ZONING BOARD MINUTES
October 3, 2022**

Chairman Sal Bevilacqua called the Zoning Board Meeting to order at 6:00 p.m. Present were Zoning Board Members: Christopher Chimento, Brian Goble, Debra Jung, and Brian Tighe.

A motion to approve the minutes from the August 29, 2022 Planning Board and Zoning Board of Appeals Joint Public Hearing on Empire Riverfront Ventures, LLC was made by Chairman Bevilacqua and seconded by Christopher Chimento. Chairman Bevilacqua voted yes. Christopher Chimento voted yes. Brian Goble voted yes. Debra Jung voted yes. Brian Tighe voted yes. The motion carried.

A motion to approve the minutes from the September 6, 2022 Zoning Board Meeting was made by Chairman Bevilacqua and seconded by Christopher Chimento. Chairman Bevilacqua voted yes. Christopher Chimento voted yes. Brian Goble voted yes. Debra Jung voted yes. Brian Tighe voted yes. The motion carried.

Correspondence Received

An emailed letter was received from Claudia Braymer, of Braymer Law, PLLC, regarding Empire Riverfront Venture's Site Plan Amendment.

New Business

Chairman Bevilacqua stated that tonight the Zoning Board will be continuing to review the Area Variance application received from Empire Riverfront Ventures for the height of the Newbury Hotel at 60 South River Street. He stated that as an involved entity of the State Environmental Quality Review (SEQR) process, he wants to acknowledge that the Planning Board, as Lead Agency, has adopted a SEQR Negative Declaration finding that the project would not pose a significant adverse impact on the environment. He stated that at the last ZBA meeting, they had composed some conditioning. They have asked Village Attorney, Robert Stout, to draft an approval Resolution containing all of the key elements of their discussions over the last few meetings, accompanied with the proposed conditioning that they have deliberated on. Mr. Stout has worked on getting a polished version of that available for the Board tonight. He asked Mr. Stout if he would like to go over some of that material.

Village Attorney, Robert Stout, read the Resolution-Empire Riverfront Ventures, LLC Application for Area Variance aloud. Resolution attached hereto as part of the official minutes.

Attorney Robert Stout stated that the operative clauses of the resolution is where the Board engages in the Area Variance balancing test. Before they get into the substance of that, he would like to go through what the standard is. The standard uses both the NYS Village Law and the Village of Coxsackie Code. NYS Village Law §7-712-b, in relation to Area Variances, states that

the Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law to grant Area Variances. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. So, at its heart, that is what the balancing test is about. Then there are five elements that help inform that decision. In making such determination, the Board shall also consider 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, whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an Area Variance, whether the requested Area Variance is substantial, whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and 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. The law goes on to state that the Board of Appeals granting an Area Variance shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood, and the health, safety, and welfare of the community.

Attorney Robert Stout read the Operative Clauses aloud. Resolution and Area Variance Findings attached hereto as part of the official minutes.

Attorney Robert Stout stated that as he goes through these proposed conditions that the Board has discussed at its last several meetings, he feels that there does need to be clarification on how the items in relation to sound operate together.

Mary Beth Bianconi, of Delaware Engineering, stated that she thinks that there is a recognition that there is going to be outdoor sound, whether amplified or not amplified. She thinks that the conditions that the Board discussed were really three things. Firstly, that the sound shall be during operating hours only. Secondly, is that the volume of the sound is that of background music only, so that conversational speaking voices have to be heard. Thirdly, is that directing the sound in any manner that is away from the building is prohibited. It must be focused internally.

Attorney Robert Stout stated that he can tweak the language to reflect the concept of the speakers, whether they be exterior or interior, shall be directed inward, towards the building, and not away.

Mary Beth Bianconi stated that as for the condition regarding parapet greenery having to be maintained through the annual growing season, there was a discussion regarding having greenery there that is intended to be grown year-round. She thinks that they might want to add that concept of while, in a perfect world, a screen will have a combination of year-round and seasonal vegetation, that there would be year-round screening as well.

Attorney Robert Stout stated that in comparing some of the conditions to discussion, he found that some of those conditions would be more appropriate to be before the Planning Board. This would be in respect to parking, signage, parking lot attendants, following the recommendations

of the traffic study, and the boundary dispute. These would all not be affected by the Area Variance, but rather impacted by the Site Plan.

Brian Goble asked where the months came from in regard to limiting the bar and dining room seasonally from May to October. He asked if this is what was listed in the applicant's plan.

Attorney Robert Stout stated that it was part of the dialogue with the applicant during the meetings.

Mary Beth Bianconi stated that it is also a traditional outdoor operating timeframe for upstate New York restaurants.

Attorney Robert Stout stated that there is nothing special about those months if the Board wishes to discuss that further.

Mary Beth Bianconi stated that the business plan that was submitted for the restaurant actually listed a shorter season. The business plan also had more narrow operating hours. However, the Board has to think about the fact that the current applicant may not operate the facility looking at the long term. So, when the Board adopts conditions, you have to think about how those conditions play out in the future, perhaps as different operators are involved. So, the Board should try to provide a reasonable level of flexibility, so that they don't end up with automatic violations in the future. In coming up with these suggestions, they also looked at what is done in other communities as an example, in terms of operating hours that seemed to be tolerable for similar circumstances.

Attorney Robert Stout stated that it is also a quantifiable way to control impacts, particularly in respect to any noise emanating from the site. Whereas the Village Code is a little bit more of a subjective standard. By putting in definitive hours of operation, it becomes easier from a Code Enforcement perspective, and gives the Board a little bit more of a degree of comfort that those impacts can be mitigated or completely avoided.

Aaron Flach, of Empire Riverfront Ventures LLC, asked if the time period in the discussion is just for the outdoor space.

Attorney Robert Stout stated that that is correct, and they will make sure that that is specified.

Mary Beth Bianconi stated that it is for the space that is open to the sky. From what she can understand from the architectural plans, there is an enclosed section of the fifth floor that is part of the restaurant. There is no reason that that could not operate year-round. It is simply the outdoor portion that could have negative impacts on neighboring properties.

Attorney Robert Stout stated that he does not think it was the Board's intention during discussion to limit the interior's operating hours.

Christopher Chimento stated that in discussing the operating hours there was discussion regarding matching it to the Village's Code, and he doesn't remember what the code states in

terms of noise ordinance.

Mary Beth Bianconi stated that the Village Code is very subjective.

Andrew Millspaugh, of Sterling Environmental Engineering, stated that the noise ordinance is 10:00 p.m. to 7:00 a.m.

Mary Beth Bianconi stated that this is in conformance of the Village Code. The rest of the Village's noise code is subjective. Some noise codes will have decibel levels, others will have something a little more objective, but this code more or less says that nothing objectionable should happen. That is another reason to frame these conditions.

Attorney Robert Stout read §89-1 of the Village's Code pertaining to unnecessary noises prohibited. The code states the following: "It shall be unlawful for any person to make, continue, aid, countenance, cause to be made or assist in making any unreasonably loud, disturbing, and unnecessary noise between the hours of 8:00 p.m. and 7:00 a.m. during any weekday and between the hours of 8:00 p.m. and 9:00 a.m. on any Sunday or holiday, except as otherwise hereinafter provided, within the limits of the Village of Coxsackie. Any noise which unreasonably interferes with the sleep, comfort, repose, health, or safety of others is prohibited during the hours above mentioned." He stated that despite what was discussed, the code still applies. The applicant is still subject to that noise ordinance. These restrictions are arguably tighter because the Board doesn't have to establish the somewhat subjective situation of defining what is unreasonably loud, what is disturbing, and what is unnecessary during those hours. Rather, actual controls are put into place. He stated in that section of code there is a listing of specific prohibitions. He read §89-1(B)(7) of the noise ordinance code stating the following: "The playing of music or sound-producing device or the operation of any radio, television receiver or phonograph in such a manner and with such volume between the hours of 10:00 p.m. and 7:00 a.m. as to annoy or disturb the quiet, comfort or repose of persons in any dwelling or other type of residence located within an area defined as a residential district in the Zoning Ordinance for the Village of Coxsackie, as adopted and amended."

Mary Beth Bianconi stated that the idea was that even though the Village Center district is a mixed-use district, and not a residential district by definition, the Ely Street and Church Street area is.

Attorney Robert Stout read §89-1(B)(8) of the noise ordinance code stating the following: "The playing of music by any band or orchestra or sound-producing device which unreasonably interferes with sleep, comfort, repose, health or safety of others between the hours of 10:00 p.m. and 7:00 a.m., except on such special occasion upon consent and permission of the Village Board."

Chairman Bevilacqua stated that he feels that the frame of the limitations proposed in the draft are appropriate.

Brian Tighe asked if there needs to be clarification on this relating to the outdoor space versus the interior space.

Mary Beth Bianconi stated that this is included in the area discussing operating hours. Again, with the intent that things that happen inside the building are not likely to have an impact on neighbors, and the idea of these conditions is to mitigate any potential impacts of the Area Variance, which is that top 15.23 feet.

Attorney Robert Stout read §155-30(B) of the Zoning Code relating to noise stating the following: “Noise shall be measured at the property line, and noise levels shall be measured in decibels and shall not exceed the following”:

Sound Pressure Level Limits (Measured in dBA Scale)		
	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Adjacent Use		
Residential	65	55
Commercial	70	60
Industrial	80	80

Brian Tighe asked if the wording is right where it says, “...to approve or disapprove the variance with conditions.” He was thinking that maybe it should say, “...to approve the requested variance with conditions.”

Attorney Robert Stout stated that that is probably a cleaner way of stating it because that is the action that this Board contemplates. So, why reference “disapprove”. That is a good point.

Mary Beth Bianconi stated that if the Board disapproved the application, they wouldn’t disapprove with conditions, nevertheless.

Brian Tighe stated that everything else looks accurate in respect to what the Board has previously discussed.

Attorney Robert Stout read the balance of the clauses aloud. Resolution and Area Variance Findings attached hereto as part of the official minutes.

Chairman Bevilacqua stated that as far as general consensus of public comment, the Board’s discussions, and what they have been shown from Empire Riverfront Ventures, LLC in regard to the application goes, this Board has spent a significant time considering all of this available data. They’ve spent months listening to, and compiling information, as well as public comment. They’ve wanted to effectively prepare themselves to confidently entertain a vote for Empire Riverfront Ventures’ variance for height requested. He feels that with the explicit conditioning they have set forth that it is sensible and appropriate, and at this time he would like to entertain a motion to approve the height variance with conditioning.

A motion to approve the Area Variance application received from Empire Riverfront Ventures, LLC with the conditions outlined in Resolution-Empire Riverfront Ventures, LLC Application for Area Variance that was reviewed and modified this evening, October 3, 2022 was made by Chairman Bevilacqua and seconded by Brian Goble. Chairman Bevilacqua voted yes.

Christopher Chimento voted yes. Brian Goble voted yes. Debra Jung voted yes. Brian Tighe voted yes. The motion carried.

Attorney Robert Stout stated that he can provide to the Zoning Board this week a revised version of the Resolution including the comments that were made tonight. He will provide a copy to the Village Clerk so that it is filed and satisfies the five-day requirement. Then they can get a copy over to the applicant. He thanked the Board and stated that he appreciates their service on this matter. He knows that the matter kicked off back in April with the submission of the application, and there were many meetings as they worked through the process. He feels that the Board engaged in a thorough comprehensive discussion of all of the key elements.

Chairman Bevilacqua thanked both Attorney Robert Stout and Mary Beth Bianconi for their help through this process as well.

Alex Betke, Attorney on behalf of the applicant, thanked the Zoning Board for dedicating their time to work on this. It has been a good process and he appreciates their willingness to work through this.

Public Comment

No public comment was received.

A motion to adjourn the Zoning Board meeting was made by Chairman Bevilacqua and seconded by Brian Tighe. Chairman Bevilacqua voted yes. Christopher Chimento voted yes. Brian Goble voted yes. Debra Jung voted yes. Brian Tighe voted yes. The motion carried.

The meeting was adjourned at 6:55 p.m.

Respectfully submitted,

Nikki Berezna
Clerk

**RESOLUTION OF THE
VILLAGE OF COXSACKIE ZONING BOARD OF APPEALS**

October 3, 2022

**EMPIRE RIVERFRONT VENTURES, LLC
APPLICATION FOR AREA VARIANCE**

WHEREAS, on April 11, 2022, Empire Riverfront Ventures, LLC (the “Applicant”) submitted to the Village of Coxsackie Zoning Board of Appeals (the “ZBA”) an area variance application requesting a height variance of 15.23 feet from the allowed maximum height of 50 feet as provided in Schedule C of the Village Zoning Ordinance for a partially constructed structure to be known as the Newbury Hotel located in the Village Center Zoning District at 60 South River Street, Tax Parcel No. 56.20-2-12, (hereinafter, the “Project Site”), which application was supplemented by submissions to the ZBA dated May 2, 2022, June 22, 2022 and July 14th 2022, as well as copies of the “Planning Board Application Submission” (as defined below) (collectively, the “Application”); and

WHEREAS, the Application was submitted following receipt of a Stop Work Order and Notice of Violation/Order to Remedy issued by the Village’s Code Enforcement Officer on March 24, 2022 (the “NOV”), which NOV required the Applicant to request an area variance from the ZBA and Site Plan amendment from the Village Planning Board (the “Planning Board”); and

WHEREAS, on April 11, 2022, the Applicant also submitted to the Planning Board an application for amendment of the existing Site Plan regarding the redevelopment of the east side of South River Street from the Dolan Block to the former State Wire facility, along with an application for a Special Use Permit addressing the addition of a deck and kitchen to a building known as “The Wire” (collectively, the “Planning Board Application Submission”); and,

WHEREAS, the Planning Board Application Submission included:

- Application forms for Site Plan Amendment and Special Use Permit;
- a copy of the application for Area Variance for building height related to the partially constructed 5th Floor at the Newbury Hotel, which Area Variance application was submitted to the Zoning Board of Appeals on the same date; and
- Supplemental Short Environmental Assessment Form dated April 11, 2022;
- Copy of February 21, 2019 SEQRA Negative Declaration;
- Project narrative;
- Updated Project Drawings Set;
- Parking and Traffic Study by Creighton Manning Engineering, LLP; and

WHEREAS, on April 14, 2022, the Applicant submitted an updated Lighting Plan to supplement the Planning Board Application Submission; and

WHEREAS, the Planning Board Application Submission has been made available to the ZBA; and

WHEREAS, at its April 21, 2022 meeting, the Planning Board adopted a resolution determining the Project to be a Type I Action pursuant to 6 NYCRR Part 617.4; requiring a coordinated review under the State Environmental Quality Review Act (“SEQRA”) and declaring its intent to be lead agency for the review of the Project; and

WHEREAS, on April 29th, 2022, the Applicant submitted a revised Part I of a Full Environmental Assessment Form (“FEAF”); and

WHEREAS, upon its receipt of an updated Part I of the FEAF to address comments from the Planning Board’s technical professionals, the Planning Board circulated a notice of intent to be Lead Agency on May 13, 2022, including a copy of the FEAF to all Interested and Involved Agencies pursuant to SEQRA; and

WHEREAS, on June 6th, 2022, the Applicant submitted a supplement to the Planning Board Application Submission, which supplement included a copy of a Visual Impact Assessment also provided to the ZBA as well as other supplemental information; and

WHEREAS, on June 10th, 2022, the Applicant submitted a supplement to the Planning Board Application Submission, which submission included a response to review memoranda issued by Delaware Engineering on April 20th and May 20th, 2022, as well as an updated Traffic Study report and comment response letter prepared by Creighton Manning Engineering, LLP; and

WHEREAS, at its June 16th, 2022 meeting, having received no objection to its serving as SEQRA Lead Agency, the Planning Board declared itself Lead Agency for a Coordinated Review of the Project; and

WHEREAS, on July 14th, the Applicant submitted a supplement to the Planning Board Application Submission, which submission included:

- Correspondence related to a property boundary dispute;
- Updated architectural renderings of the Newbury Hotel and additional line of site photographs to supplement the previously provided Visual Impact Assessment;
- Lease Agreement for parking on the adjacent southern parcel;
- A Stormwater Pollution Prevention Plan (“SWPPP”);
- Copy of a partially executed Letter of Resolution with the New York State Office of Parks, Recreation and Historic Preservation to mitigate impacts to historic and cultural resources; and

WHEREAS, a public hearing was held during a joint meeting of the Planning Board and the Zoning Board of Appeals on August 29th, 2022, which public hearing was left open for the submission of written comments through September 7, 2022; and

WHEREAS, by letter dated September 14th, 2022, the Applicant submitted a response to comments received during the public comment period; and

WHEREAS, the Planning Board previously issued a Negative Declaration on February 21, 2019, and Site Plan approval on March 21, 2019 for the proposed redevelopment consisting of the renovation of four historic buildings into residential apartments, commercial spaces, restaurant/event space, and a 40-unit hotel; and the formalization of parking for the Village Center, however, such negative declaration and Site Plan approval did not contemplate the exceedance of the 50 foot maximum height limitation; and,

WHEREAS, the Planning Board Application Submission includes deviations from the previously reviewed and approved project, which deviations are the subject of Planning Board review, and which deviations include a partially constructed fifth floor, 15.23 feet in excess of the maximum allowable height in the Village Center Zoning District, which exceedance is the subject of this area variance request: and

WHEREAS, the Applicant has entered into a Letter of Resolution (LOR) with SHPO to effectively mitigate impacts associated with the demolition of the building to facilitate construction of the Newbury Hotel; and

WHEREAS, the Applicant submitted a Traffic Study prepared by Creighton Manning, dated June 9, 2022, which study concluded in part that the magnitude of the new vehicle trips generated at the site is less than the NYSDOT and ITE threshold of 100 site generated vehicles on any one intersection approach for needing off-site intersection analysis indicating that detailed intersection analysis is not needed and that the site generated traffic will be accommodated by the existing roadway network; and

WHEREAS, the Applicant undertook a Visual Assessment at the request of the Zoning Board of Appeals and Planning Board and agreed to modify the Project to include the following measures:

- Fifth-floor Dark Sky compliant, down-lit, internally focused low-level lighting without flashing, colored, strobe or other lighting effects shall be installed.
- Parapet greenery must be maintained year round.
- All building systems equipment located on the fifth-floor shall be situated to reduce visibility from neighboring properties (e.g. behind parapet and/or landscaping) and all such systems shall include measures to minimize sound.

WHEREAS, the Applicant has responded to all requests for supplemental information, documents and engineering evaluations to date, including those enumerated in memoranda issued by Delaware Engineering dated March 23, 2022, April 20, 2022, May 20, 2022, June 6, 2022, June 16, 2022 and June 27, 2022; and

WHEREAS, the Applicant, following consultation with the Planning Board and Zoning Board of Appeals has further modified its Project to reflect the following limitations:

- Operating hours of the outdoor portion of the restaurant on the fifth floor are limited to 7 AM to 9 PM Sunday through Thursday; 7 AM to 10 PM Friday and Saturday.
- Outdoor space on the fifth floor is limited to bar and dining use seasonally from May to October; any other use of the space is prohibited.
- Exterior amplified or non-amplified sound is permitted only during operating hours such that patrons may maintain conversational speaking voices (e.g. background music only).
- Exterior amplified and non-amplified sound of any kind is strictly prohibited outside operating hours.
- Amplifiers, speakers or other acoustic devices, be they exterior or interior, shall be directed inward and not away from the fifth-floor occupied space.

WHEREAS, the Planning Board completed Part II of the FEAF and, after taking the requisite “hard look” at the potential environmental impacts of the project, issued a negative declaration for SEQR purposes at its September 22, 2022 regular meeting;

WHEREAS, pursuant to the attached findings and NYS Village Law § 7-712-b (3) (b) and § 155-94 (C)(2)(b) of the Village Zoning Ordinance, the statutory balancing test demonstrates that the detriment to the health, safety and welfare of the neighborhood or community arising from granting the requested variance is outweighed by the benefits to the Applicant of such grant; and

WHEREAS, the ZBA has the authority under Village Zoning Code § 155-94 D and NYS Village Law § 7-712-b (4) to approve the requested variance with conditions, the Village of Cossackie Zoning Board of Appeals conditions its approval on the following:

- a. Operating hours of the outdoor portion of the restaurant on the fifth floor are limited to 7 AM to 9 PM Sunday through Thursday; 7 AM to 10 PM Friday and Saturday.
- b. Outdoor space on the fifth floor is limited to bar and dining use seasonally from May to October; any other use of the space is prohibited.
- c. Exterior amplified or non-amplified sound is permitted only during operating hours such that patrons may maintain conversational speaking voices (e.g. background music only).
- d. Exterior amplified and non-amplified sound of any kind is strictly prohibited outside operating hours.
- e. Amplifiers, speakers or other acoustic devices, be they exterior or interior, shall be directed inward and not away from the fifth-floor occupied space.
- f. Fifth-floor Dark Sky compliant, down-lit, internally focused low-level lighting without flashing, colored, strobe or other lighting effects shall be installed.
- g. Parapet greenery must be maintained year round.
- h. All building systems equipment located on the fifth-floor shall be situated to reduce visibility from neighboring properties (e.g. behind parapet and/or landscaping) and all such systems shall include measures to minimize sound.

NOW, THEREFORE, BE IT RESOLVED, that based on the Applicant’s application and supporting information, including the Applicant’s Project plans and the public hearing on the

Applicant's variance request, the Applicant's request for a variance for the Project is granted pursuant to NYS Village Law § 7-712-b (3) (a) and Zoning Code § 155-94 C subject to the conditions above; and

BE IT FURTHER RESOLVED, that all WHEREAS clauses are incorporated into the approval; and

BE IT FURTHER RESOLVED, that this variance approval shall run with the land and shall bind any successor in interest to the Applicant; and

BE IT FURTHER RESOLVED, that this resolution shall be filed with the Village of Coxsackie Village Clerk within five (5) days of its adoption and a copy sent to the Applicant; and

BE IT FINALLY RESOLVED, that this resolution shall become effective immediately upon its adoption.

Motion By: Sal Bevilacqua

Seconded By: Brian Goble

The foregoing resolution was voted upon with all members voting and signing as follows:

Sal Bevilacqua, Chairman	<u>Yes</u>	No	Abstain	Absent _____
Christopher Chimento	<u>Yes</u>	No	Abstain	Absent _____
Brian Goble	<u>Yes</u>	No	Abstain	Absent _____
Debra Jung	<u>Yes</u>	No	Abstain	Absent _____
Brian Tighe	<u>Yes</u>	No	Abstain	Absent _____

VOTE IS CERTIFIED BY:

Jim Bevan
Secretary

10/3/2022
Date

I, the undersigned Clerk of the Village of Coxsackie do hereby certify that the above is a resolution duly adopted by the Zoning Board of Appeals on October 3, 2022.

SEAL

Nikki Berezna
Nikki Berezna, Clerk

Filed in the Office of the Village Clerk, October 24, 2022.

THE RESOLUTION IS HEREBY APPROVED AND ORDERED TO THE RECORD BY:



Sal Bevilacqua, Chair

10/03/22

Date

Area Variance Findings

1. Pursuant to NYS Village Law § 7-712-b (3) (b) (1) and § 155-94 (C)(2)(a) of the Village Zoning Ordinance, an undesirable change will not be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance.

The stated purpose of Historic Village Center is to “allow for commercial uses and community services in a high-density setting while promoting architectural design that is compatible with the overall historic character of the Village of Coxsackie. The district allows a variety of uses, including retail sales and services, restaurants and offices, among others, in a compact, pedestrian-oriented environment.”

Located along the river, Village Center features a Reed Street Historic District and a Riverfront New York State area of scenic significance. The aesthetics of the proposal, while in excess of the height requirement, are consistent with the Village Center community character, which features three-story brick buildings constructed in the late 1800s.

The Project is shown in a series of community photos and due to elevation differences, existing tree stands, and existing structures, the building does not significantly exceed the height of surrounding buildings. The view to the east from properties immediately west of the building does include visibility of the structure. This is the case if the structure is at the 50 foot maximum allowed in the zoning district or with the added height of the area variance of 15.23 feet. The view is substantially similar between a code compliant building and the building with the requested area variance. Photos illustrate how the Project building height fits the scale and massing of existing structures in Village Center. Therefore, granting the variance will not result in an undesirable change in the neighborhood character nor create a detriment to nearby properties. Moreover, the project has been revised to include, and this approval will be conditioned upon, among other things, the maintenance of year-round parapet greenery and the location of all building systems equipment on the fifth floor in a way to reduce visibility from neighboring properties. Likewise, limitations on operating hours of the fifth-floor space and outdoor noise will further minimize the potential for detriments to nearby properties.

2. Pursuant to NYS Village Law § 7-712-b (3) (b) (2) and § 155-94 (C)(2)(b) of the Village Zoning Ordinance, the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

The Applicant submitted original planning documents in reliance upon the existing, historic foundations of manufacturing structures upon which the hotel would be constructed to a total of four stories (ground level existing plus three floors above). Unforeseen structural deficiencies resulted in the inability to construct additional floors above the existing ground level structure. Thus, the project was re-designed and a new foundation and first floor constructed¹. The project

¹ In the February 21, 2019 Village of Coxsackie Planning Board SEQR Determination of Non-Significance the Description of Action states “All buildings are existing and no new structures will be built on-site. No significant

redesign also included addition of an in-structure restaurant to meet market demands and ensure the economic viability of the hotel. Reducing the height would impair valuable business space and therefore impair the operating income and financing of the project. Relocating the restaurant proposed for the top floor would not meet market demands and would result in a greater disturbance elsewhere on the site.

3. Pursuant to NYS Village Law § 7-712-b (3) (b) (1) and § 155-94 (C)(2)(c) of the Village Zoning Ordinance, the requested area variance is not substantial given the totality of the circumstances.

The Project, sited in the Village Center, requires a 15.23 foot height variance due to re-design of the building foundation and market demand for an in-structure restaurant. In the Village Center, the maximum height allowed is 50'. Photos show the building fits in the viewshed of neighboring properties and the community, often because the Project Site elevation is lower than in-land properties. Therefore, while in absolute terms a 15.23 foot area variance may be deemed to be substantial, for the reasons set forth in this resolution, the ZBA finds that, given the totality of the circumstances, the requested area variance is not substantial, nor should the amount of relief requested be determinative.

4. Pursuant to NYS Village Law § 7-712-b (3) (b) (1) and § 155-94 (C)(2)(d) of the Village Zoning Ordinance, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The variance does not negatively impact the community for the reasons discussed above: 1) it fits the Village Center aesthetics; 2) it does not impair the viewshed of neighboring properties; and 3) as illustrated by submitted photos the height variance does not appear significant. Specifically, as noted above, the project has been revised to include, and this approval will be conditioned upon, among other things, the maintenance of year-round parapet greenery and the location of all building systems equipment on the fifth floor in a way to reduce visibility from neighboring properties. Likewise, limitations on operating hours of the fifth-floor space and outdoor noise will further minimize the potential for detriments to nearby properties.

Moreover, the hotel which occupies four stories and has a fifth floor with access to the rooftop for outdoor amenities, acts as a gateway attraction to the downtown Village Center. The variance if granted heightens its role as a gateway feature. As a gateway attraction the hotel accommodations and events center will increase foot traffic to the neighborhood small businesses on Reed Street and South River Street. As a result of the economic activity, the Project presence will support the preservation and occupancy of the existing historic brick structures in Village Center. Therefore, the Project, inclusive of the additional height to include a restaurant, will improve the physical and environmental conditions in the Village Center district.

impacts are expected due to the buildings being originally constructed for manufacturing and heavy commercial use.”

5. Pursuant to NYS Village Law § 7-712-b (3) (b) (1) 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.

The difficulty was self-created as the Applicant constructed the additional space without the required variance or site plan approval. However, the Board notes that the statute specifically indicates that this consideration shall not necessarily preclude the granting of the area variance.