

JAN 25 2024

VILLAGE OF UPPER NYACK

**Village of Upper Nyack Planning Board Meeting
Wednesday, December 20, 2023**

MINUTES

A meeting of the Planning Board of the Village of Upper Nyack was held on the above date and called to order at 7:30 p.m. by the Chairman, William Pfaff.

Other Board Members present: Karen Olson, Joseph Heider, and Zara Crowley

Absent Board Members: Ellen Simpson

Also present: Dennis Letson, P.E., Village Engineer/Zoning Inspector; Janet Guerra, Board Secretary; and Noelle Wolfson, Esq., Consulting Attorney.

Applications:

1. Gregory Fisher for NBroadway LLC and 603 North Broadway LLC, County Map 60.10-01-08 and 60.10-01-10. Application for minor subdivision approval for a merger between two adjacent lots. R-30 Zoning District and Hudson Riverfront Overlay District. ***Resolution Only***

2. Eric Carter, 503 North Broadway, County Map 60.14-01-06. Application for site plan approval for reconstruction of seawall, install a fixed timber pier, gangway and floating dock on property improved with an existing single-family residence located in the Residence R-30 and Hudson Riverfront Overlay Districts. ***Continued from November 15, 2023.***

3. James Bumgardner and Louis Tharp, 515 N. Midland, County Map 60.13.-03-01.01. Application for site plan approval to install ground mounted solar panel array on property improved with an existing single-family residence located in the Residence R-20 Zoning District.

7:30 p.m. The Chairman reviewed the agenda.

7:31 p.m. Review of the minutes from the November 15, 2023 meeting.

There were no comments from the Board members on the November minutes.

Motion to approve the minutes of the November 15, 2023 meeting.

Motion: Karen Olson

Second: Zara Crowley

Vote: 4 (Yes- Pfaff, Olson, Heider, Crowley) – 0 (no); 1 (Absent- Simpson)

7:32 p.m. Gregory Fisher for NBroadway LLC and 603 North Broadway LLC, County Map 60.10-01-08 and 60.10-01-10. Application for minor subdivision approval for a merger between the two adjacent lots. R-30 Zoning District and Hudson Riverfront Overlay District

The Board members reviewed the resolution prepared by counsel as directed at the November meeting. Counsel noted that the resolution was posted on the website prior to the meeting.

There were no changes to the proposed resolution.

Motion to approve the resolution granting conditional minor subdivision (lot merger) approval in the application of Gregory Fisher for NBroadway LLC and 603 North Broadway LLC, County Map 60.10-01-08 and 60.10-01-10, as prepared by counsel and to waive the reading thereof.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (Yes- Pfaff, Olson, Heider, Crowley) – 0 (no); 1 (Absent- Simpson)

A copy of the approved resolution is attached to the minutes.

7:33 p.m. Eric Carter, 503 North Broadway, County Map 60.14-01-06. Application for site plan approval for reconstruction of seawall, install a fixed timber pier, gangway and floating dock on property improved with an existing single-family residence located in the Residence R-30 District with Hudson Riverfront Overlay

Applicant Representative: Tim DeBartolomeo, P.E., Sound Engineering

Mr. DeBartolomeo explained that the application was last before the board in November. At that meeting the members of the Board and the Village Engineer had questions about and comments on the drawings. The plan set has been updated to address those comments. He explained that, among other things, the applicant has added a turbidity curtain and details of the stabilized construction access and the silt fencing detail to the plan.

Mr. DeBartolomeo further explained that the flood zone line and a profile along the southern property line were also added to the plans. He also added a new sheet-- SEA-101A – to make the information on the plans easier to read.

The Village Engineer's review memorandum dated December 20, 2023 was read into the record as follows:

Information Reviewed

Project narrative by TMS Waterfront dated Sept. 2023.

Copy of ACoE permit NAN-2022-00263.

Copy of NYSDEC permit 3-3920-00632/00003 & 00005.

Copy of NYS DOS Coastal Zone Consistency Determination.

Project Plans, 6 sheets by Sound Eng'g Assoc. LLC dated 8/1/23.

Rockland County Planning GML comment dated 11/9/23.

Town of Clarkstown GML referral comment dated 11/20/23.

State Environmental Quality Review (SEQR)

Under the provisions of 6NYCRR Part 617.5c2, the project is a Type 2 action No further

review under SEQR is required.

Zoning

Bulk table modified and moved to sheet 101-A.

Site Plan

No new or additional comments on the plan set.

Referrals

1. RC Planning Dept.
 1. Recommends approval.
2. Town of Clarkstown.
 1. Recommends local determination.

Village Engineer Letson stated that the comments raised in his memorandum submitted for the November meeting have all been addressed.

The Chairman asked Mr. DeBartolomeo to add the new sheet SEA-101A to the plan set title sheet. He also asked Mr. DeBartolomeo to make a note on the Existing Site Plan (SEA-100) referencing the fact that further information is provided on Sheet SEA-101A.

There were no additional comments from members of the Board.

The Chairman indicated that the public hearing was opened at the November meeting and remains open. He asked if there were any comments from members of the public. No members of the public were present to comment on the application.

Motion to close the public hearing.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (Yes- Pfaff, Olson, Heider, Crowley) – 0 (no); 1 (Absent- Simpson)

Motion to grant site plan approval for the plan set titled *Proposed Repairs & Improvements to Riverfront Structures, Eric Carter, 503 North Broadway, Upper Nyack, New York 10960*, prepared by Sound Engineering Associates, LLC, which includes the following sheets:

- *Title Sheet, Drawing List & Vicinity Map (SEA-001)*, dated 8/1/2023
- *Existing Site Plan (SEA-100)*, dated 8/1/2023, last revised 12/5/2023
- *Partial Historical Site Plan (SEA-101)*, dated 8/1/2023, last revised 12/5/2023
- *Proposed General Plan (SEA-101A)*, dated 8/1/2023, last revised 12/5/2023
- *Site Access Plan (SEA-102)*, dated 8/1/2023, last revised 12/5/2023
- *Proposed Plan (SEA-103)*, dated 8/1/2023, last revised 12/5/2023
- *Sections & Elevations (SEA-201)*, dated 8/1/2023, last revised 12/5/2023

(collectively, the “Site Plan”), subject to the following conditions:

1. Under the provisions of SEQR this is a Type II action requiring no further review.

2. **The List of Drawings on the Title Sheet (SEA-001) shall be updated to include the Proposed General Plan (SEA-101A).**
3. **The Applicant shall add a reference to the Proposed General Plan (SEA-101A) on the Existing Site Plan (SEA-100).**
4. **Prior to the issuance of a Certificate of Occupancy the Applicant shall provide 2 copies of an as-built survey including topographical information, signed and sealed by a licensed professional.**
5. **The Site Plan shall be revised to include an entry in the revision note section to indicate the date that the plan is submitted for Planning Board signature. The description for the revision date note shall read "For PB Signature."**
6. **The Applicant shall comply with the requirements of the New York Uniform Fire Prevention and Building Code, all Village of Upper Nyack laws and ordinances, and all other applicable laws and regulations of any governmental entity or agency with jurisdiction over the Property or its use.**
7. **The Applicant shall comply with all permits and conditions thereto issued for the work that is the subject of this approval by the United States Army Corp of Engineers, the New York State Department of Environmental Conservation, and any other local, state or federal board, office, agency or department with jurisdiction over the Property or its use.**
8. **Unless otherwise specifically modified by this Resolution or the plans approved hereby, all conditions of any prior approval of any board, department or officer of the Village of Upper Nyack shall remain in full force and effect.**
9. **This final site plan approval authorizes the applicant to undertake only the activities specifically set forth herein, in accordance with this resolution of approval and as delineated on the final site plan endorsed by the Planning Board Chairman. Any changes or modifications to such plan require amended site plan approval from the Planning Board.**
10. **Except as otherwise provided in Village of Upper Nyack Zoning Law Section 10.4.1, this approval shall expire if it is not signed by the Planning Board Chairman within 90 days of the date hereof, if a building permit for the work proposed herein is not issued within 18 months of the date that the Site Plan is signed by the Planning Board Chairman, or if a Certificate of Occupancy or Certificate of Compliance has not been issued within 2 years of the date that the building permit is issued.**

Motion: Karen Olson
Second: Joseph Heider

Vote: 4 (Yes- Pfaff, Olson, Heider, Crowley) – 0 (no); 1 (Absent- Simpson)

7:44 p.m. James Bumgardner and Louis Tharp, 515 North Midland Avenue, County Map 60.13-03-01.01. Application for site plan approval for a ground mount solar installation on property improved with an existing single-family residence located in the Residence R-20 Zoning District.

Applicant Representatives Courtney Roberts, Empire Solar Solutions

The Chairman asked Ms. Roberts to explain the proposed installation.

Ms. Roberts indicated that the installation will be placed in the rear yard on the property. The total area of the installation is about 930 square feet. There will be some brush removed as a part of the installation. The area where the installation is proposed to be located is behind the existing house and natural screening exists so it should not be visible from the road.

The Chairman indicated that there is a trench shown on the property and asked about its purpose. Ms. Roberts explained that the trench is for the wires that will connect the system to the meter. She indicated that all wires would be installed underground.

The Village Engineer's review memorandum dated December 20, 2023 was read into the record as follows:

Information Reviewed

Cover letter by Empire Solar dated July 6, 2023.
Site plan application package,
SEAF dated 9/28/23 by Erin McConnell.
Survey of property by Jay Greenwell, PLS dated 9/21/20.
Project plans, 5 sheets by Empire Solar dated 9/8/23.
Structural certification by Michael Miele PE.

State Environmental Quality Review (SEQR)

Under the provisions of 6 NYCRR Part 617, the project is an Unlisted action.
Draft EAF Parts 2 and 3 are attached for the Boards' use.
It appears a negative declaration would be appropriate for this action.

Zoning

1. Ground mounted solar collectors are a permitted accessory use in this district.
2. Bulk table has been added to the plan sheet 1 of 5.
3. The location of the proposed panel installation conforms to the required side and rear yard setbacks.

Site Plan

1. A trench detail should be added to the plan set.
2. As this site has secured previous approvals from the Board, suggest the note "This plan and approval is valid for the installation of accessory solar panel use. All conditions of previous site plan approval dated Jan. 20, 2021 shall remain in full force and effect except as modified by this approval" be added to the plan.

In addition to the above comments, Village Engineer Letson said that the setbacks to the proposed array must be shown with more accuracy on the plan and should be measured from the closest portion of the array to the property line.

The Chairman said that the site plan is not to scale and does not meet the minimum site plan requirements that are provided in a checklist in the application form and in Village of Upper Nyack Zoning Law Section 10.5. The scale must be no smaller than 1"=20', it should have a North arrow, a vicinity plan, it should accurately show the setbacks and should provide all of the information listed in Zoning Law 10.5.

The Chairman also explained that the bulk table must include rows for the legal requirements, the existing condition and the proposed condition. This is important to enable the Board to accurately understand the changes and the current bulk table is missing the existing condition information.

The Chairman also asked that a detail of the trench be included on the plan.

The Chairman indicated that he visited the site to observe the existing condition and that the site plan should be revised to clearly delineate where the changes in ground cover (pave surfaces, lawn, brush, tree line) occur.

The Village Engineer explained that if the Applicants' engineer determined that any of the site plan elements of Section 10.5 are not relevant to this application, he can ask for a waiver of those requirements.

Board Member Olson asked for a rendering of what the panels will look like and additional information and perspectives of the installation from the surrounding properties.

There was a discussion about the view from the property on the north side (Mallow). It was noted that there is vegetation in that area and that lot is vacant. To the east, there is a significant area of vegetation along the eastern property line and a change of grade such that the property is higher than the properties to the east.

The property to the south (Baroni) could have a view of the array, and the Board members asked for a rendering and additional information, such as a north/south site section, to show how the proposed array will look from the Baroni's house. The applicant, Mr. Tharp, indicated that the existing vegetation and the change in grade between the two properties would buffer the view of the installation from the Baroni property and that he is working with the Baronis closely because the intent is to buffer the view of the installation to the maximum extent possible.

The Board summarized the information that would be needed for a follow-up submission as follows:

- A. A site plan that meets the requirements of Village of Upper Nyack Zoning Law Section 10.5 and: (i) delineates where changes in ground cover (paved surface, lawn, brush, tree line, etc...) occur; (ii) provides an updated bulk table that shows the permitted, existing and proposed dimensions; and (iii) accurately depicts the setbacks to the array;

- B. A topographical survey;
- C. A north/south section view; and
- D. A detail of the proposed trench that shows the size of the conduit, its depth, the bedding and backfilling, and other pertinent information.

Motion to open the public hearing.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (Yes- Pfaff, Olson, Heider, Crowley) – 0 (no); 1 (Absent- Simpson)

There were no members of the public who wished to comment on the application.

Motion to continue the public hearing to the Board's January 24, 2024 Meeting.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (Yes- Pfaff, Olson, Heider, Crowley) – 0 (no); 1 (Absent- Simpson)

8:03 p.m. Motion to close the meeting and adjourn.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (Yes- Pfaff, Olson, Heider, Crowley) – 0 (no); 1 (Absent- Simpson)

DEC 27 2023

VILLAGE OF UPPER NYACK

**RESOLUTION OF THE
VILLAGE OF UPPER NYACK PLANNING BOARD
RESOLUTION OF MINOR SUBDIVISION APPROVAL**

Property Address: 603 North Broadway and 611 North Broadway, Village of Upper Nyack (the "Property")
County Map No.: 60.10-01-08 (611 North Broadway)
60.10-01-10 (603 North Broadway)
Zoning District: Residence R-30 and Hudson Riverfront Overlay District
Applicant/Owner: NBroadway LLC (60.10-01-08) and 603 North Broadway LLC (60.10-01-10) (collectively, the "Applicants")
SEQRA Classification: Unlisted Action- Negative Declaration Adopted July 26, 2023
Date of Public Hearing: July 26, 2023 and November 15, 2023

SUMMARY

The Applicants are seeking approval of a minor subdivision to merge existing tax lot 60.10-01-08 (Tax Lot 8) and tax lot 60.10-01-10 (Tax Lot 10) to be one lot. Currently Tax Lot 10 is improved with a single-family residence and related improvements and Tax Lot 8 is vacant.

No construction or physical alteration to the Property is proposed as a part of this application and no public improvements are proposed. The purpose of this application is solely to remove the lot line separating Tax Lot 8 and Tax Lot 10. This approval does not authorize any physical disturbance to the subject Property.

**PRIOR PLANNING BOARD AND ZONING BOARD OF APPEALS APPROVALS
(2008-PRESENT)**

The following approvals were previously granted for the subject Property:

Area Variances for minimum lot width and front yard setback to cabana (ZBA 11/8/2023)

Site plan approval (Tax Lot 10) (Planning Board 5/18/2011)

Area variances for slopes disturbance and lot coverage (Tax Lot 10) (ZBA 4/19/2011)

Site plan approval (Tax Lot 10) (Planning Board 7/18/2008)

Site plan approval (Tax Lot 10) (Planning Board 4/16/2008)

DOCUMENTS REVIEWED

1. Memorandum of Village Engineer, Dennis Letson, dated January 5, 2023
2. Village of Upper Nyack Planning Board Application:
 - a. Submission Checklist
 - b. Land Use Board Contact Form
 - c. Planning Board Application Form
 - d. General Municipal Law 809 Statement
 - e. General Municipal Law 239 Form
3. Narrative Summary addressed to Village of Upper Nyack Zoning Board of Appeals, dated June 29, 2023
4. Photographs of the subject property, stamped received June 29, 2023
5. Short Environmental Assessment Form, Part 1, dated June 21, 2023
6. Property Deed- Tax Lot 10
7. Property Deed- Tax Lot 8
8. *Minor Subdivision Plat Merger of Tax Lot 60.10-1-10 & 60.10-1-8*, prepared by Atzl, Nasher & Zigler PC, dated June 24, 2023
9. Referral form for General Municipal Law reviews sent June 30, 2023
10. Letter from Town of Clarkstown Planning Board dated July 14, 2023
11. Letter from Rockland County Department of Planning, dated July 25, 2023
12. Memorandum of Village Engineer, Dennis Letson, dated July 26, 2023
13. Short Environmental Assessment Form Parts 1, 2 and 3
14. *Minor Subdivision Plat Merger of Tax Lot 60.10-1-10 & 60.10-1-8*, prepared by Atzl, Nasher & Zigler PC, dated June 24, 2023, last revised November 9, 2023.
15. Supplemental Narrative, dated November 13, 2023, prepared by J. David MacCartney, Jr. Feerick, Nugent MacCartney, PLLC
16. Memorandum of Village Engineer, Dennis Letson, dated November 15, 2023

AGENCY REFERRALS AND COMMENTS

Because the Property is located within 500 feet of the Hudson River, this application was referred to the Rockland County Department of Planning for review pursuant to General Municipal Law 239-m. It was also referred to the Town of Clarkstown.

By letter dated July 14, 2023, the Town of Clarkstown found this to be a matter for local determination.

By letter dated July 26, 2022 the Rockland County Department of Planning recommended two modifications to the proposed application. The Department of Planning's comments are summarized below in bold italics and the Planning Board's response appears below the comment.

Comment 1: As required by the Rockland County Stream Control Act, the subdivision plan must be reviewed and signed by the Chairman of the Rockland County Drainage Agency before the County Clerk an accept the plan to be filed.

Response 1: This comment will be incorporated as a condition of this approval.

Comment 2: Subdivisions are one method to show an intended lot line change between two or more parcel owners. However, once a subdivision has been approved, a filed map cannot be used to convey property, nor can the tax maps be updated with the lot changes, until the deeds are filed with the County Clerk, conveying the portions of the lots that are required to achieve the lot configuration indicated on the subdivision map. The applicant and the Village must make sure that the deeds are properly filed with the Rockland County Clerk to ensure that the tax maps are properly updated.

Response 2: This comment will be incorporated as a condition of this approval.

BOARD FINDINGS (see VILLAGE SUBDIVISION LAW (LL 2 OF 2022) §4.1)

1. The proposed lot merger is beneficial to the surrounding neighborhood, as it adds the area of Tax Lot 8, which is landlocked, to Tax Lot 10, which has frontage on the existing private street.
2. Variances for lot width, front yard setback and lot coverage have been granted for the subject Property.
3. No new building lots are proposed nor is any physical disturbance proposed or approved as a part of this subdivision. Therefore, existing means of access, utility services, and drainage facilities will not be negatively impacted by the subdivision.
4. Because no additional development is proposed and no new building lots are being created, the proposed subdivision will not have any negative impacts on traffic conditions

in the surrounding area, nor will it negatively impact views of or from the Hudson River or Hook Mountain.

DETERMINATION AND CONDITIONS

Based on the foregoing, the materials submitted in support of this application, and the information provided at the public hearing on this application, the Planning Board approves the *Minor Subdivision Plat Merger of Tax Lot 60.10-1-10 and 60.10-1-8*, prepared by Atzl, Nasher & Sigler, P.C., dated June 24, 2023, last revised November 9, 2023 (the "Subdivision Plat"), subject to the following conditions:

CONDITIONS TO BE SATISFIED BEFORE THE CHAIRMAN SIGNS THE SUBDIVISION PLAT.

1. The Applicant shall make the following changes to the Subdivision Plat, all changes shall be made to the satisfaction of the Village Engineer:
 - a. Clarify the surface materials and clearly delineate the transition between such materials to accurately reflect the existing condition, particularly in the area near the Property's Hudson River frontage and the macadam driveway near the existing cabana.
 - b. Add the dimensions of the solarium on the existing residence and confirm that the area of the solarium is included in the building and development coverage calculations.
 - c. Add labels and dimensions to all the existing accessory buildings on the Property and provide the accurate area of each accessory building in the coverage calculations on the Subdivision Plat, with each accessory building listed separately in such calculations.
 - d. Add the existing gate.
2. The following note shall be added to the Plat: "A portion of the septic system serving the property labeled "Tax Lot 60.10-1-4 N/F Frederick & Jillana Sinnott" on the Subdivision Plat might be existing as of the date hereof on a portion of Tax Lot 60.10-1-8."
3. The Subdivision Plat shall be signed by the Chairman of the Rockland County Drainage Agency.
4. The Subdivision Plat shall be revised to include an entry in the revision note section to indicate the date that the plan is submitted for Planning Board signature. The description for the revision date note shall read "For PB Signature."
5. The Applicants shall file with the Board Secretary letters from the County Commissioner of Finance, the Receiver of Taxes of the Town of Clarkstown and the Village Clerk stating that all taxes due on the Property have been paid.

6. The Applicants shall file with the Board Secretary a statement from the project engineer or surveyor certifying the total acreage in the subdivision.

CONDITIONS TO BE SATISFIED SIMULTANEOUSLY WITH THE RECORDING OF THE SUBDIVISION PLAT.

7. Prior to or simultaneously with the filing of the Subdivision Plat in the Rockland County Clerk's Office, the Applicants shall file in the Rockland County Clerk's office a deed of conveyance conveying the property required to achieve the lot configuration indicated on the Subdivision Plat to a common owner. The Applicants shall provide a copy of the deed as recorded to the Board Secretary promptly following recording.

CONDITIONS SUBSEQUENT TO THE FILING OF THE SUBDIVISION PLAT IN THE ROCKLAND COUNTY CLERK'S OFFICE

8. The Applicants shall provide the Board Secretary with 4 full-size copies of the Subdivision Plat as filed and an electronic copy of the Subdivision Plat as filed.
9. The Applicants shall make all required applications to the Town of Clarkstown Assessor's office, the Village of Upper Nyack Assessor's office and/or the Rockland County Department of Finance as may be necessary to have a new tax identification number assigned to the newly created lot. A copy of all forms filed with the Town of Clarkstown Assessor, or the Rockland County Department of Finance shall be filed with the Village Assessor.

GENERAL OR ONGOING CONDITIONS.

10. This approval authorizes the Applicants to undertake only the activities specifically set forth herein, in accordance with this resolution of approval and as delineated on the Subdivision Plat endorsed by the Planning Board Chairman. Any changes or modifications to such plan require further approval from the Planning Board.
11. This approval does not permit the Applicants to undertake any physical disturbance or construction on the subject property.
12. The Applicants shall comply with the requirements of the New York Uniform Fire Prevention and Building Code, all Village of Upper Nyack laws and ordinances, and all other applicable laws and regulations of any governmental entity or agency with jurisdiction over the Property or its use.
13. Unless otherwise specifically modified by this Resolution or the plans approved hereby, all conditions of any prior approval of any board, department or officer of the Village of Upper Nyack shall remain in full force and effect.

EXPIRATION OF APPROVAL (SUBDIVISION LAW SECTION 6.8 AND 5.3.9)

14. This approval shall expire within 180 days of the date hereof (June 17, 2024) unless all of the Conditions required before the Chairman Signs the Subdivision Plat have been certified as completed, the Chairman signs the Subdivision Plat and the Subdivision Plat is filed in the Office of the Rockland County Clerk prior to such date.

DATED: December 20, 2023

VOTE: Motion to Approve Resolution: Karen Olson

Second: Joseph Heider

Vote: 4 Yes- Pfaff, Olson, Heider, Crowley

0 No

1 Absent- Simpson

Village of Upper Nyack Planning Board


William Pfaff, Chairman