

**Village of Upper Nyack Planning Board Meeting
Wednesday, February 28, 2024**

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: Joseph Heider and Zara Crowley

Absent Board members: Karen Olson and Ellen Simpson

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

Applications:

1. **Shirley and Daniel Kramer, 602 Palmer Drive, County Map 60.09-01-03.** Application for site plan approval for site elements, including but not limited to: gravel walks, retaining walls and patio, constructed in a manner that does not comply with the prior approved site plan on property improved with an existing single-family residence located in the Residence R-20 Zoning District.
2. **Cynthia Turner, 204 Bliss Lane, County Map 60.09-01-40.** Application for site plan approval for a second story addition, rear addition, other alterations and a swimming pool 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 January 24, 2024 meeting.

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

Motion to approve the minutes of the January 24, 2024 meeting.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Pfaff, Heider, Crowley,) – 0 (no); 2 (Absent- Olson, Simpson)

7:32 p.m. **Shirley and Daniel Kramer, 602 Palmer Drive, County Map 60.09-01-03.**

Application for site plan approval for site elements, including but not limited to: gravel walks, retaining walls and patio, constructed in a manner that does not comply with the prior approved site plan on property improved with an existing single-family residence located in the Residence R-20 Zoning District.

Applicant Representative: Kier B. Levesque, Architect

Mr. Levesque explained that this is an application to amend a previously approved site plan (site plan approval granted in 2016). The prior owner obtained site plan approval for improvements to the site, but constructed improvements that were not permitted by that plan. In the intervening time, the Village's Zoning Law has changed and there are a few site elements that require variances—variances are needed for the total development coverage on the lot and to retain a patio in the required side yard.

Board member Heider asked if all of the work was completed and Mr. Levesque confirmed that it was.

Mr. Levesque explained the improvements on the property requiring approval. He explained that there were formerly wood retaining walls on the site and the prior owner replaced them with stone retaining walls. Additionally, walkways and patios were added. All such work was completed without the required permits.

He explained that other improvements were also constructed without permits, but have been removed. Village Engineer Letson indicated that he has been working with Mr. Levesque on this matter for about 12 months and confirmed that several improvements constructed without permits (i.e. a parking space, tiki bar, roof structure over a patio) have been removed.

Mr. Levesque acknowledged that variances for the existing improvements are required and that they will have to be modified if the variances are not granted.

The Chairman read the Village Engineer's review memorandum dated February 28, 2024 into the record as follows:

Information Reviewed

Project description by Kier Levesque dated rev 1/16/24.

Site Plan by Kier Levesque dated 12/23/2015 and last revised 1/16/24.

State Environmental Quality Review (SEQR)

Under the provisions of 6NYCRR Part 617.5c12, the project is a Type 2 action. No further review under SEQR is required.

Zoning

1. The application is for increased coverage over what was approved by Boards in 2015/2016, for construction by the prior Owner.
2. The Board Counsel has noted that an additional variance is required for the tile and brick pavers area in the side yard, zoning LL 4.5.6.1. The ZBA application should be modified to request this additional variance.

Site Plan

1. We have worked with the Architect to get the application as close to conforming as possible.
2. No additional comments.

Referrals

1. RC Planning Dept.

1. A rare approval recommendation for a variance.

The Chairman read the Rockland County Department of Planning referral response letter dated February 14, 2024 into the record.

Chairman Pfaff commented that he would like the development coverage calculations keyed into the plan with more accuracy. Ideally, each development coverage element would be numbered on the plan and the corresponding numbers would be located in the development coverage calculation table. Mr. Levesque indicated that that change can be made.

Board member Heider asked if the property was sold to the new owner (current applicant) in the noncompliant condition.

Village Engineer Letson explained that before the property was transferred, some work had to be completed in the house and a certificate of occupancy was issued for the building, but the permit for the site work remains open.

Motion to open the Public Hearing

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Pfaff, Heider, Crowley,) – 0 (no); 2 (Absent- Olson, Simpson)

There were no comments from members of the public.

There was a discussion about the sequencing of the application in light of the changes needed to the development coverage table. It was the Board's view that those changes should be made before the application appears before the Zoning Board of Appeals. It was agreed that the applicant would make the requested changes to the development coverage table and resubmit the plan on or before March 5th and would be referred to the Zoning Board of Appeals for the required variances.

Motion to refer this application to the Zoning Board of Appeals for consideration of the required variances provided that the changes to the proposed development coverage calculation table are made to the plan to the satisfaction of the Village's Zoning Inspector, and to adjourn the public hearing on this application to the Planning Board's March 20, 2024 meeting.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Pfaff, Heider, Crowley,) – 0 (no); 2 (Absent- Olson, Simpson)

7:52 p.m. Cynthia Turner, 204 Bliss Lane, County Map 60.09-01-40. Application for site plan approval for a second story addition, rear addition, other alterations and a swimming pool on property improved with an existing single-family residence located in the Residence R-20 Zoning District

Applicant Representative: Cynthia Turner

Ms. Turner explained that she is proposing a rear addition and second story addition to the existing single-family residence on the Property. The plan also proposed a deck, patio and swimming pool, although the swimming pool is still conceptual.

Ms. Turner explained that the existing home has a nonconforming rear yard setback and that the small rear addition will increase that nonconformity slightly. She also indicated that a development coverage variance will be required.

Chairman Pfaff indicated that the narrative that was submitted in support of the application should include some additional information, including who prepared it and additional context for the application.

The Chairman read the Village Engineer's review memorandum dated February 28, 2024 into the record as follows:

Information Reviewed

Project description.

Site Plan by Michael Esmay dated 12/27/2023 and last revised 1/22/24.

State Environmental Quality Review (SEQR)

Under the provisions of 6NYCRR Part 617.5c11 & 12, the project is a Type 2 action. No further review under SEQR is required.

Zoning

3. Variance required for increase in non-conforming rear setback.
4. Variance required for total coverage.

Site Plan

3. Stormwater management area to be detailed as noted.
4. Stormwater maintenance agreement to be executed for the site.
5. Standard drawing notes should be added to the set.
6. Notes related to pool safety (gates and door alarms) should be added to the set.

Referrals

2. None.
-

Chairman Pfaff commented that similar to the prior application, it is difficult to match the improvements shown on the plan with the entries in the development coverage table. The elements in the development coverage table should be keyed to the plan or the coverage elements should be numbered.

Village Engineer Letson advised the applicant that the plan should separately identify Bliss Lane from the driveway on the property in the development coverage table. This information could be relevant for the Zoning Board of Appeals in its consideration of the coverage variance.

Chairman Pfaff stated that the plan set should include a dimensioned elevation so the Board members can understand how the building height was calculated. A note should be added to the site plan indicating the sheet on which the dimensioned elevation is located.

Ms. Turner advised that the height of the building was being mitigated by using a flat roof and that the height was 21 feet, but that a dimensioned elevation could be provided.

Consulting Attorney Wolfson indicated that the applicant's submission provided that solar panels were going to be installed on the house. She advised that the Architectural Review Board reviews applications for roof-mounted solar installations and asked if the applicant would be applying to the Architectural Review Board for review of the solar panels at the time the application is referred to that Board by the Planning Board, or if she would return to the Architectural Review Board for review of the solar panels at a later date.

Ms. Turner indicated that it would be her preference to include the review of the solar panels at the earlier date, and would provide additional information on that aspect of the project in a later submission.

Motion to open the Public Hearing.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Pfaff, Heider, Crowley,) – 0 (no); 2 (Absent- Olson, Simpson)

Public Comment:

Marion Shaw, 206 Bliss Lane. Ms. Shaw indicated that she did not object to the application. She asked for clarification about how far the proposed pool was from her property and Village Engineer Letson advised that it would be approximately 40 feet from the Shaw property line. Ms. Shaw explained that the property slopes from her property line down toward the proposed pool. She said that there is a significant amount of bamboo in this location and asked what the applicant's intentions were regarding the bamboo.

Ms. Turner indicated that it was generally her intention to remove the bamboo, which is an invasive species, when she was constructing the addition.

Ms. Shaw said that if the bamboo is removed, then, because of the topography of the site, there will be a clear view of the pool from her property.

There was a discussion about whether the applicant will propose additional screening around the pool and/or keep the bamboo which provides screening of the property at present. The applicant will consider the screening options and clarify what is proposed to remain and what new plantings are proposed to be installed in the next plan submission.

David Fine- 530 North Midland Avenue. Mr. Fine indicated that he lives directly east of the property. He would like to understand the nature of the calculations for the variance. He also heard reference to stormwater management requirements and would like to understand those requirements.

Chairman Pfaff explained the development coverage requirements in the Village Zoning Law, including the deduction to lot area for steep slopes to arrive at the net lot area as a basis for calculating the percentage of development coverage, and explained that the proposed coverage exceeded the maximum allowed by the Zoning Law.

Mr. Fine asked if the steep slopes were being disturbed and the Village Engineer confirmed that they were not.

With regard to stormwater management, Village Engineer Letson explained that when new development is proposed, the applicant must do an evaluation of the existing and proposed lot coverage and provide storage volume onsite to maintain the same peak rate of flow post development.

There was no further comment from the members of the public.

Ms. Turner asked if the application could be forwarded to the Zoning Board of Appeals for consideration of the variances, and to the Architectural Review Board.

There was a discussion about the sequencing of the application and whether removing the proposed pool would bring the property into conformance with the development coverage requirements.

Village Engineer Letson advised that removing the pool likely would not bring the property into compliance with the Zoning Law's coverage requirements.

The Board members agreed that the application should return to the Planning Board for review before it is referred to the Zoning Board of Appeals and Architectural Review Board, and that it would like to see the following changes made to the proposed plan, in addition to the comments included in the Village Engineer's memorandum issued for this meeting:

- The plan should more accurately key the development coverage calculation to the features on the site. If possible, it would be helpful if the coverage elements could be numbered and the numbers referenced in the development coverage calculations. The applicant may also want to consider breaking out Bliss Lane into a separate entry in the development coverage calculations.

- The site plan should identify existing landscaping to remain (bamboo, etc...) and proposed landscaping.
- The plan set should include a dimensioned height elevation and that elevation should be referenced in a note on the site plan sheet.

Motion to adjourn the application and public hearing to the Board's March 20, 2024 meeting.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Pfaff, Heider, Crowley,) – 0 (no); 2 (Absent- Olson, Simpson)

8:23 Joseph Dahan, 500 N. Highland Avenue, 59.12-02-04 Establish escrow account for Planning Board review of tree removal permit

Village Engineer Letson explained that the owner of the property at 500 North Highland Ave is proposing to remove several trees from the property.

The Board members reviewed the Village Engineer's memorandum of February 1, 2024 regarding the application.

The Village Engineer explained that the property owner has submitted a few conflicting arborist reports, but the most recent report indicates that 71 trees will be removed from the property.

Although it is not clear at present if the property owner plans to move forward with the tree removal, if the project proceeds, then the tree removal permit application would require Planning Board review given the significant number of trees to be removed.

Mr. Letson explained that the Village Tree Preservation Law and Zoning Law allow the Planning Board to retain consultants to assist in the review of applications and that the fee for such consultants can be paid from an escrow account funded by the applicant. He suggested that review by the Village's Consulting Arborist, Cahilly Horticultural Services, would be appropriate if the application moves forward because of the significant extent of the tree removal.

At this point, the only request on this application is for the Board to authorize the retention of Cahilly Horticultural Services and to establish the amount of the review escrow in the event that this application proceeds. Mr. Letson advised that setting the review escrow in the amount of \$3,000.00 would be appropriate in light of the quote for services provided by Cahilly Horticultural Services and stamped received by the Village on February 5, 2024.

Motion to retain Cahilly's Horticultural Services LLC for the review of the Tree Removal Permit application for 500 North Highland Avenue and to require the property owner to establish a review escrow account with the Village in the initial amount of \$3,000 to pay Cahilly's Horticultural Services LLC's invoices for the review of this application prior to scheduling the Tree Removal Permit application on a Planning Board agenda. All requirements and provisions of Village of Upper Nyack Zoning Law Section 13.2 shall apply.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Pfaff, Heider, Crowley,) – 0 (no); 2 (Absent- Olson, Simpson)

8:33 p.m. *James Bumgardner and Louis Tharp, 515 N. Midland, County Map 60.13-03-01.01.*

Continuation from December 20, 2023. 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.

At the January meeting the Board adopted a motion to adjourn this matter to the February 28, 2024 meeting and requested that the applicant provide some additional information and schedule a site visit.

Site visits have been scheduled for dates in March. By email dated February 28, 2024 the applicant has requested an adjournment of the hearing to the March 20th meeting.

Motion to adjourn the public hearing on this application to the Board's March 20, 2024 meeting.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Pfaff, Heider, Crowley,) – 0 (no); 2 (Absent- Olson, Simpson)

8:35 p.m. Motion to close the meeting and adjourn.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Pfaff, Heider, Crowley,) – 0 (no); 2 (Absent- Olson, Simpson)