

**Village of Upper Nyack  
Zoning Board of Appeals Meeting  
Wednesday, November 8, 2023, 7:30pm**

**MINUTES**

A meeting of the Zoning Board of Appeals of the Village of Upper Nyack was held on the above date and called to order at 7:32 p.m. by the Chairman, Thomas Englert.

**Other Board members present:** Paul Curley, Meg Fowler, Beth Wittig, Steve Lubeck

**Also present:** Noelle C. Wolfson, Esq., Consulting Attorney, and Janet Guerra, Board Secretary.

**7:33 p.m.: Review of the minutes of the meeting of July 11, 2023.**

The Chairman asked if there were comments on the draft minutes.

The members of the Board did not have any comments on the draft minutes.

**Motion to approve the July 11, 2023 Minutes.**

**Motion:** Paul Curley

**Second:** Beth Wittig

**VOTE:** 4 yes (Englert, Curley, Wittig, Fowler)-0 no, 1 abstain (Lubeck)

**7:35 p.m.: NBroadway LLC and 603 North Broadway LLC, 603 and 611 North Broadway, County Map 60.10-01-08 and 60.10-01-10.** Application for area variances from: (1) the requirements of Upper Nyack Zoning Law §4.4.2, Row 4, Col. 3 (Lot Width)— minimum 100 ft required, 74.5 ft proposed; and (2) Upper Nyack Zoning Law §4.4.2, Row 4, Col. 5 (Min. Required Front Yard)- minimum 35 feet required, 27.8 ft proposed. These variances are being sought in connection with an application for a lot merger between the two adjacent lots at County Map 60.10-01-08 (vacant land) and 60.10-01-10 (improved with a single-family residence). The subject lots are in the Residence R-30 District and the Hudson Riverfront Overlay District.

**Applicant Representatives:** David MacCartney, Esq., Feerick Nugent MacCartney, Counsel for the Applicants and John Atzl, PLS, Atzl, Nasher & Zigler, P.C., Land Surveyor

Mr. MacCartney presented the application. He explained that Gregory Fisher is the principal of the limited liability companies that own the subject lots and is the applicant. Mr. Fisher, through his limited liability companies, recently acquired Village Tax Lots 60.10-01-08 and 60.10-01-07, which were formerly owned by the Clemensens. Tax Lot 7 is improved with a large house with frontage on North Broadway. Tax Lot 8 is a landlocked, vacant parcel.

Mr. Fisher, through his LLC has, owned Tax Lot 60.10-01-10 for several years. His primary residence is on the west side of North Broadway, generally across the street from the subject

properties, but he and his family use Tax Lot 10, which is improved with a single-family residence, cabana and related improvements. Although until recently Tax Lot 8 was owned by the Clemensens, Mr. Fisher has used, maintained, and improved it with lawns and gardens with the Clemensens's permission for approximately 17 years to function as the backyard of the property Mr. Fisher owns (Tax Lot 10).

Now that Mr. Fisher's entity owns Tax Lot 8, he has applied for Planning Board approval to merge Tax Lots 8 and 10 to make them one lot.

The legal history of Tax Lot 8 is not entirely clear. There is some indication that at some point it was intended to be merged with Tax Lot 7 but that never occurred. Mr. MacCartney explained that visually and topographically, it makes more sense for it to be merged with Tax Lot 10 rather than Tax Lot 7.

Mr. MacCartney explained the two variances that are needed. The first is for the minimum lot width of the lot that would be created by the merger. He explained that per the definition of Lot Width in the Village's Zoning Law, the minimum lot width is measured at the narrowest point of the proposed lot. Although most of existing Tax Lot 10 is much wider than the minimum required 100 feet in width, the narrowest point of the lot proposed to be created is 74.5 feet. Therefore, the variance is required.

He further explained that during the course of reviewing the subdivision plans, the Village's Zoning Inspector, Dennis Letson, concluded that the existing cabana building had a deficient front yard setback (it was deficient under both the prior zoning law and the current zoning law). Although the cabana building was the subject of site plan approval from the Planning Board and variances for coverage from the Zoning Board of Appeals in or around 2011, no variance for the deficient front yard setback was sought or approved at that time. The record was unclear about why no variance was required or sought at that time; however, the Zoning Inspector has determined that a variance for that deficient setback is required. Accordingly, the applicants are seeking a variance to legalize the deficient front yard setback of the existing cabana.

The Chairman noted that a lot coverage variance was previously granted for Tax Lot 10 and he asked about how the coverage variance would apply to the newly created lot. Mr. MacCartney explained that he discussed this with Zoning Inspector Letson and it is addressed by a note on the proposed subdivision plat explaining how the prior variance would apply to the newly created lot. Essentially the percentage of coverage permitted on the newly created lot would be reduced because of the larger lot size, but it would allow all of the existing coverage to remain. Mr. Atzl explained the note and related calculations added to the bulk table to address the permitted coverage.

Board Member Lubeck indicated that he is familiar with the subject properties and that he agrees that Lot 8 visually appears to be a part of Lot 10. This looks like a "legalization" of the existing condition.

Board Member Curley asked the applicant to clarify the location of each of the variances requested on the plan and Mr. MacCartney and Mr. Atzl indicated on the plan the location of each variance.

**Motion to Open the public hearing.**

**Motion:** Steve Lubeck

**Second:** Beth Wittig

**VOTE:** 5 (yes) – 0 (no)

**Motion to Close the public hearing.**

**Motion:** Steve Lubeck

**Second:** Beth Wittig

**VOTE:** 5 (yes) – 0 (no)

The Chairman reviewed the area variance test- whether the benefit to the applicant by the grant of the variance outweighs the detriment to the health, safety and welfare of the community resulting from the grant of the variance based on an evaluation of the five factors below.

The benefit sought by the Applicants is the ability to make this one integrated lot for zoning purposes and to legalize the deficient front yard setback of the cabana building. There is no corresponding detriment to the community, and, if the lot merger is approved it could be beneficial in that overall less coverage would be permitted on the lot as merged and it would eliminate the landlocked parcel (Tax Lot 8).

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the granting of the area variance.

There would be no undesirable change in the character of the community. Merging the lots, and granting the variances to allow the merger to proceed, would be a benefit to the surrounding community because it would integrate the currently landlocked Tax Lot 8 into Tax Lot 10 with which it is visually and topographically integrated. Ultimately, merging the lots will result in less lot coverage because the prior lot variance would be adjusted to the larger lot size.

With regard to the front yard setback variance for the existing cabana, such variance is needed to legalize an existing condition. The setback is 27.8 feet and the cabana is at the end of a private road, not visible from the public street and will not negatively impact the surrounding community.

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.

Because of the minimum lot width requirements, Lots 8 and 10 cannot be merged without a variance. Regarding the cabana, its deficient front yard setback is existing and it is not feasible to relocate the cabana to achieve the minimum required setback.

3. Whether the requested area variance is substantial.

The variances are not substantial because they will not have substantial negative impacts on the surrounding area. In fact, merger of the lot will be a net benefit as explained in response to factor 1.

With regard to the front yard setback variance, such variance is minimal and, because of the way the building is situated, only the corner of the building is located at the 27.8 foot setback with the balance of the building being setback further from the private road.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The granting of the variance is a Type II action under SEQRA. The Planning Board determined that the subdivision is an Unlisted action and adopted a Negative Declaration of Environmental Significance for the subdivision application in July 2023.

The Rockland County Department of Planning has recommended approval of the variance application without modification (See July 25, 2023 letter).

5. Whether the alleged difficulty was self-created.

To the extent the need for the variance is self-created that does not preclude the grant of the variance.

**Motion to grant an area variance from Village of Upper Nyack Zoning Law §4.4.2, Row 4, Col. 3 (Lot Width), which requires a lot in the R-30 zoning district and Hudson Riverfront Zoning District to have a minimum lot width of 100 feet to permit the proposed lot to be created by the merger of current tax lots 60.10-01-08 and 60.10-01-10 to have a Minimum Lot Width of 74.5 ft and an area variance from Village of Upper Nyack Zoning Law §4.4.2, Row 4, Col. 5 (Required Front Yard), which requires a lot in the R-30 zoning district and Hudson Riverfront Zoning District to have a minimum front yard setback of 35 feet where 27.8 feet to the existing cabana building is proposed, based on the application of the area variance standards as evaluated and as discussed at the public hearing, and subject to the following conditions:**

1. **With respect to the Lot Width Variance: Such variance shall be of no force or effect unless or until the Applicants receive final subdivision plat (lot line change) approval from the Village of Upper Nyack Planning Board merging Lots 8 and 10 into one zoning lot and such approved final subdivision plat is filed in the Office of the Rockland County Clerk. The Lot Width Area Variance shall expire if a final subdivision plat effecting the merger of Lots 8 and 10 is not filed in the Office of the Rockland County Clerk on or before November 8, 2024.**
  
2. **Compliance with the plan titled *Minor Subdivision Plat, Merger of Tax Lot 60.10-1-10 and 60.10-1-8*, prepared by Atzl, Nasher & Zigler, P.C, dated June 24, 2023, last revised October 11, 2023 (the “Plan”) as it may be revised by the Planning Board, provided that such changes do not increase the magnitude of the variance granted by this resolution. The applicant shall update the bulk table to reflect the grant of the variance and the date of this resolution.**
  
3. **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.**

**Motion:** Steve Lubeck

**Second:** Meg Fowler

**VOTE:** 5 (yes) – 0 (no)

**8:00 p.m. Meeting was concluded.**