

PUBLIC HEARING
ZONE TEXT AMENDMENTS
December 10, 2009

A public hearing was held by the Board of Trustees of the Village of Upper Nyack at the Upper Nyack Elementary School, 336 North Broadway, on Thursday, December 10, 2009 at 7:00 PM to consider a local law amending Article IV "Establishment of Zoning Districts" of the 1962 Zoning Ordinance of the Village of Upper Nyack. The proposed amendments would provide for residential use by special permit in the commercial zoning districts of Laboratory Office (LO), Village Center (VC) and Marine Business (MB)

The Village Clerk kept a record of the proceedings. A court reporter was also present. The village did not request an official transcript.

Those present: Mayor Esmay, Trustees Diamond, Hindin, Morgan and Sarna
Village Attorney Robert P. Lewis, Kristen K. Wilson, Esq., Village Engineer Dennis Letson, Village Clerk Carol G. Brotherhood, Kathy Stala-Court Reporter/Rockland & Orange Reporting

Others identified: Names listed on the public sign-in sheet enclosed in the file.

Members of the public who spoke: Public comment sheet enclosed in the file.

Mayor Esmay opened the public hearing.

An opening statement was presented by Trustee Morgan who outlined a brief history of the zone text amendment. A process had previously taken place to add residential use in the Office Business (OB) zone. Given this precedent, the owners of Petersen's Boatyard approached the village to see if residential use could be considered in the Marine Business (MB) zone.

A proposal was drafted and sent out to various agencies for referral. The Village Board declared itself Lead Agency and followed the SEQRA process for review. The Village Engineer prepared an environmental review (Full EAF). The next step in the process is the holding of the public hearing to allow for public comment.

The Village Clerk read the public hearing notice.

Dennis Letson, as directed by the Village Board, prepared a Full EAF. Mr. Letson read through the entire EAF. He noted that some items on the form may be less applicable because of the multiple use of lots (LO, MB, & VC) Usually a review is site specific.

The Village Clerk read a list of those agencies that had been sent the Proposed Zone Text Amendment and public hearing notice and indicated which ones had responded with comments. (Those with an * responded) * Rockland County Dept. of Planning,

* Clarkstown Planning Board, * NYS Dept. of Transportation, Palisades Interstate Park Commission, Village of Nyack Planning Board, * NY-NJ Trail Conference, NY State DEC Region 3, NYS Historic Preservation Office, US Army Corp. of Engineers, Riverkeeper.

Mayor Esmay opened the hearing to the public for comment.

Those who spoke:

Carl V. Wortendyke, Upper Nyack resident

Elyce Knight, Secretary of the Tappan Zee Preservation Coalition

John Stepanovich, Attorney representing clients

Fran Marton, Upper Nyack resident

Daniel Wolff, Upper Nyack resident (read letter from Scenic Hudson)

Ralph Bartolacci, Upper Nyack resident

Winston C. Perry Jr., Upper Nyack resident & Village Historian

John Barone, Real estate & environmental attorney, representing Van Houten Landing Neighborhood Association

John Lipscomb, Riverkeeper

Shirley Lasker, Upper Nyack resident & Clarkstown Councilwoman

Dennis E. A. Lynch, Attorney representing Beneville family

John Lodico Sr., former Upper Nyack resident

Ken Rothchild, Upper Nyack resident

Robert Goldberg, Valley Cottage resident

Art Gunther III, Rockland County resident & member of Board of Historic Land Use

Connie Cocker, South Nyack resident & Rockland County Legislator

Jonathan Demme, Upper Nyack resident

John Borst, Upper Nyack resident

Beth Knowlstein, Upper Nyack resident

Jock DeCamp, Upper Nyack resident

Joseph Scarmato, Upper Nyack resident & member of the Upper Nyack ZBA

Sonya Tulevech Wong, Upper Nyack resident

Mayor Esmay asked if there were any others in attendance who wished to make any comments. As there were none he asked for a motion to close the public hearing.

Trustee Morgan made a motion that having heard a wide variety of public comment that the Board of Trustees would now close the public hearing, seconded by Trustee Diamond and so moved.

AYES: Mayor Esmay, Trustees Diamond, Hindin, Morgan & Sarna

NOES: None

Mayor Esmay noted that written comments will continue to be accepted at the village

hall between the public hearing (12/10/09) and December 17, 2009. The Board will discuss the proposed amendments at the next regularly scheduled meeting on the 17th. The majority of the public in attendance exited at approximately 9 PM. The Board reconvened at 9:15 PM

The Mayor and the Board discussed the public hearing and the proposal. The Board agreed it was good public turnout and comment.

Dennis Letson noted that the EAF was required for a Type 1 action. Letson stated that the findings noted in the EAF would be a Positive Declaration which means a finding of potential adverse environmental impact.

Trustee Hindin commented that the process does not just end here. Felt it was important to note that all of the information was out in the open and that a decision would be made for the community as a whole, all residents and the boatyard owners.

Mayor Esmay noted the Board would have to make a positive declaration based on the findings.

Trustee Morgan made a motion on the attached resolution, seconded by Trustee Sarna.
Discussion on the resolution:

Trustee Sarna noted that the language taken is very technical, as taken from the EAF and the sterile nature of the language may not address the public comments or descriptive text taken from tonight.

Trustee Morgan responded that a full EIS would be needed and it would be more specific.

Dennis Letson commented that the form is based on unbiased information. The Board can separate out comment from tonight that was about historical significance. The SEQRA process must be followed through to the end. The ending can come with a positive declaration.

Village Attorney Lewis noted that continuation could make the process lengthy and expensive for the village.

Mr. Letson noted that a Full EIS could take six months to two years

Trustee Sarna noted that the way the resolution is worded an EIS would have to be done. The cost to the village could be \$150,000 to \$200,000.

Village Attorney Lewis stated the public hearings would continue. Also there is nothing that compels the Board to make any zone text amendment.

Trustee Sarna further noted that the Positive Declaration is for the action on the zone text amendment.

Mayor Esmay asked if there were no further discussion on the motion and being none the motion was moved and carried.

A roll call for a vote:

AYES: Mayor Esmay, Trustee Diamond, Hindin, Morgan & Sarna

NOES: None

Trustee Hindin made a motion to adjourn at 9:40 PM, seconded by Trustee Morgan and so moved.

AYES: Mayor Esmay, Trustee Diamond, Hindin, Morgan & Sarna

NOES: None

Respectfully submitted,

Carol G. Brotherhood
Village Clerk

Public Hearing on proposed zone text amendments, held at Upper Nyack Elementary school on December 10, 2009 at 7:00 PM.

Motion by: Trustee Morgan

Seconded by: Trustee Sarna

RESOLUTION ADOPTING A DETERMINATION OF SIGNIFICANCE
UNDER THE PROVISIONS OF 6NYCRR PART 617
STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) FOR
NON-RESIDENTIAL DISTRICT ZONE TEXT AMENDMENT

WHEREAS, the Village Board of the Village of Upper Nyack is considering the implementation of a zoning text amendment to allow residential uses in the LO, VC and MB commercial zoning districts in the Village of Upper Nyack, and

WHEREAS, the Village Board distributed said draft amendment to potential interested or involved agencies in September 2009, and

WHEREAS, no involved agency objected to the Village Board being Lead Agency for coordinated review under the provisions of 6 NYCRR Part 617, whereby the Village Board is therefore Lead Agency, and,

WHEREAS, a Full Environmental Assessment Form (EAF) was prepared by the Village Engineer at the direction of the Village Board, and distributed to the Mayor and trustees and was available to the public at Village Hall, and

WHEREAS, the Board reviewed the proposed action and the Full EAF and identified potential large adverse environmental impacts due to the proposed action as follows:

Impact on Land, i.e. construction where depth to the water table is less than 3 feet and construction in a designated floodway.

Impact on surface or groundwater, i.e. construction will require a discharge permit, will likely cause siltation or discharge into an existing water body, potential release of soil contaminants to surface or groundwater.

Impact on drainage flow or surface water runoff, i.e. construction may cause substantial erosion and will alter the runoff volumes from the site, action would allow development in a designated floodway.

Impact on aesthetic resources, i.e. visual impacts, development in contrast to surrounding land use patterns, elimination or significant reduction of aesthetic resources (Palisades Ridge, Hudson River waterfront).

Impact on historic and archeological resources, i.e. action occurring within and contiguous to site listed on State or National Register of historic places.

Impact on Open Space and Recreation i.e. the elimination of existing marina/boatyard.

Impact on transportation, i.e. significant alteration of existing traffic patterns, generation of additional traffic volumes to existing roadways.

Impacts on health and safety, i.e. the release of or exposure to existing or potential contaminants by construction activities or residential occupancy.

Impact on growth and character of community or neighborhood, i.e. increase population, increased density of land use, conflict with community goals and the Village Comprehensive Plan, elimination of facilities of historic importance, and the increased demand for community services (school and emergency services), and the elimination of employment.

WHEREAS, at Public Hearings held on December 10, 2009 the application was reviewed and comment was offered to identify any potential adverse environmental impacts,

NOW THEREFORE BE IT RESOLVED that the Village Board, based on review of proposed action, and the potential adverse environmental impact thereof, makes a determination that the proposed action may have a significant adverse impact on the environment, and that an Environmental Impact Statement shall be necessary to evaluate said impacts and the mitigation thereof.

AYES: Mayor Esmay, Trustees Diamond, Hindin, Morgan & Sarna

NOES: None