

PUBLIC HEARING
ZONE TEXT AMENDMENTS
April 29, 2008

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 Tuesday, April 29, 2008 at 7:00 PM to consider the adoption of proposed Zone Text Amendments also known as Local Laws #1, #2 and #3 of 2008.

Those present: Mayor Esmay, Trustees Anderson, Diamond, Morgan and Sarna
Village Clerk Carol G. Brotherhood, Village Attorney Lewis

Others identified: Attorney Kristen Kelley Wilson, Attorney Dennis E. A. Lynch, Terry Lynch, Jock DeCamp, Laurie Dodge, Jennifer Meyerhardt, John Dedyo, C. Robert Clemensen, Kathryn Lebeau-Court Reporter(Rockland & Orange Reporting)

Mayor Esmay waited until 7:05 PM to begin the hearing.
The Village Clerk read the public hearing notices.

Mayor Esmay addressed those assembled, noting that the Board had been involved in looking at the zoning code and in particular, Places of Assembly, for the last 1-1/2 years. Now the amendments are ready for the public to review and comment on.
Mayor Esmay invited Trustee Morgan to speak on behalf of the Board.

Trustee Morgan read from a prepared statement:

**Public Hearing for a proposed Zoning Ordinance Revision: Places of Assembly
Introduction**

The Village Comprehensive Plan of the Village of Upper Nyack, adopted in February 1999, sets forth as an overall planning goal “Ensure that future development and changes in land use are compatible with the existing community, with available utilities and with the Village’s ability to provide municipal services.”

In the current Zoning Ordinance of the Village of Upper Nyack Articles 10, 11,12,13,14 and 14A specify certain uses permitted in residential zoning districts using terms such as “churches and rectories” in R-1, “churches and rectories, public and private schools, and Club houses of Private Clubs, not conducted for profit or gain” in R-2.

In addition, Article 15:3 of the current Zoning Ordinance specifies certain uses that are permitted by special permit in the Office Business (OB) District, including,” Colleges, learning centers and schools, not including those with residential facilities.” and

”Religious buildings, such as churches and temples, not including those with residential facilities.”

However, the current Zoning Ordinance provides no specific guidelines or standards for these permitted uses, even though in normal use they will be occupied by large numbers of people, most of them arriving by automobile. It became apparent to the Village Board that meaningful and practical standards were needed.

A committee of the Village Board was formed in the Fall of 2006 to address this issue. An early finding was that current planning typically refers to these uses as “places of assembly,” a term that may be unfamiliar to some of you, but that is more inclusive and descriptive of all forms of gatherings than the traditional terms which are often specific to a certain group or type of use.

In planning terms, all places of assembly, regardless of their specific purpose, must be located, designed and maintained in such a way to ensure as a primary end the health, safety and well-being of those who use them and those who live near them.

The committee started its work by taking a close look at the characteristics of the places of assembly that exist today in the Village and that have operated in a safe manner for many years, and can therefore serve as conceptual models for future places of assembly.

The committee reviewed the scale and site characteristics of these existing places of assembly with a record of safe and compatible performance, and have observed certain characteristics that appear to contribute to the effective protection of the health, safety and well-being of the public.

The committee also referred to the planning literature and to the zoning ordinances that are in effect in other villages and towns to gain some perspective on the typical standards that are in use for places of assembly and to include elements that are appropriate for Upper Nyack.

The Village Board has concluded that new standards should be incorporated in the Zoning Ordinance and that the Zoning Ordinance should be revised to specify those zoning districts in which places of assembly may be located.

The Village Board also engaged the services of a law firm with experience in New York State municipal law. Kristin Kelley Wilson of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP has been of great value in drafting and reviewing these amendments.

As the work of setting standards and drafting the changes proceeded, it became clear that some of the existing definitions in the Ordinance needed to be replaced or clarified,

and that some new definitions would be needed. These changes are in Sections 1 and 2 of the Proposed Local Law No. 1 of 2008.

Given the unique requirements of places of assembly of different types, it was determined that it would not be practical to draft “as of right” standards. Instead, the Village Board found that the special needs of places of assembly for accommodating large numbers of users safely and without causing adverse impacts on the Village streets, infrastructure and surrounding properties can best be addressed by requiring a special permit for each such use.

This required an amendment of the current Special Permit language in the Zoning Ordinance paragraph 5 and the addition of a new section on the processing of special permit applications: Paragraph 15:8 (see pages 8-10).

The Village Board took careful note of the features of the current places of assembly in the Village and compared these to the planning literature and other zoning ordinances and created a set of minimum standards to be applied by the Planning Board in setting the conditions for granting a special use permit for a place of assembly (see pages 13-18).

Paragraph 10 of the Zoning Ordinance will be revised to specify the Zoning Districts in which places of assembly are permitted. See Section 4, pages 6-8).

The proposed Local Law No.1 of 2008 has been circulated to a number of other entities for their review and comments have been received from the Rockland County Planning Department, and these comments plus other comments received by mail or at the Village Hall, along with any findings of this hearing, will be considered by the Board.

The Village Clerk read a list of those agencies that had been notified of the proposed Zone Text Amendments and indicated which ones had responded. Rockland County Dept. of Planning, Clarkstown Planning Board, NYS Dept. of Transportation, Palisades Interstate Park Commission, Village of Nyack Planning Board, Valley Cottage Fire District, Nyack Joint Fire District. Comments have been received from the Rockland County Dept. of Planning.

Mayor Esmay opened the hearing to the public for comment.

Those who spoke: Attorney Dennis E. A. Lynch, Jock DeCamp, Jennifer Meyerhardt, John Dedyo, C. Robert Clemensen

Attorney Dennis Lynch had sent a letter dated April 28, 2008 to the Village and asked that it be marked and noted into the record. The letter was stamped in at Village Hall,

distributed to the Mayor, all Board of Trustee members, Attorney Kristen Kelley Wilson and Village Attorney Lewis.

Attorney Dennis Lynch spoke to the Board and those present and in his opinion noted that the effort by the Board fails to meet applicable State & Federal Laws. He feels the Board has set minimum standards and leaves it to the discretion of the Boards.

Under the Federal Fair Housing Act the code text fails. Attorney Dennis Lynch expressed his feeling that the code needs to be revised.

Jock DeCamp, 349 North Broadway, questioned how the new code addresses restriction as to size of structures in residential zones.

Trustee Morgan noted that the previous language in the zoning code stated areas that could have places of assembly like schools, private clubs but now has set of standards for those uses.

Mayor Esmay added that the Board was not changing the zoning but just changing the standards, adding standards where there were none.

Mr. DeCamp also questioned how property maintenance would be handled. Who would enforce?

Trustee Morgan noted it would still fall under the jurisdiction of the Building Inspector.

Mr. DeCamp feels the Board is on to something and it is good legislation.

Mayor Esmay indicated these changes would be reflected immediately and used in the review process.

Trustee Morgan noted that the changes would not be retroactive and would not apply to preexisting applications or conditions.

Jennifer Meyerhardt, 323 North Broadway, wanted to know is there a standard for notification of a change to a property? Is it now within 200 feet?

The Village Clerk noted that notices are published in the Journal News legal section, posted to the village web site and posted on the village message board outside of village hall.

John Dedyo, 413 North Broadway, asked when does it stop being an existing use? What level of change needs to occur?

Village Attorney Lewis noted that if a use is abandoned for 6 months the property loses any expansion of the non-conforming use.

Jock DeCamp stated that Mr. Lynch's comments were that this legislation is not proper. Is it enforceable, is it law?

Village Attorney Lewis noted that Attorney Lynch represents clients or potential purchaser of his client's property and his legal opinion is that he has problems with the proposed law.

Mr. DeCamp inquired about getting a copy of Mr. Lynch's letter and was told by the clerk that he could request it at village hall from the Village Clerk.

Kristen Kelley Wilson noted that this meeting was a public hearing and once the Village Board closes the public hearing it can pass the legislation and it would go to the State for filing.

Mr. Dedyo asked what is the time frame?

Mayor Esmay noted the Board would like to get the law in place soon.

Ms. Wilson also noted that the comments received from the Rockland County Planning Dept. did not include any of the objections raised by Attorney Lynch.

Trustee Anderson made a motion to close the public hearing which was seconded by Trustee Morgan and so moved and on a call for a vote:

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

NOES: None

Attorney Kristen Kelley Wilson told the Board they would have to complete the SEQRA environmental form.

The Long Form EAF Part I was filled out previously and Part II would be completed tonight with about 20 questions to answer.

Trustee Morgan read the questions aloud. The Board and representative to the Board Kristen Kelley Wilson, reviewed the questions and answered them.

Since the Board did not identify any potential problems in Part II, there is no need to fill out Part III.

Trustee Morgan made the following motion on the SEQRA resolution, seconded by Trustee Anderson,

SEQRA RESOLUTION FINDING THAT PROPOSED LOCAL LAW NUMBER 1 OF 2008 ENTITLED "A LOCAL LAW AMENDING ARTICLE II 'DEFINITIONS,' ARTICLE III 'GENERAL REGULATIONS,' ARTICLE IV 'ESTABLISHMENT OF ZONING DISTRICTS,' AND ARTICLE V 'ADMINISTRATION OF ZONING,' OF THE ZONING ORDINANCE OF THE VILLAGE OF UPPER NYACK" WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

WHEREAS, the Village Board of Trustees of the Village of Upper Nyack (the “Village Board”) with an address of 328 North Broadway, Upper Nyack, New York, has thoroughly reviewed the existing zoning ordinance (the “Zoning Ordinance”) of the Village of Upper Nyack (the “Village”); and

WHEREAS, the Village Board believes that in order to plan for the Village’s future, reasonable planning regulations must be incorporated into the Zoning Ordinance governing uses of property which involve large gatherings of people (hereinafter referred to as “Places of Assembly”); and

WHEREAS, the Village Board formed a committee (the “Committee”) to review and propose zoning regulations that address the health, safety and welfare of the Village’s current and future residents; and

WHEREAS, the Committee proposed certain amendments to the Zoning Ordinance that are included in Local Law # 1 of 2008 entitled “A Local law amending Article II ‘Definitions,’ Article III ‘General Regulations,’ Article IV ‘Establishment of Zoning Districts,’ and Article V ‘Administration of Zoning,’ of the Zoning Ordinance of the Village of Upper Nyack” (“Local Law #1 of 2008”); and

WHEREAS, Local Law #1 of 2008 amends several definitions, adds special permit procedures and requirements relating to Places of Assembly and other permitted uses and streamlines other procedures in the Zoning Ordinance; and

WHEREAS, Local Law #1 of 2008 is consistent with the intent of the Comprehensive Plan of the Village of Upper Nyack and promotes the orderly development of same; and

WHEREAS, the Village Board declared itself to be the lead agency with respect to adopting Local Law #1 of 2008 since it is the only involved agency and prepared a long form environmental assessment form (the “EAF”); and

WHEREAS, the proposed action is a Type I action under the New York State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, the Village Board took the requisite hard look at any environmental issues and thoroughly considered the EAF; and

WHEREAS, this notice is issued pursuant to 6 NYCRR Part 617 of the implementing regulations pertaining to Article 8 of the Environmental Conservation Law;

NOW, THEREFORE, BE IT RESOLVED, that upon consideration of the above and all of the previous documents, discussion and debate, upon the motion of Trustee Morgan seconded by Trustee Anderson, the Village Board declares that Local Law #1 of 2008 will not have any significant adverse environmental impacts and hereby issues a negative declaration; and

BE IT FURTHER RESOLVED, that this negative declaration is based on the following findings consistent with 6 NYCRR Part 617.7:

- (a) Local Law #1 of 2008, in both the short term and the long term, will improve the community character and provide a framework for orderly future development and expansion of existing Places of Assembly within the Village;
- (b) Local Law #1 of 2008 will help preserve the existing neighborhoods and historic and aesthetic resources in the Village;
- (c) There will be no adverse impact with respect to existing air quality or to ground or surface water quality or quantity;
- (d) Local Law #1 of 2008 will not result in any increase in the use of energy;
- (e) Local Law #1 of 2008 will not adversely impact the existing vegetation in the Village;
- (f) Local Law #1 of 2008 will not adversely impact any known endangered or threatened species;
- (g) Local Law #1 of 2008 will improve parking congestion by requiring Places of Assembly to meet certain standards depending on the size and type of use proposed;
- (h) Local Law #1 of 2008 will provide adequate buffers between different land uses to ensure

- adequate safety and privacy between adjoining properties; and
- (i) Local Law #1 of 2008 will better define and clarify certain procedures and definitions in the existing Zoning Ordinance.

Dated: April 29, 2008

Ayes: Mayor Esmay, Trustees Anderson, Diamond, Morgan and Sarna

Nays: None

On a call for a vote the motion carries.

Mayor Esmay suggested an additional two week period of public comment.

Mr. Clemensen, 609 North Broadway, commended the Board for their diligent work.

Mayor Esmay noted that since the public hearing had been closed, Mr. Clemensen could come to the workshop on May 8th, 2008 and express his comments then.

Mr. Clemensen noted he had no agenda and no authority but wanted to be sure the legislation would stand up in court.

Mayor Esmay noted, and on advice from counsel, that the public comment period would be extended until May 13, 2008.

Mayor Esmay told the public that the Board would now be going into an Attorney-Client meeting to discuss legal matters with the attorneys and the public hearing was over. The members of the public and the Court Reporter departed.

The Board was in agreement to enter an attorney-client meeting.

The Attorney-Client meeting began at 7:55 PM

The Attorney-Client meeting ended at 8:30 PM

Trustee Sarna made a motion to adjourn at 8:30 PM, seconded by Trustee Anderson and so moved

Respectfully submitted,

Carol G. Brotherhood
Village Clerk