

**Village of Upper Nyack  
Planning Board Meeting  
Wednesday, July 15, 2020, 7:30pm**

***Minutes***

A meeting of the Planning Board of the Village of Upper Nyack was held on the above date via videoconferencing in accordance with the Governor's Executive Order 202.1 due to the COVID-19 emergency and called to order at **7:30pm** by the Chairman, William Pfaff.

**Other Board members present:** Ellen Simpson, Karen Olson and Cynthia Turner. **Also present:** Dennis Letson, Village Engineer; Noelle C. Wolfson, Esq., Consulting Attorney; and Jillana Sinnott, Secretary.

**7:30pm:** The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on July 8, 2020. The Chairman also reviewed how the Zoom meeting would take place due to the COVID-19 emergency in accordance with the Governor's Executive Order 202.1.

The Chairman read a letter of resignation from Board member Danielle Watson. The Chairman replied to her and thanked her for her years of service and understands that sometimes other things in life take precedence.

**7:32pm:** **Approval of Minutes:** Member Karen Olson moved to approve the minutes from June 17, 2020 as amended; SECOND: Ellen Simpson; unanimously APPROVED.

**7:37pm:** **Brookfield Nyack, LLC, 519 North Midland Avenue, County Map No. 60.09-03-48.**  
*Continuation from June 17, 2020.*

Said property is located in Residential Zoning District R-3.

The APPLICANT was represented by Jay Greenwell, Land Surveyor and Marc Mallow, Homeowner.

The Application is before the Board for approval to demolish the existing house which is greater than 50 years old.

The Village Engineer discussed the EAF form and the status of the SEQRA review. He advised that since the Applicant has made an application for site plan approval to replace the existing residence with a new residence, the entire action (demolition and site plan approval for reconstruction) can be combined and could be one "Action" under SEQRA if the Applicant requests to either merge the demolition application with the site plan application for the new house or withdraw the demolition application. Although the demolition on its own is an Unlisted Action under SEQRA, the combined application to demolish the existing residence and replace it in kind with a new residence is a Type II action under SEQRA (6 NYCRR 617.5c2-replacements in kind). As a Type II Action, no further review is required under SEQRA.

Counsel agreed that either way is acceptable and discussed procedural considerations for the application.

The Applicant stated that he would like to withdraw the separate application for demolition. The request for demolition was incorporated into the site plan review application for the construction of the new home on the subject property.

**7:47pm: Brookfield Nyack, LLC, 519 North Midland Avenue, County Map No. 60.09-03-48.**

Said property is located in Residential Zoning District R-3.

This APPLICATION submitted to the clerk the Certificate of mail receipts of neighbor notification.

The APPLICANT was represented by Jay Greenwell, Land Surveyor, Libby Parks, Architect and Marc Mallow, Homeowner.

Application for site plan approval to demolish the existing residence on the property and reconstruct a new residence and related improvements.

The Chairman reviewed the demolition application that was discussed at the Planning Board meeting of June 17, 2020. The Applicant purchased the property with the intention of renovating the house. They had the asbestos removed and removed the roof. Further environmental remediation was needed because of mold and damage to the roof. The house is well constructed but windows have been broken and it has been exposed to the elements for over 18 years. The previous owners were granted a demolition permit.

The Applicant reviewed the submitted site plan dated July 15, 2020 for demolition of an existing single family residence and construction of a new single family residence. Mr. Greenwell noted that the proposed new dwelling will be constructed in substantially the same location as the existing dwelling that is to be removed. Parts of the driveway will remain and some of it will be reshaped. The pool will remain and a hot tub will be added. The site requires two drywells. The utilities are going to be reused. The sewer connection is existing and is proposed to remain and/or be refurbished, as necessary. There will be a generator to the north of the driveway. Very little grading will be necessary.

The Architect reviewed the plans dated June 24, 2020 with the Board. The west view down the driveway shows a garage on the left. It is a two story structure with the master bedroom on the first floor and the bedrooms on the second floor and three garages. On the river side the garage is shown on the right with a studio above. The materials used will be a slate roof with horizontal wood siding. The low slope roofs will be natural copper.

The Chairman noted that the 31' maximum building height is not the elevation plan. The Architect said that it was measured at the rear side of the dwelling and will note it on the plan.

The BOARD read and reviewed the report from Dennis Letson, Village Engineer, whose comments were entered into the record as follows:

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**State Environmental Quality Review (SEQR)**

*Under the provisions of 6NYCRR Part 617.5c2:*

*“replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of*

*the thresholds in section 617.4 of this Part” defines this project as a Type 2 action. This now negates the need for specific SEQR of the demolition as an unlisted action. To fully comply with Part 617 definitions, Mr. Greenwell has added the existing house outline and a note “to be removed” to the site plan. The Board will still include review of the provisions of Village Code Section 15.7 in the overall project review and any determination made on the application.*

*No further review under the provisions of SEQRA is required.*

#### Site Plan

##### *1. Zoning*

- a. Planning Board approval of the demolition portion of the work is required by Section 15:7 of the code. This was discussed at the prior meeting and should be part of the record for this application.*
- b. Verify the south side yard setback of 110.6’ shown in the bulk table, it does not agree with the 109.6’ dimension shown on the plan.*
- c. The proposed site plan is compliant with zoning.*

##### *2. Provide drainage calculation for design of proposed drywell.*

##### *3. Given the disturbance area over 10,000 s.f. a full SWPPP will be needed.*

##### *4. Infiltration test shall be performed to verify assumed infiltration rates.*

##### *5. Coordinate notes 4, 5 and 6 with the proposed stormwater management drywell.*

##### *6. A stormwater maintenance agreement will be required for the site.*

##### *7. Check and if needed revise the location of proposed gas service to generator to insure that the roots of the 40” pine will not be damaged.*

##### *8. Consider visual and noise screening around the proposed generator.*

The BOARD reviewed the report. The south side yard setback is 109.6’. The Village Engineer will review Counsel’s Stormwater Agreement to be used as a template. The screening of the generator was discussed. The Applicant said that they might be going with a generator that will give off very little noise and they will have screening around it. The distance between the generator and the neighbors was discussed. The northwest neighbor is at least 125’ from the generator. The drywell placement should be below the basement level. The pool is 9’D x 19.5’W x 36’L, notes regarding fencing and alarms need to be added to the plan. The Bulk Table should reference the maximum building height.

The BOARD had no further comments at this time.

The BOARD opened the public hearing and listened to comments from the public regarding the demolition of the existing residence and the site plan for the new single family residence.

**Louis Tharp, 515 North Midland Avenue** agrees with everything that the Applicant is doing and feels it will be an incredible addition to the neighborhood.

**MOTION:** Member Ellen Simpson moved to close the public hearing: SECOND Karen Olson;  
Unanimously APPROVED

The Chairman asked what the status of the landscaping plan was. The Applicant will have it for the next meeting.

There was a discussion of what the Board could approve tonight. The Board had previously discussed the demolition permit last month. There was a discussion of approving the Application with a condition that the landscape plan is submitted for the September meeting and if it is not, any building permit that may be issued could be revoked until a landscape plan is approved by the Planning Board. Dates of the meetings were discussed, there are no meetings in August. The Applicant still needs to go the Architectural Review Board for review and that is not until September 14<sup>th</sup>. The Planning Board meeting is on September 16<sup>th</sup>.

**MOTION:** This is a Type II action therefore no further SEQRA review is required. The site plan final approval is based the following:

- The following plans referred to collectively below as the “Site Plan” for the Demolition of the existing structure and construction of a new single family residence.
  - Site Plan for demo of existing structure and construction of a new single family residence, Brookfield Nyack LLC, prepared by Jay A. Greenwell, PLS, LLC dated January 20, 2020 last revised July 7, 2020, Job #2503
  - Architectural Plan for new single family residence, (Pages 1-8 consisting of A001; A100-A104; A400-A401) Marc & Sari Mallow, prepared by Elizabeth Parks, dated June 24, 2020.
- The BOARD granted the Applicant’s request pursuant to Section 15.7 of the Zoning Ordinance of the village of Upper Nyack for demolition of the existing residence, finding that based on the Applicant’s submission and information provided by Win Perry, Village Historian, that although the structure is over fifty years old it does not have significant historical value that would prohibit the demolition of the existing structure.

The BOARD approved the Applicant’s application for site plan approval to construct a new residence on the Property subject to the following conditions:

1. 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 Site Plan endorsed by the Planning Board Chairman. Any changes or modifications to such plan require amended site plan approval from the Planning Board.
2. This approval shall be void and of no effect if a building permit for the work proposed herein is not issued within 3 years of the date of this resolution.
3. The Applicant shall address to the reasonable satisfaction of the Village Engineer the following comments set forth in the memorandum from the Village Engineer to the Planning Board dated July 15, 2020, which are specifically set forth herein as conditions of approval, #1b; #2; #3 #4; #5; #6; #8; add fence and locking gates for the pool; add building height to the plans.
4. A Stormwater Maintenance Agreement in a form acceptable to the Village Engineer and the Board’s counsel shall be recorded in the office of the Rockland County Clerk and a

copy of such agreement as recorded shall be file with the Board. The applicant shall pay all applicable recording fees.

5. This approval is subject to review and approval of the Architectural Board of Review and the submission of a landscape plan for the September Planning Board.
6. The Building Inspector may issue the demolition permit for the existing residence on the Property provided that all other requirements necessary for the issuance of a demolition permit are satisfied.

**MOTION BY:** Karen Olson

**SECOND:** Ellen Simpson

**VOTE:** Unanimously APPROVED

### **Other Business:**

#### **8:52pm: Comito Homes LLC, 205 Wanamaker Lane, County Map No. 60.13-02-94.**

The Applicant was represented by Jay Greenwell, Land Surveyor and Marc Comito, property owner.

The applicant discussed the amended site plan that shows a concern that was brought up at the last meeting regarding fill that had been brought to the site. Some of the fill was from the basement excavation from the foundation and 17 truckloads of clean fill was obtained and delivered. The applicant wanted to stabilize the backyard and make it flatter for a prospective buyer. There was an issue over the weekend with the rain and the silt fencing because of the tremendous storms we had. The Building Inspector had taken photos of the runoff and the adjacent property damage.

The Village Engineer discussed what has been done to remedy the silt fencing. Some areas have been stabilized but other areas need to be corrected. The silt fence needs to be corrected or moved; the temporary mulch should be maintained throughout the site; the southwest corner needs silt fencing installed. The weather in the next few days will not be good so these corrections need to be done right away and coordinate with the Building Inspector for inspection.

The Board read and reviewed the report from Dennis Letson, Village Engineer, whose comments were entered into the record as follows:

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#### **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.*

#### **Site Plan**

##### **1. Zoning**

- a. *No changes to zoning issues with this request.*

**2.** *The request to appear results from a discussion I had with Mr. Comito on site during an erosion control inspection. At that time I indicated to Mr. Comito that the rear yard was filled beyond the grading shown on the approved site plan.*

**3.** *The drawing prepared shows several changes from the approved grading plan:*

- a. The west retaining wall has been extended to the south and grading above the wall revised to show swales for drainage above the wall.*
  - b. The east retaining wall has been extended to the south with revised grading above the wall.*
- 4. The drawing must be revised to indicate the new grades at the rear of the house, which was the reason I advised Mr. Comito to return to the Board. This area is shown as existing and does not fully indicate the changes made in the field; there appears to be a miscommunication to Mr. Greenwell as to what was to be shown.*
- 5. The revised walls will require revised designs be submitted.*
- 6. Coordinate the proposed landscape plan with the new swale shown above the west wall to insure the proposed plantings can be viable in the swale.*
- 7. Provide information on the source of fill added to the site.*

The Chairman discussed the new flat backyard and the need to return to the Planning Board for an amended site plan. The applicant stated that he was not aware that he needed approval. The Chairman said the wall is now longer and it would require approval. The Village Engineer reviewed the previous contours. The Board would like to see the current and the proposed contours to see what area has been altered. The revised landscape plan was discussed. The Chairman and Village Engineer discussed the grading changes. The applicant can only build what was approved. There is significant enough changes that this should return to the Board. The applicant asked if they could build the enlarged wall and then come to Planning Board with an as-built. The Board replied that they just approved a site plan at the last meeting and the grade change to the east could affect the neighbor. This change has been self-created by the applicant. The current slope and previous slopes were discussed.

The applicant can only build according to the approved site plan. They should return to the Planning Board with an amended site plan for consideration of approval. This application will also need a GML review.

The meeting was adjourned at 9:22pm.

Respectfully submitted,  
Jillana Sinnott, Secretary