

**Village of Upper Nyack
Planning Board Meeting
Wednesday, March 23, 2022, 7:30pm**

MINUTES

A meeting of the Planning Board of the Village of Upper Nyack was held on the above date and called to order at 7:36 pm by the Chairman, William Pfaff (via Zoom).

Other Board members present in person: Karen Olson, Cynthia Turner, and Joseph Heider.

Also present in person: Dennis Letson, Village Engineer; Noelle Wolfson, Esq., Consulting Village Attorney; Janet Guerra, Board Secretary.

Absent: Patricia Esgate.

7:51 pm. The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on February 17, 2022. Chairman Pfaff reviewed the agenda and the nature of the meeting as hybrid, with some members of the Board participating via Zoom and some applicants participating via Zoom.

Acknowledgement of Bruce Biavati, longtime Planning Board member who passed away on March 15, 2022. Chairman Pfaff acknowledged and remembered his service to the Board. Member Karen Olson remembered him as a mentor. She said he made a motion for a Negative Declaration on each application and, in his honor, made a Negative Declaration motion, seconded by Member Joe Heider, and approved by all present.

7:56 pm. Motion for approval of minutes from the February 23, 2022 meeting.

First: Karen Olson

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

7:57 pm. Application of Stuart and Jennifer Chaitin, 617 North Broadway, County Map No. 60.10-01-09. Continuation from February 23, 2022. Application for site plan approval for accessory structures (fencing, stone pillars and pool decking) on property improved with an existing single-family residence located in the Residence R-2 District.

The Applicant was represented by Timothy DeBartolomeo, PE, Sound Engineering Associates.

Mr. DeBartolomeo gave a general introduction. He advised that following the February meeting the plans were revised to address the comment of the Village Engineer issued before the February meeting and that a full site plan was submitted.

The comments of the Village Engineer were reviewed and discussed:

State Environmental Quality Review (SEQR)

There is no additional SEQR review required for this modification.

Zoning

1. The parcel is in the existing R-2 zone, as of April 15 it will be in the R-30 zone; if the application returns to any Board after April 15, the bulk table will require revision to reflect the new zoning bulk requirements:
 - a. A Lot Width requirement (100') is added.
 - b. A Total Side Yard requirement (50') is added.
 - c. Min. Floor Area is replaced with Floor Area Ratio (FAR), 0.2 in the R-30 district.
 - d. The slope area reduction exemption is replaced with new code section 7.3. Additional restriction on disturbance of slopes of 15% to 24% have been added.
 - e. Applicant's professionals would have to evaluate if the changes would result in additional variance requests.
2. Under the current R-2 zoning the application requires variances for disturbance of slopes over 40% and height of the fence pillars. The coverage variance is not required under the existing code as the ABA previously granted a variance to 27.4%

Sound Engineering Plan

1. From the Greenwell drawing and the Sound Eng. sections, it appears impacts to adjacent properties are approx. 68 feet, 12 ft on the Sinnott parcel and 56 ft on the Clemenson parcel, approximately where the elevation 42 contour crossed the property lines.
2. The original limit of disturbance line has been added to the plan for reference.
3. The revisions to the plan address my previous comments.

Greenwell Plan

1. See "Zoning" above for possible revisions to the bulk requirements and the bulk table.
2. Reference to variance requests for total coverage may be removed from the drawing if the approvals are secured prior to April 15. These are shown on sheets 1 and 2 of the set.
3. Please add a plan note to indicate refer to Sound Engineering Plan, with last revised date, for work to be performed in the area above the proposed dry laid stone wall.
4. The pool equipment pad and surrounding gravel area should be shown shaded on the added coverage area plan, sheet 3.
5. Please add a drawing list to the plan set.

Village Engineer, Dennis Letson, advised that the application to the ZBA for the required variances required GML review by Rockland County Planning. As such, the applicant will be required to comply with and seek variances as necessary from the requirements of the Village's 2022 Zoning Law, to become effective April 15th. The Village Engineer advised that the applicants' advisors should carefully review the 2022 Zoning Law and update the bulk table to identify variances that will be required before making ZBA application.

Chairman Pfaff's comments: On Sheet 2 of the submitted plan set the last item in the bulk table references note 1, 2, and 3 on the coversheet. This reference appears to be incorrect and it seems like it should reference notes 6, 7 and 8. Mr. DeBartolomeo advised that he would review and correct as needed.

Member Joseph Heider's comments: Member Heider asked about several of the station details and the impact of the proposed plan on the off-site portion of the slope. The proposed site plan shows slope stabilization predominately on the Chaitin property; but also shows slope remediation on the Sinnott and Clemensen properties that could be completed in the future. Mr. Heider expressed concern about stabilizing only the portion of the slope on the Chaitin property and asked if the slope on the adjacent properties would continue to erode; and, if so, if that could compromise the integrity of the slope stabilization on the Chaitin property, including causing the proposed retaining wall to fail.

Mr. Chaitin advised that there is a sheer cliff that abuts the Sinnott property on the Wortendyke property. Mr. DeBartolomeo explained that at station 0+50 and 0+75, the plan shows work that could, in the future, occur on adjacent property. Counsel for the applicant is working on obtaining agreements with those property owners so that the slope stabilization can occur on those lots. As it stands now, the slopes have held up and any erosion has been minor over the past 14 years. He advised that the proposed retaining wall would likely serve to contain future erosion. He said that there is some risk that erosion could continue, but that it would be minimal and could be managed. Mr. Heider asked Mr. DeBartolomeo to clarify what he meant that it could be managed. Mr. DeBartolomeo advised that the retaining wall has been designed to sustain the weight of material that would be filled behind it. If it were to be stabilized, the wall would not collapse. Mr. Heider asked if there was a risk that erosion could continue and Mr. DeBartolomeo agreed that all risk of further erosion could not be eliminated.

Mr. Heider asked about the slope at the +25 and +50 stations. He said that it appears steeper now than it was in 2007. Mr. DeBartolomeo explained that there is a combination of exposed rock and organics that have taken hold that provide a level of stability.

Mr. DeBartolomeo advised that the slope has been in this condition for 14 years and even with the significant weather events, it has been fairly stable.

Mr. Heider asked if the amount of erosion between 2007 and 2021 is significant. Mr. DeBartolomeo clarified that the condition of the slope was not caused by erosion, but is a built condition created by the applicant. He said it appears that slope has been fairly stable for the past 14 years.

No further board comments.

Public Hearing Comments:

Fred Sinnott, owner of the property to the west of Chaitin Property: The engineer just mentioned that the slope is somewhat stable. Before construction the slope was at a 45-degree angle; after it is 60-70-degree angle and in some places, it is a sheer cliff. He said that the vegetation stabilizing a portion of the slope the applicant's engineer referenced was exposed root due to erosion. He has advised that the applicant's attorney has not reached out to him.

Jill Sinnott: Mrs. Sinnott wanted to confirm that the Planning Board members received both letters she submitted regarding this application. The members confirmed receipt.

Village Engineer Letson advised that at the February meeting the applicant's attorney advised that the applicant would be willing to consider working with neighboring property owners. The plan submitted for the February meeting showed only work on the Chaitin property. This submission shows the proposed remediation that could occur on the neighboring properties which would allow the applicants to reach out to the neighbors. He confirmed that the scope of the remediation proposed was consistent with what he advised was necessary

Seeing no additional members of the public who wished to speak, a discussion about process ensued. Chairman Pfaff asked Noelle Wolfson, the Board's consulting counsel, what was in the purview of the Board to consider. Ms. Wolfson confirmed that it was Mr. DeBartolomeo's view that the proposed stabilization plan could accommodate stabilization of the entire slope without regard to the property line; but that all necessary work required on the Chaitin property could be completed even if the off-site work was not. Mr. DeBartolomeo confirmed that it was his view that that was correct. Mr. Heider asked Village Engineer Letson if he agreed; and he said generally he did. In light of that, she advised that the Board could consider the work showing the off-site stabilization; but the applicant could not complete that work without the prior written consent of the property owners.

There was another discussion of whether the slope stabilization will be fully effective if all of the work was not complete. The Board acknowledged that it could not compel the applicant to complete the off-site improvements; but wanted to understand the implications of not completing them on the stabilization of the slope.

The Board members discussed referring the application to the Zoning Board of Appeals for the requested variances so that the applicant can advance the application and have some additional time to reach out to the neighboring property owners and figure out if they will be able to come to an agreement on the off-site slope stabilization.

Motion to refer the application to the ZBA so that the applicant can seek the necessary variances:

First: Joseph Heider

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

Motion to continue public hearing on this application to the May 18th Planning Board meeting:

First: Karen Olsen

Second: Joseph Heider

Vote: 4-0, 1 absent, APPROVED.

9:08 pm. Lewis Maresca, 505 Spook Hollow Road, County Map No. 60.09-02-25.

Continuation from February 23, 2022. Application for site plan approval for a semi-inground pool on property improved with an existing single-family residence located in the Residence R-4 District.

The applicant was represented by Paul Gdanski, PE and Lawrence Garvey, Esq.

Mr. Gdanski introduced the application and explained changes to the plan from the plan presented at the February 23, 2022 meeting to address the Village Engineer's comments. He advised that the applicant was not able to secure an easement from the neighboring property for stormwater management; so, they added an additional drywell. He advised that the pool pump and heater were added to the equipment pad.

The comments of the Village Engineer were reviewed and discussed:

State Environmental Quality Review (SEQR)

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

Zoning

1. The parcel is in the existing R-4 zone, as of April 15 it will be in the R-10 zone; if the application returns to any Board after April 15, the bulk table will require revision to reflect the new zoning bulk requirements:
 - a. A Lot Width requirement (90') is added.
 - b. A Total Side Yard requirement (50') is added.
 - c. Min. Floor Area is replaced with Floor Area Ratio (FAR), 0.25 in the R-10 district.
 - d. Setback for parking and driveway areas have been added.
 - e. Applicant's professionals would have to evaluate if the changes would result in additional variance requests.
2. Under the current R-2 zoning the application requires variances for side and rear setbacks for the proposed pool and side yard setback for the shed.

Site Plan

1. Existing southeast roof leaders are connected to the exiting drainage piping in the yard, and should be shown. While Mr. Gdanski's response to previous comments indicate the roof leaders are not connected to the proposed drywells, the plan shows them connected to a field inlet which then is piped to the drywells and the narrative further states the drywells are designed to compensate for half the roof. Please coordinate the various components (plans and narrative) of the application.
2. The stone wall at the east property line is partially shown on the plan; the entire wall should be shown for plan completeness.
3. Please use a standard line type to depict the existing vinyl fence.
4. Proposed equipment should be specified.
5. Stormwater maintenance agreement will be required for the site.

There was a discussion about Village Engineer site plan comment #1. Mr. Gdanski said he would revise the plan to address it. Mr. Letson said he would withdraw comments #3 and #4.

No board members had comments on the application.

The Chairman opened the meeting to public comment.

Lawrence Garvey, Esq.: Counsel for Mr. Maresca. 317 South Little Tor Road, New City. Mr. Garvey asked if all of Mr. Letson's comments were addressed. Mr. Letson advised that the comments that were addressed were removed from his memo and the open comments were included in his memo for this meeting. Mr. Garvey requested that this matter proceed to a vote or referral to Zoning Board of Appeals.

No other members of the public wanted to speak at the meeting or via Zoom.

Motion to continue the public hearing to the May 18th meeting:

First: Karen Olsen

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

Motion to refer application to ZBA for variances required under the 2022 Zoning Law:

First: Karen Olsen

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

9:22pm. Richard and Danielle James, 315 North Broadway, County Map No. 60.18-01-40.

Application for site plan approval to remove a wood deck and steps and construct a raised stone patio with steps and a landing on property improved with an existing single-family residence located in the Residence R-4 District.

The applicant was represented by Keir Levesque, AIA.

Mr. Levesque explained that the applicant wanted to remove an existing wooden deck from the property and replace it with a patio with broad steps. He explained that the existing house is setback 7.9 feet from property line. In designing the patio, he made sure that it was setback to a further extent than the existing house.

The comments of the Village Engineer were reviewed and discussed:

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 parcel is in the existing R-4 zone, as of April 15 it will be in the R-30 zone. The GML referral will not allow this application to proceed to the ZBA until May, after the new code effective date. This will require revisions to the bulk calculations and utilization of the new bulk table (suggested tables are attached):

- a. A Lot Width requirement (100') is added.

- b. A Total Side Yard requirement (50') is added.
 - c. Min. Floor Area is replaced with Floor Area Ratio (FAR), 0.20 in the R-30 district.
 - d. Setback for parking and driveway areas have been added.
 - e. Applicant's professional will have to evaluate if the changes would result in additional existing non-conformities or variance requests.
2. Under the proposed R-30 zoning the application requires variances for increase in non-conforming side yard setback.

Site Plan

1. Stormwater quantity management is not required as the site drains directly to the Hudson River. Quality management will be provided by overland flow filtration on existing vegetated surfaces. No stormwater management is required for this application.
2. The silt fence shown will provide adequate erosion and sediment control.
3. If fill material will be imported for construction of the patio area, consider a stabilized construction entrance.

There was a discussion about the nonconforming setback of the house and an accessory structure. Mr. Letson advised the applicant that he did not have to seek variances for those aspects of the site since they are not being affected; but the applicant could do so to eliminate the nonconforming status if they wish. The variance that is required is the setback for the patio. The applicant should also evaluate the 2022 Zoning Law to determine if any additional variances will be required.

GML reviews:

Village of Nyack comment: Matter of local determination; no adverse impacts on the Village of Nyack.

Rockland County Planning: Recommended approval.

Orangetown Sewer District comment letter- Read into the record.

Motion to open the public hearing:

First: Karen Olsen

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

No public comment in person or by Zoom.

Chairman Pfaff asked Village Engineer Letson if this had to come back to the Planning Board after ZBA review as a result of the Town of Orangetown comments. Mr. Letson advised that that shouldn't be necessary as they can be addressed with map notes. The Chairman asked if the Board members wanted

the application to return to the Planning Board after ZBA review. The Board members advised that they did not.

Motion to close the public hearing:

First: Cynthia Turner

Second: Joseph Heider

Vote: 4-0, 1 absent, APPROVED.

Motion to grant site plan approval:

I move to approve this Site Plan (JAMES PATIO, #202175, Kier Levesque, February 10, 2022).

1. Under the provisions of SEQR this is a Type II action requiring no further review.
2. The applicant shall address to the reasonable satisfaction comments of the Village Engineer in his report dated March 23, 2022; and which are specifically set forth herein as conditions of approval. (1 a-e, 2, site plan 1-3).
3. Comments from other Agencies commenting on this plan are herein incorporated as conditions of approval. Rockland County Planning 3/21/22 and Orangetown Sewer District March 14, 2022.
4. This approval is subject to the applicant seeking and obtaining variances that the Zoning Inspector determines are necessary pursuant to the 2022 Village of Upper Nyack Zoning Law from the Zoning Board of Appeals and updating the bulk table on the site plan to reflect the 2022 Zoning Law requirements and any variances granted. If such approvals are not granted, the applicant shall return to the Planning Board for review. If approved the applicant may apply for a building permit.
5. Prior to the issuance of a Certificate of Occupancy the Applicant shall provide an as-built survey signed and sealed by a licensed professional.
6. The Site Plan shall be revised to include an entry in the revision note section to indicate the date that the plan is submitted for Planning Board signature. The description for the revision date note shall read "For PB Signature."
7. 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 final site plan endorsed by the Planning Board Chairman. Any changes or modifications to such plan require amended site plan approval from the Planning Board.
8. 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.

First: Karen Olsen
Second: Joseph Heider
Vote: 4-0, 1 absent, APPROVED.

Other business:

Bond Release

Village Engineer Letson explained that this is related to the 2-lot subdivision on Elm Street. In May 2019, an escrow for work to be completed at the time the C/O was issued was established. One of the items that was escrowed was the replacement of two trees that were supposed to remain on the site per the site plan but were removed. The applicant said the replanting should be waived because there is a lot of landscaping on the lot at present.

The Village Engineer and the Building Inspector wanted to refer to Planning Board for their view on whether the additional trees should be planted. The members of the Board agreed that the replanting of the two trees was not necessary because of the existing vegetation and because, as Mr. Letson explained, there was some potential for them to conflict with power lines. The release will be handled administratively.

9:50pm. Motion to close the meeting:

First: Karen Olsen
Second: Cynthia Turner
Vote: 4-0, 1 absent, APPROVED.

Respectfully submitted,

Janet Guerra, Board Secretary