

**Village of Upper Nyack Planning Board Meeting
Wednesday, May 17, 2023 7:30 p.m.**

MINUTES

A meeting of the Planning Board of the Village of Upper Nyack was held on the above date and called to order at 7:30 p.m. by the Chairman, William Pfaff.

Other Board members present: Karen Olson, Joseph Heider, and Zara Crowley

Absent Board members: Cynthia Turner

Also present: Dennis Letson, P.E. Village Engineer/Zoning Inspector; Janet Guerra, Board Secretary; Noelle Wolfson, Esq., Consulting Village Attorney.

7:30 p.m. The Chairman reviewed the agenda.

7:31 p.m. Review of the minutes from the April 19, 2023 meeting.

Village Engineer Letson identified a typographical error to correct on page 3.

Motion to approve the minutes of the April 19, 2023 meeting as amended.

Motion: Karen Olson

Second: Zara Crowley

Vote: 4 (yes) – 0 (no), 1 (absent)

7:33 p.m. John and Melodi Pomeroy, 500 Camboan Road, County Map 60.09-02-85.

Application for waiver of site plan approval pursuant to Zoning Law §10.4.3.1 to allow the use of a temporary above ground swimming pool on the Property. Zoning District R-10.

No one was present to represent the applicant.

The Chairman summarized the applicants' submission letter into the record.

The Village Engineer explained that the lot is a corner lot and that the proposed pool is to be located in the rear yard and confirmed that it met the criteria to be eligible for a site plan waiver.

There was a discussion about the site plan requirements for swimming pools generally.

Consulting Counsel explained that no public hearing is required on site plan waiver applications but public comment may be accepted.

There was a discussion about whether the waiver should be sought every year. It was the consensus of the Board that the waiver should be sought each year.

Motion to Grant a Waiver of Site Plan approval pursuant to Zoning Law Section 10.4.3.1 to allow the temporary installation of a maximum 20 foot by 12 foot by 48 inch above ground

swimming pool on the Property, on the conditions that: (1) the dimensions of the pool shall not exceed 20 feet by 12 feet by 48 inches; (2) the pool shall be located in the rear yard of the property in the location depicted on the survey submitted in support for the requested waiver; (3) the pool shall be removed on or before October 1, 2023; (4) the applicant shall comply with all applicable requirements and provisions of the NYS and Rockland County Sanitary Code and the NYS Residential Code that apply to the proposed pool; (5) this approval waiver shall expire on October 1, 2023; and (6) the placement of the pool shall comply with the Village of Upper Nyack Zoning Law.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (yes) – 0 (no), 1 (absent)

7:40 p.m. Richard & Joanne Giordano 119 Highmount Ave, County Map 60.17-03-12.

Application for waiver of site plan approval pursuant to Zoning Law §10.4.3.1 to allow the applicants to construct a minor addition and new patio on property improved with a single-family residence in the R-10 zoning district.

The applicant was present to explain the application.

The applicant is proposing an addition to the existing residence to add a 41 square foot one story addition on the west side of the home to expand the eating and cooking area, a second story addition (apx 214 sf) over an existing one-story sunroom at the rear of the home, and the addition of a partially covered patio and patio pavers in the rear of the house.

There was a discussion about whether Architectural Review Board approval will be needed. Consulting Counsel advised that even if the site plan waiver is granted, Architectural Review Board approval would be required before the building permit could be issued.

Motion to open public comment period.

Motion: Joseph Heider

Second: Karen Olson

Vote: 4 (yes) – 0 (no), 1 (absent)

There were no members of the public who wanted to comment on the application.

Motion to close public comment period.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (yes) – 0 (no), 1 (absent)

There were no further comments from the Board.

Motion to Grant a Waiver of Site Plan approval pursuant to Zoning Law Section 10.4.3.1 to allow the construction of the building addition and patio as depicted on the *Preliminary Site*

Plan of Property prepared for Giordano, prepared by Jay A. Greenwell, PLS, LLC, dated 4/19/23 last revised 5/11/23 (the “Site Plan”) on the following conditions: (1) the proposed improvements shall be constructed in strict compliance with the Site Plan, any modifications of or changes to the proposed improvements require further review by the Planning Board; (2) the applicants shall apply for and receive the approval of the Village of Upper Nyack Architectural Review Board for the proposed building alterations; (3) this waiver of site plan approval shall expire if a Certificate of Occupancy or Certificate of Compliance for the proposed improvements has not been issued on or before a date that is two (2) years from the date hereof (on or before May 17, 2025); and (4) all improvements to be constructed on the property shall comply with the Upper Nyack Zoning Law.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (yes) – 0 (no), 1 (absent)

7:50 p.m. Gloria Janata, 202 Hilltop Drive, County Map 60.09-01-43. Continuation from April 19, 2023. Application for amended site plan approval for modifications to a site plan approval granted November 18, 2009 on property improved with a single-family residence located in the Residence R-20 District.

The applicant requested an adjournment of the hearing to the Board’s June 21, 2023 meeting.

Motion to continue the public hearing on the application to the June 21, 2023 meeting.

Motion: Karen Olson

Second: Zara Crowley

Vote: 4 (yes) – 0 (no), 1 (absent)

7:51 p.m. Vallex Herard, 514 N. Broadway, County Map No. 60.13-03-14 Continuation from February 15, 2023. Application for site plan approval for interior and exterior renovations including kitchen, primary bedroom and bathroom renovations; new stairs, windows, dormer and siding; new deck, fencing and pergola on property improved with an existing single-family residence located in the Residence R-20 District.

Representing the Applicant: Maren Robertson, Architect

This application was last before the Board with a substantive submission in September 2022. Since that time the architect and the plan have changed, the scope of the project has gotten smaller.

The largest change is the addition of the new 2 car garage. That would bring the Property over the development coverage, which is the reason for the change to the landscaped permeable pavers in the driveway and patio. There are also façade changes and fencing proposed. Ms. Robertson described the proposed fencing.

Ms. Robertson explained that the applicant is proposing a flat roof over the proposed garage to allow for an addition of a room over the garage at a future date. The applicant is not seeking approval of the room at this time, but explained that such a potential future addition is the reason

for the flat roof over the garage.

The Village Engineer's comment memorandum dated May 16, 2023 was read into the record as follows:

State Environmental Quality Review (SEQR)

Under the provisions of 6NYCRR Part 617.5c11 and 12, the project is a Type 2 action. No further review under SEQR is required.

Zoning

1. Zoning district R-20 as indicated on the plans.
2. The project is compliant with the Zoning Local Law.

Site Plan

1. Zoning height dimension should be shown on the building elevations.

The Village Engineer indicated that the building elevations were not included in the submission. Ms. Robertson advised that she assumed the Board members had the elevations from the last submission so she did not resubmit them. She confirmed that the height dimensions are shown on the building elevations.

The Chairman asked that the proposed setbacks be shown on the plan. He asked that the applicant add the setbacks in all yards to the existing and proposed improvements. The applicant will clarify all of the setbacks so that they are readily apparent.

There was a discussion about the permeable pavers; the system is a grid and grass is planted between the grid. It is completely permeable. Village Engineer/Zoning Inspector Letson explained that because of the design of this system the area of this system is not included in the Development Coverage.

Consulting Counsel explained that even though this application was on a prior Board agenda, the minutes of that meeting do not reflect that the public hearing was ever opened.

Motion to open the public hearing.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (yes) – 0 (no), 1 (absent)

There were no comments from members of the public.

Motion to continue the public hearing to the Board's June 21, 2023 meeting and to refer this application to the Architectural Review Board.

Motion: Karen Olson

Second: Zara Crowley

Vote: 4 (yes) – 0 (no), 1 (absent)

Board Member Olson recused herself from the discussion of the Nyack Field Club application and left the meeting.

8:02 p.m. Nyack Field Club, 335 N. Midland Avenue, County Map 60.13-03-58. Application for a modification to the Special Use Permit (Private Membership Club) and site plan approval for the referenced Property to permit the addition of new sports courts on the Property, which is located in the Residence R-30 District.

Representing the Applicant: Robert Knoebel, appearing as a member of the Club and Member of the Board of the Club. Leigh Salzberg, Club Board member and Elliot Berkowitz, Club member.

Mr. Knoebel explained that the Club is located at 335 North Midland Avenue. The site measures approximately 12 acres. He explained that it has existed as a tennis and swim club since approximately 1954. He characterized the application as one for renewal of the special use permit for the Club and for a modification to allow the Club to add a new half basketball court and two additional paddle tennis courts. Mr. Knoebel explained that at present the Club does not have funding for the paddle tennis courts, but it is seeking approval if funding becomes available within the duration of the plan approval.

Ms. Salzberg gave a presentation about the basketball court. She identified herself as a long-time Club member. She indicated that there previously was a basketball court on the Club property but that it was converted to a pickleball court. Basketball is popular with the children of the Club members and therefore the Club is looking to add back the basketball court, predominately for the children. She indicated that there are approximately 150 children at the Club and it would be used by the camp and by the children generally. It has been proposed for some time, but internal club matters delayed its construction.

Mr. Knoebel explained that this application was discussed at a technical review meeting prior to the Planning Board meeting. He indicated that Jay Greenwell, LS will be adding a bulk table to the site plan. He indicated that the increase in coverage from the addition of the courts is minimal.

Mr. Knoebel acknowledged that the EAF was not signed and that he would sign it. He acknowledged receipt of the Village Engineer's comments dated May 17, 2023, but asked for clarification about the need for the variance to place the basketball court in the proposed location. The Village Engineer/Zoning Inspector explained that the front building setback is the area for the length of the lot between the building face and the lot line.

Mr. Knoebel explained why, in the Club's view this is the optimal location for the basketball court. He indicated that the Club may seek an interpretation of this section. Consulting Counsel and Zoning Inspector Letson advised that he could do so and seek a variance in the alternative.

Village Engineer/Zoning Inspector Letson advised the Board that he separated his review of this application into two reviews—the first for reissuance of the special use permit. The second approval required is a site plan amendment for the addition of the sports courts. He explained that the reissuance of the special use permit is at Type II action under SEQRA and the site plan amendment is an Unlisted action.

There was a discussion about whether the site plan and special permit could be decided separately because a variance is determined to be required for the placement of the basketball court. There was a lengthy discussion about the sequence of approvals incorporating the zoning board review.

The Board's Counsel gave a brief explanation of the procedural history of the use.

The applicant's submission materials were reviewed. The Chairman asked the Applicant's representative to sign and date the narrative that was submitted.

Village Engineer Memorandum dated May 17, 2023 on the special use permit application was reviewed.

SPECIAL USE PERMIT REVIEW MEMO

State Environmental Quality Review (SEQR)

The special permit reissuance request indicates that the operation will continue as previously operated, maintaining the scope of permitted activities.

Under the provisions of 6NYCRR Part 6175c32, the project is a Type 2 action.

No further review under the provisions of SEQR is required.

Comments:

1. The narrative indicates compliance with the provisions of Section 9.6.13.
2. It does not specifically refer to compliance with Sections 6.9 and 6.10 (referenced in 9.6.13.8). However, previous reviews of those facilities (swimming pool and tennis courts) by the Planning Board reveals they are in compliance.
3. For a complete record, the Board may wish to review the general standards listed in Section 9.5

The Chairman reviewed the General Special Use Permit Standards provided in Section 9.5 of the Village's Zoning Law.

Section 9.5.1: The location and size of the Special Permit Use, the nature and intensity of the operations, the size of the Lot and the location of the Lot with respect to Streets giving access to it are such that the Use will be in harmony with appropriate and orderly development of the area in which it is located. The Applicant shall demonstrate that utility service to serve the proposed Use is available, specifically including, but not limited to, water and sewer services.

The Chairman noted that there were no significant changes to the site proposed other than the addition of the proposed courts and that there were no changes to utility service. Consulting Counsel noted that the proposed sports courts were located in proximity to existing courts.

Section 9.5.2: The location, nature and height of Structures, Buildings, walls and Fences and the nature and extent of existing or proposed plantings on the Lot are such that the Special Permit Use will not hinder or discourage the appropriate development and Use of adjacent Lots, Streets or Buildings.

The only site changes that are proposed are the addition of the courts. Some additional landscaping is also proposed in proximity to the proposed basketball court.

Section 9.5.3: Operations in connection with any Special Permit Use shall not be more objectionable to nearby properties by reason of noise, traffic, airborne particulate matter; odors; fumes, vibration or other characteristics than would be the operations of permitted uses not requiring a Special Use Permit.

Section 9.5.4: Parking Areas and Loading Spaces will be of adequate size for the proposed Use, properly located and suitably screened from adjoining residential Uses, and the entrance and exit drives shall be laid out to achieve convenience and safety for vehicles and pedestrians.

There was a discussion about whether the addition of the Courts would generate additional traffic or need for parking. Mr. Knoebel advised that the Club has a cap on membership- 200 family memberships. The courts are going to be used by members, as for the basketball courts, mostly children of members. Consulting Counsel advised that per the Zoning Law, minimum parking requirements for the Club used are based on building gross floor area so the addition of the courts would not have an increase in the number of parking spaces required by the zoning law.

Member Heider explained that his personal experience in walking near the Club property is that cars exiting the Club property rarely stop.

Mr. Knoebel acknowledged that vegetation growth near the driveway exit impedes sight distances and that the vegetation near that exit could be trimmed so that drivers have a better view of the pedestrian and vehicular traffic. The Village Engineer agreed that trimming the vegetation is needed at the driveway. It was also suggested that the applicant replace the current signage at the exit with a stop sign.

Section 9.5.5 Lighting for all Special Permit Uses shall comply with the requirements of Section 6.6 of this Zoning Law.

Mr. Knoebel explained that no new lighting was proposed.

Compliance with Section 6.6 would be required.

The Board Members reviewed the criteria in Zoning Law Section 9.6.13, standards applicable to private membership clubs.

9.6.13.1 Required Frontage: At least 150 feet of Frontage on and primary access from North Broadway, Midland Avenue or Route 9W (Highland Avenue) and at least 2 points of vehicular ingress and egress on such Frontage.

9.6.13.2 Minimum Net Lot Area: The greater of the Minimum Net Lot Area in the district in which the Lot is located or 3 acres.

9.6.13.3 Required Yards: The greater of the Required Yards in the district in which the Lot is located or 50 feet, Required Front Yard, and 35 feet, Required Side and Rear Yards.

Consulting Counsel noted that the proposed improvements would comply with the yard requirements; no changes are proposed to the existing improvements.

9.6.13.4 No more than 2 large vehicles owned or used by the Private Membership Club (for example, commercial vans or buses) may be parked overnight on the Lot at any time. Parking Spaces for such vehicles shall be specified on the approved Site Plan. Such Parking Spaces shall not be located in the Front Building Setback or in the Required Rear or Side Yards.

The applicant indicated that maintenance vehicles are parked in the back of the existing parking area.

9.6.13.5 Dwellings or overnight accommodations are prohibited.

The applicant's written submission indicates that there are no overnight accommodations on the site. Consulting Counsel suggested making the prohibition on overnight accommodations a condition of the approval.

9.6.13.6 No use of a club house or club site shall involve the discharge of firearms, bow and arrow, or any other dangerous weapons.

The applicant's written submission indicates that no such uses occur on the property. Consulting Counsel suggested making the prohibition on such use a condition of the approval.

9.6.13.7 Rental of the Private Membership Club facilities for use by non-members is prohibited.

The applicant's written submission indicates that no such uses occur on the property and in fact even members are not allowed to rent the facilities in season. Consulting Counsel suggesting making the prohibition on rentals by non-members a condition of the approval.

9.6.13.8 Swimming Pools, tennis courts and other outdoor sports courts and facilities shall comply with the requirements of Sections 6.9 and 6.10.

As previously discussed, a variance is required for the location of the proposed basketball court. Mr. Knoebel explained the management and oversight of the swimming pool.

There was a discussion about the screening of the proposed basketball court. The applicant was willing to add screening of the Court from North Midland Avenue. There was a discussion about whether fencing around the court would be erected. The Village Engineer suggested columnar evergreens. The Club would like the basketball court open to view from inside the Club property

so parents could supervise children using the court, but was amenable to screening from the North Midland side.

9.6.13.9 Indoor dining or bar facilities (including kitchen facilities and Patios adjacent to indoor dining facilities), and an area for retail sale of goods for members only (i.e. a pro shop) shall be permitted, however such facilities shall not exceed 20% of the Floor Area of the Principal Buildings on the Lot. Outdoor, seasonal, unenclosed dining facilities where table service is not provided, such as snack bars and picnic areas, shall not be included in calculating the percentage of dining and retail sales facilities.

There is an outdoor deck with a snack bar, serviced by a very small kitchen. There is no table service or outdoor table service. Mr. Knoebel advised that the Club is in compliance with this criteria.

9.6.13.10 Upon renewal of the Special Use Permit pursuant to Section 9.4.2 the applicant shall confirm its valid not-for profit status with evidence reasonably satisfactory to the Planning Board

Mr. Knoebel indicated that he submitted the Club's certificate of good standing. Consulting Counsel indicated that the certificate of good standing was dated September 2022 and confirmed that the applicant is representing that it is still compliant with that not-for-profit status.

The Chairman asked Consulting Counsel about procedure and whether the hearings on the special use permit and site plan applications should be held separately. Counsel advised that a joint hearing would be preferable.

The Board reviewed the Village Engineer Memorandum dated May 17, 2023 on the site plan application.

SITE PLAN REVIEW MEMO

The site plan indicates the addition of 2 paddle ball courts and a proposed basketball court. State Environmental Quality Review (SEQR)

Under the provisions of 6NYCRR Part 617, the additions are Unlisted actions.

Short EAF has been prepared and is attached for review.

Zoning

1. The proposed paddle court locations comply with the setback requirements of the Zoning District and Special Permit criteria.
2. The proposed basketball court is in compliance with the front setback distance requirements (157.26' proposed vs. 50' required), but is prohibited in the front yard under Section 6.10. A variance is required.

3. While the survey does not include a bulk table, review of bulk criteria on prior plans indicates the proposed additions will not result in any other non-conformities.

4. A bulk table should be added prior to endorsement.

Comments

1. The proposed additional impervious areas are minor (6,300 s.f.) and will drain to adjacent permeable surfaces.

2. Erosion and sediment control measures will be required during construction, submit erosion control plan with building permit application.

3. Aerial photo (attached) indicates the proposed paddle ball courts will be further from the nearest residence than the existing courts.

4. Coordinate the proposed paddle court locations with the transformer located near the east end of the proposed courts (not shown on the survey).

Village Engineer Letson reviewed the Short EAF in detail with the Board. He concluded by recommending the adoption of a negative declaration for the site plan amendment application based on the information contained in the EAF and on the project plans.

There was a discussion about whether a public hearing was required to make a SEQRA determination. Consulting Counsel advised that SEQRA does not require a public hearing on an EAF, so the Board could adopt a determination of significance before opening the public hearing, or it could open the public hearing before taking action on SEQRA.

The Board decided to open the public hearing on the application before proceeding with any further action under SEQRA.

Motion to Open the Public Hearing on the special use permit and site plan applications.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Heider, Crowley, Pfaff) – 0 (No), 1 (absent- Turner), 1 (recusal- Olson)

Public Comment:

Larry Nathanson, 124 Castle Heights Ave. Mr. Nathanson expressed opposition to the grant of the special permit and asked the Board to deny the request. He indicated that the submission materials were too vague and do not describe the activities that occur at the Club. Because of that lack of specificity, it makes it too difficult for the Board to evaluate the impacts of the use.

He said he has made multiple Sound Law complaints about noise from the Club to the Clarkstown Police and that traffic from the Club, and parking for large events, is an issue in the surrounding neighborhood.

Mr. Nathanson said that it is hard for him to sit outside in his yard with the noise and that he has recordings of the sounds.

Mr. Nathanson said that the Club has not provided any proof that the Club will benefit the Village or its residents.

Mr. Nathanson explained that the Club runs movie nights in the summer that are very loud and last until 11 pm; it has parties with DJs that emit significant amounts of noise. He alleged that the Club dumps yard waste in the woods on the property creating a fire hazard and drainage makes this area a mosquito breeding ground.

Laura Rider, 140 Castle Heights Avenue.

Ms. Rider indicated that she concurs with Mr. Nathanson's comments. She asked how to obtain a copy of the Club's special use permit and Consulting Counsel explained how a copy could be obtained.

She indicated that noise level from the prior basketball court that was converted to the pickleball court is significant.

She said that noise from the Courts occurs all day and into the night. Most problematic and disruptive are pickleball, Cardio-Tennis in which amplified music is played, and yelling from the tennis instructor. She also indicated that the noise from the tennis ball machines was problematic. She said it can start as early as 7 am, and goes until dark. Tennis itself is not the issue, it's the music with the tennis and the yelling.

She indicated that the Club has not been a good neighbor and is not responsive to neighbor calls. She indicated that the summer camp brings additional noise and that although she does not want to deprive the children of camp, the Club should take the impacts on the neighbors into consideration.

Mary O'Connell 138 Castle Height Ave. Ms. O'Connell echoed Ms. Rider's comments on the tennis machine. She indicated that it can go on past dark with the rapid fire sound of the machine and the balls constant.

The Chairman asked if lighting was an issue. Ms. O'Connell said that light has not been an issue, just noise.

The commenting neighbors indicated a pattern in which they would reach out to the Club to express their complaints but that the Club was unresponsive. They would welcome the opportunity to meet with the Club to discuss the concerns, but the Club is unresponsive.

Mr. Knoebell explained that in the summer months the Club does host a movie night approximately 8 times per year on the front law of the tennis courts. The Club has been hosting movie nights for decades. He indicated that the Sound Law is implicated at 10 pm and they try to say within that timeframe, although he acknowledged that there was a incident when it was later.

He said that they have one pool party for members in the summer. They do have a DJ. At the last party the setup of the DJ was not ideal.

There was a discussion about the comments that the Club was not responsive to complaints. Mr. Knoebel said that neighbors could contact him or the Club manager.

There was a discussion about whether movie night could be relocated to have less of an impact on neighboring property owners. Further, the Board would need more information about the activities that occur on the Property (movie nights, children's camp, etc...).

There was a discussion about the Sound Law and what it prohibits at different times of the day, and that there are some limitations before 10 pm.

There was a discussion about the potential ways the Board might address the sound emitting from the Property as a part of the permit. Counsel suggested making the permit expire upon the conviction of a certain number of sound law violations, as one potential option to consider. Mr. Knoebel expressed significant dissatisfaction with that suggestion and likened it to a taking. He argued that the Club is a nonconforming use. Consulting Counsel advised that the Club does not operate as a non-conforming use. It applied for and was granted a special use permit in 2013. It has made modifications to the site in reliance on that permit and is again seeking modifications to the site which would not be allowed under the restrictions on expansion of a nonconforming use. The nature of the use as a special permit use allows the club to make modifications such as the ones proposed as a part of this application.

Chairman Pfaff summarized that based on the comments, the Board will need more information about the activities that occur at the Club, when and where they occur and the noise they generate. The Chairman indicated that the Applicant could reach out to the Village Engineer/Zoning Inspector or Consulting Counsel if they need more information.

There was a discussion about the next procedural steps.

Consulting Counsel advised that the Board can refer the site plan application to the ZBA for consideration for the variance request without making a SEQRA determination since the site plan application is an Unlisted Action and the Boards could undertake an uncoordinated review. The request for the single setback variance from the ZBA would be a Type II action under SEQRA.

Motion to continue the public hearing to the Board's June 21, 2023 meeting and to refer the application to the Zoning Board of Appeals.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Heider, Crowley, Pfaff) – 0 (No), 1 (absent- Turner), 1 (recusal- Olson)

9:44 p.m. Motion to adjourn the meeting.

Motion: Joseph Heider

Second: Zara Crowley

Vote: 3 (Yes- Heider, Crowley, Pfaff) – 0 (No), 2 (absent- Turner, Olson)