

MINUTES
Village of Upper Nyack Planning Board Meeting
Wednesday, February 15, 2023 7:30 p.m.

A meeting of the Planning Board of the Village of Upper Nyack was held on the above date and called to order at 7:33 p.m. by the Chairman, William Pfaff.

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

Absent Board members: Zara Crowley

Also present: Noelle Wolfson, Esq., Consulting Village Attorney; Dennis Letson, Village Engineer.

7:33 p.m. The chairman reviewed the agenda.

7:35 p.m. Review of the minutes from the January 18, 2023 meeting.

There were no board member comments.

Motion to approve the minutes.

Motion: Joseph Heider

Second: Cynthia Turner

Vote: 3 (approve) - 0, 1 (absent), 1 (abstain- Olson)

7:36 p.m. **Stuart and Jennifer Chaitin, 617 North Broadway, County Map No. 60.10-01-09.**

Adjourned to March 15, 2023. 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-20 District and Hudson River Overlay District.

The applicant has requested an adjournment to the March 15, 2023 meeting to allow an opportunity to review the revised plan with the neighboring property owners.

Motion to adjourn the public hearing to the March 15, 2023 meeting.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4 (approve) - 0, 1 (absent)

7:36 p.m. **Vallex Herard, 514 N. Broadway, County Map No. 60.13-03-14 Continuation from November 16, 2022.** 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.

The applicant submitted an email dated February 15, 2023 asking for an adjournment of this application to the Board's April meeting because he is working with a new design professional who needs some additional time to prepare the plans.

Motion to adjourn this application to the Board's meeting of April 19, 2023.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4 (approve) - 0, 1 (absent)

7:46 p.m. DeMan Motorsports 530 N. Highland Avenue, County Map No. 59.12-02-02.

Application for site plan approval and a special use permit to allow the use of the Property and the existing building thereon as a Motor Vehicle Service Facility on a property located in the Office Business District.

Present Representing the Applicant: Robert Silarski AIA, S& CO, Architecture and Design. Rick DeMan, principal of the property owner.

Application Procedural History: The public hearing on this application was opened on January 18, 2023. A proposed resolution has been prepared for consideration and was posted to the Village's website in advance of the meeting.

There was a discussion about the existing and ongoing bakery use in the premises and whether it would continue after the Motor Vehicle Service Facility is established as its existence was not indicated on the plan, disclosed in the application materials, or mentioned during the January session of the public hearing. Mr. DeMan represented that the bakery tenant's lease is due to expire at the end of March and that although the tenant has a one year right of extension it is his understanding that the bakery tenant will not exercise the option to extend the lease. Mr. DeMan explained that his business is required to vacate its current premises at the end of the month and that he needs to use this space for his business at that time.

There was a discussion about whether the Board could decide on the application at this time given the fact that the plan does not take into account the current use of the premises and that the bakery use and the automotive use may be made of the property concurrently for a brief period of time. There was a brief discussion of whether the Property could comply with the Zoning Law's parking and loading requirements if the concurrent uses of the property would occur.

As an accommodation to the applicant, the Board agreed to proceed to a decision on the application on the condition that any approval that is granted would expire and be of no force and effect if the bakery use of the premises does not cease and if the motor vehicle service facility use of the Property is not the sole use by May 15, 2023. The applicant would be required to provide proof satisfactory to the Board's counsel that the bakery use has ceased and that the motor vehicle service facility use is the sole use, and an inspection of the premises would have to occur. The applicant agreed to proceed on this condition.

The Chairman also requested that the applicant add a note to the plan providing that "The 1,347 square foot bakery use shall be abandoned and no use other than the Motor Vehicle Service Facility

shall occur on the Property without an amendment to this site plan and special use permit approval by the Planning Board.” The applicant also agreed to this condition.

There was a discussion about interior renovations being necessary at the premises, which would require a building permit from the Building Department. The Board’s counsel advised that if special use permit and site plan approval is granted by the Board, that does not indicate that the building can be occupied for the Motor Vehicle Service Facility use, and that the applicant must contact the Building Department to obtain any necessary permits that would be required for interior work and occupancy from the Building Department.

The comments of the Village Engineer, in his memorandum dated February 15, 2023 were read into the record and reviewed by the Board. The comments are as follows:

State Environmental Quality Review (SEQR)

Under the provisions of 6NYCRR Part 617.5c18:

reuse of a residential or commercial structure, or of a structure containing mixed residential and commercial uses, where the residential or commercial use is a permitted use under the applicable zoning law or ordinance, including permitted by special use permit, and the action does not meet or exceeds any of the thresholds in section 617.4 of this Part;

the project is a Type 2 action. No further review under SEQR is required.

Zoning

1. Proposed use is permitted by special permit. The Board may issue with conditions they feel appropriate.
2. No site work is proposed for this application, all non-conforming elements are existing; variances are not required.

Site Plan

1. Northern “N/F 536 N Highland Ave LLC” is correct, remove “N/F Jaber”
2. No water service is indicated. If property is on a well, note well location.

Referrals

1. No new comments on referrals.

Mr. Silarski advised that he has made the changes identified in site plan comments 1 and 2, and that the feature indicated on the original plan as the “Fill Cap” is the well head. He has corrected the n/f information on the property to the north and correctly labeled the well head.

There was a discussion about the way the landscaping along the Property’s Route 9W frontage was depicted on the site plan. The applicant agreed to make a notation on the site plan indicating the existing planting types in the planting buffer along 9W.

There were no additional comments from the members of the Board and there were no comments from members of the public.

Motion to Close the Public Hearing.

Motion: Cynthia Turner

Second: Joseph Heider

Vote: 4 (approve)-0, 1(absent)

There was a discussion about the resolution prepared for this application and whether it should be read into the record. The Board decided to waive the reading of the resolution but asked the Board's counsel to read the conditions to the resolution as amended based on the discussion at the hearing and the Board's counsel did so.

Motion to adopt the resolution of site plan and special use permit approval prepared for this application as amended to include the following conditions, in addition to those included in the proposed resolution, that: (1) This special use permit and site plan approval shall expire on May 15, 2023 and be of no force or effect, unless, on or before such date, the current bakery facility use of the Property ceases and the Automotive Service Facility is the sole use occurring on the Property. On or before May 15, 2023, the Applicant shall provide written proof in a form satisfactory to the Board's Counsel that the bakery tenant lease has been terminated and the sole use of the Property is the Automotive Service Facility, and the Zoning Inspector or Code Enforcement Official shall inspect the Premises to confirm compliance with this condition; (2) The site plan should be modified to remove "N/F Jaber" as an adjacent owner "N/F 536 N Highland Ave LLC" is correct; (3) No water service is indicated. The location of the well shall be indicated on the site plan; and (4) A note shall be added to site plan providing that "The 1,347 square foot bakery use shall be abandoned and no use other than the Motor Vehicle Service facility shall occur on the Property without an amendment to this site plan and special use permit approval by the Planning Board." and to waive a reading of the resolution.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (approve)-0, 1(absent)

8:40 p.m. Congregation Sons of Israel, County Map 60.17-03-27. Application for renewal of special permit for a place of assembly and worship on a property located in the Residence R-10 District.

Representing the applicant: Joe Zweig, President of the Board of Trustees of the Congregation Sons of Israel

Procedural History: Special use permit granted February 17, 2016.

Mr. Zweig gave a general presentation about the layout and use of the Property. There was a discussion about the capacity of the classrooms. Mr. Zweig confirmed that the classroom capacity and number of students remains the same as when the special use permit was granted in 2016.

Agency Comments:

The Board reviewed comments submitted by other agencies as follows:

Rockland County Department of Planning: Letter dated January 27, 2023 recommending approval of the application as it will not have any adverse impacts on county-wide interest.

Letter from the Village of Nyack, Village Planner, Robert Galvin, dated February 2, 2023 finding this application to be a matter of local determination.

Village Engineer comment memorandum dated February 15, 2023:

State Environmental Quality Review (SEQR)

Under the provisions of 6NYCRR Part 617.5c(32):

license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities; is a Type 2 Action. No further review under SEQR is required.

Zoning

1. The following are uses permitted by Special Permit in the R-10 Zoning District:
 - a. Places of Worship, with customary accessory uses.
 - b. Schools, Day
2. The narrative description and affirmation listed below indicate the continuing uses are in conformance with the Zoning Local Law.

Special Permit

3. Information reviewed:
 - a. [omitted]
 - b. Copy of Special Permit issued 2/17/2016 and affirmation dated 12/1/2022 that the use is continuing in compliance with the special permit issued.
 - c. As-Built Survey for Congregation Sons of Israel dated 7/22/2011 and last revised 8/15/2014. This survey was the approved site plan accompanying the 2016 special permit approval.
4. From all information submitted, the facility is operating in conformance with the previously issued Special Permit. It appears the Special Permit may be renewed.

The chairman reviewed the February 17, 2016 Resolution of approval.

There was a discussion about whether there was a change to the facilities since the original special use permit was granted in 2016. Mr. Zweig advised that there were no changes to the facilities other than that new equipment has been added to the playground area.

The Board Members reviewed the applicable special use permit criteria as follows:

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 layout of the property has not changed from the time the original special use permit was granted and no change to utility services are proposed.

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.

There was a discussion of the layout of the property. There is fencing along the property's North Broadway frontage and chain link fencing on the side of the property. On the west side of the property there are various barriers on the neighboring properties. There is an entrance driveway on the north side of the property's North Broadway frontage and an egress driveway on the south side of the property's North Broadway frontage. Parking occurs in the macadam parking area in the western portion of the lot. There is no exterior storage of goods or materials on the property. This layout and configuration has existed since the original special use permit was issued in 2016 and no changes to the site layout are currently proposed.

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.

Mr. Zweig explained that there is a school wing of the building with two class-rooms on the north side and one classroom on the south side. The same classrooms are used for secular pre-k and then for religious education. There is a collapsible wall to allow the space to be used as two classrooms.

There was a discussion about the drop-off and pick up procedures for the children attending the school. Mr. Zweig explained that there is an entrance on the west side of the building. Parents drive up to the entrance, teachers meet the children and walk them into the classroom such that parents do not have to park on-site at drop off and pick up. Summer programs typically operate in the same manner.

Worship services occur on Saturday from 9:30 a.m. to approximately 1 p.m. All parking occurs within the parking area. On holidays, some parking occurs on North Broadway. Mr. Zweig explained that on some holidays, there is a service outdoors which utilizes a portable speaker, but it occurs during regular daytime hours.

The proposed use has been existing for several years and has not produced impacts of the type listed in Section 9.5.3 different from principal permitted uses.

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 the number of parking spaces in the existing parking lot on the premises. It was estimated that there are approximately 60 spaces in the lot, but the applicant was asked to confirm the count. Deliveries to the property are infrequent and typically use the existing parking area.

There was a discussion about whether there have been any changes to the parking area since the 2016 special use permit was granted. Mr. Zweig advised that there has not been any changes to the parking area since that time.

The Village Engineer advised that plans on file with the Village may show the approved parking configuration with the space count.

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

The special use permit will be subject to Section 6.6. of the Zoning Law.

Use Specific Special Use Permit Requirements (Section 9.6.12- Places of Worship)

9.6.12.1 Supplemental Bulk Requirements. All Bulk requirements in the underlying zoning district apply as supplemented as follows:

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.

The property has 324 feet of frontage and two points of vehicular access on North Broadway.

Required Yards. Residence Districts: The greater of the Yards required in the underlying district or Required Front Yard- 50 feet; Required Side Yards and Rear Yards 35 feet.

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

The property measures 2.94 acres in area and currently has a front yard of 43.8 feet, side yards of 36.2 feet and 165.6 feet and a rear yard of 159.9 feet. To the extent that they are deficient they may continue as a pre-existing nonconformity since no physical changes are proposed to the property.

9.6.12.2 Large vehicles owned or used by the Place of Worship (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 and Side Yards. In Residence Districts, no more than 2 such vehicles may be parked on the Lot overnight.

Mr. Zweig advised that the applicant does not keep any such vehicles on the property.

9.6.12.3. Maximum Height: Belfries, steeples, bell towers or other symbolic or emblematic religious or institutional icons on the Principal Building on the Lot shall be exempt from the height requirement, but in no case shall any part of any Structure exceed 50 feet in height as measured from the Finished Grade to the highest point of the Structure.

The applicant was asked to provide additional information about the height of the existing building, which the Village Engineer advised might be found in the Village's property records. However, it was observed that there is no symbolic or emblematic icon on the top of the existing building and the building appears to be significantly less than 50 feet in height.

9.6.12.4 Permitted accessory uses

Nursery schools and use of nursery school facilities for summer programming for children, children's programs and adult programs, and administrative offices are all permitted accessory uses in addition to the religious use of the premises.

Motion to open the public hearing.

Motion: Joseph Heider

Second: Karen Olson

Vote: 4 (approve)-0, 1 (absent)

There were no comments from members of the public.

Motion to continue the public hearing on this Application to the Board's March 15th meeting to allow the applicant to submit information pertaining to the number of parking spaces on the property and the height of the building and directing the Board's counsel to prepare a resolution for consideration.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4 (approve)-0, 1 (absent)

Mr. Zweig asked for clarification about the information that should be submitted for the next meeting. The Village Engineer advised that he would review the Village's property file and advise Mr. Zweig if anything further is needed. There was also a discussion about the notice requirements for the March 15th hearing. The Board's counsel advised Mr. Zweig that no additional notice mailing was required but the notice sign should remain posted.

8:58 p.m. Gloria Janata, 202 Hilltop Drive, County Map 60.09-01-43. 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.

Presenting for applicant: Jorel Vaccaro, Krypton Engineering. Michael DeMarco, Contractor.

Procedural History: Site plan approval originally granted on November 18, 2009 (previously approved site plan 6/18/2008).

The approved site plan required air conditioner units to be moved from the south side of the property to the southeast side (rear façade). However, they were installed on the south side in violation of the approval. Additional changes have been made and a generator has also been installed.

Mr. Vaccaro gave an overview of what was approved in 2009 and how the as built condition varies from the approved plan. Generally, the air conditioner units were required to be constructed behind the building but were located on the south side of the building. The reason is because they conflicted with a door location. They are sunk in and screened with a stone wall. The applicant introduced photographs of the air conditioning units for the Board's review.

The comments of the Village Engineer, dated February 15, 2023 were read into the record as follows:

State Environmental Quality Review Action (SEQR)

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

Zoning

1. Zoning R-20 as shown on the plan.
2. Bulk Table
 - a. Side yard is 24.9.
 - b. Total side yard column should be added; total side yard permitted is 50 ft. existing and proposed is 50 ft.
 - c. Previous total coverage was shown as 12.8% as is the current total coverage. It appear that the additional coverage should increase this figure, please check and revise as needed.

Site Plan

1. The setbacks on the plan should be revised to coordinate with the bulk table and the supplemental survey provided with the application.
2. The location and screening of the air conditioning units was extensively discussed at the time of prior approval (11/18/09), but the units were not placed in accordance with that approval.
3. Generator has been added on the south side of the structure. It appear that this installation would raise similar concerns to those discussed regarding the a/c units.
4. There was also discussion regarding plantings and plant species. Perhaps an updated statement as to the conformance with the previously approved planting plan or a new plan would be desired by the Board.

There was a discussion about discrepancies between the proposed site plan and the existing condition survey. There were a few boulder retaining walls that don't agree as located but are similar in total massing.

Mr. Vaccaro explained that there is a curb wall which surrounds a formal portion of the grass yard, which was not on the original site plan. It is 12-14 inches wide and is not higher than 18 inches. Its area will be included in the development coverage and accounts for some minor changes in the grading.

There was a discussion about the required screening of the air conditioning units shown on the site plan and the existing condition on the Property.

There was a comment in the 2009 approval about a curb extending into Bliss Lane, but that encroachment is not apparent on the plan or on the property.

There was a discussion about the porch and patio area, which was not shown on the approved site plan. Mr. Vaccaro explained that this area is comprised of loose laid stones and although it will be included in the Development Coverage calculations, it is pervious for stormwater calculation purposes such that no additional stormwater mitigation should be required.

The Village Engineer advised that the asphalt area in the front of the building looks like it was extended. Mr. Vaccaro agreed to review that area.

Mr. Vaccaro clarified that C-100 is the surveyed conditions site plan. The comparison is just to visually show the difference in the plans; it is for reference purposes only.

Motion to open the public hearing.

Motion: Joseph Heider

Second: Cynthia Turner

Vote: 4 (approve) -0, 1(absent)

The Board reviewed a comment letter submitted by the adjacent property owner to the south, the McCarthys- 212 Foss Drive. Generally, the letter was requesting additional landscaping to buffer the visual and noise impacts of the existing air conditioner units and the generator.

Mr. Vaccaro explained that air conditioning units are sunk in at a lower elevation and there is a loose stone wall around the units. There was a discussion about a potential discrepancy between the way the air conditioning enclosure is depicted on the plan and shown in the photograph (submitted with the neighbor's letter). The engineer was asked to review the area and ensure it is depicted correctly.

There was a discussion about the location of window air conditioning units and a generator on the McCarthy property. Mr. DeMarco indicated that the commenting neighbor's window air conditioner was noisier than the air condition condensers on the subject property.

The applicant advised that the air conditioning units were newly installed.

There was a review of the location of the generator and electrical panels. There were stone walls depicted on the plan that did not show in the generator picture. The engineer would review and ensure it is shown accurately.

The applicants advised that they did obtain a permit for the generator from the Building Department.

There was a discussion about whether the applicant could propose some additional screening measures to buffer the view of the air conditioning units, and potentially the generator (although it was the Board's view that no additional screening of the generator was required since the installation of the generator did not trigger the need for site plan review).

There was a discussion about the screening options since the applicant advised that it is difficult for vegetation to grow in this area of the site. The applicant agreed to review screening options, which could include fencing, vegetation or a combination of both.

There was a discussion about what must be submitted for the next meeting. The applicant was advised that the bulk table (setbacks and coverage) must be updated, the site plan must be reviewed against the existing conditions survey and field conditions to ensure that the existing condition is accurately depicted on the site plan, particularly with regard to the stone walls. The top and bottom of wall elevation must be included on the site plan. The applicant should propose appropriate screening around the air conditioning units.

Motion to adjourn this application to the Board's meeting of March 15th.

Motion: Joseph Heider

Second: Cynthia Turner

Vote: 4 (approve)-0, 1(absent)

10:03 p.m. Motion to adjourn the meeting.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4 (approve)-0, 1 (absent)