

MINUTES
Village of Upper Nyack Planning Board Meeting
Wednesday, March 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 7:32 p.m. by the Vice Chair, Karen Olson.

Other Board members present: Joseph Heider, Cynthia Turner, and Zara Crowley

Absent Board members: William Pfaff

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

The Board members extended their condolences to Bill Pfaff and his family on the passing of his daughter.

7:33 p.m. The Vice Chair reviewed the agenda.

7:34 p.m. Review of the minutes from the February 15, 2023 meeting.

The Village Engineer indicated that at the February meeting he had rescinded Comment 3a on page 5 of the draft minutes, so that comment should be deleted.

Motion to approve the minutes of the February 15, 2023 meeting with Comment 3a on page 5 deleted.

Motion: Joseph Heider

Second: Cynthia Turner

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

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.

Present Representing the Applicant: Jay Greenwell, PLS

Procedural History: The Board's counsel gave a procedural history of the application. The last time this matter was before the Board for a substantive review was March 2022. At that time the application was referred to the Zoning Board of Appeals for the required variances and the applicant was asked to reach out to the neighboring property owners – the Sinnotts and Clemensens—to discuss restoring the disturbed grade on their properties.

Following the March 2022 meeting, in July 2022 the Zoning Board of Appeals granted the applicant the required variances.

The applicant has revised the plan to restore the previously disturbed grading on the Chaitin, Sinnott and Clemensen properties and that plan was presented for review.

Although the grading on the plan differs from what was approved by the Zoning Board of Appeals, recent amendments to the Village's Zoning Law allow the Planning Board to permit alterations to slopes in excess of 40% in certain circumstances.

Mr. Greenwell presented on behalf of the applicant. He indicated that the plan that is proposed is an effort to fix the condition created by the applicant when he disturbed the grade beyond the limit of disturbance line established on the 2007 approved site plan for the Property. The change in grade on the Chaitin property cause the slope both on the Chaitin property and on the Sinnott and Clemensen property to become unstable. He indicated that the proposed solution to regrade the subject area was shown on Sheet 3 of the submission set and includes a retaining wall and the creation of a consistent slope from the wall to where it meets the original grade.

Mr. Greenwell indicated that the applicant and the neighboring property owners are discussing the best way to get the materials needed to perform the work to the location on site as the as built condition of the Chaitin property makes it difficult to do so from the Chaitin property. However he acknowledged that that is something the parties will have to work out and that if they cannot come to an agreement the applicant will have to have the materials delivered to the location of the work over his property.

Although there is no formal agreement in place with the neighboring property owners, Mr. Greenwell indicated that what is proposed in concept is a 10-foot-wide temporary access easement on the neighboring property owners lots to perform the work. He asked that the Board advance this matter and include obtaining the agreement with the neighbors as a condition of approval.

The Village Engineer's comments dated March 14, 2023 were read into the record as follows:

State Environmental Quality Review (SEQR)

There is no additional SEQR review required for this modification.

Zoning

1. The parcel is in the R-30 zone; the bulk table reflects the 2022 zoning bulk requirements:
 - a. Variance for total lot coverage has been granted by the ZBA.
 - b. Variance for height of the entry gate and pillars has been granted by the ZBA.
 - c. The recent Zoning Code amendments now allow the Planning Board to grant approval for slope disturbances; that request has been made via a note added to the bulk table.

Site Plans

1. Significant review and comment has been made previously and has been addressed.
2. On the SEA plan, wall detail, move arrow denoting rock surface.
3. No additional comments.

There was a discussion about the new provisions to the Village Zoning Law which allows the Planning Board to permit modifications to slopes in excess of 40%. There was a discussion about

whether this was a permanent alteration that would improve the condition of the slope thus new Section 6.7.1.1 would apply, or whether section 6.7.1.4, which applies to slopes disturbances that are not primarily intended to improve the condition of a slope, but to allow for development of a sloped site in limited circumstances, would apply.

Mr. Greenwell explained the history of the change of the slope and the disturbance to the prior slope causing the existing condition to be unstable. He said the primary intention here is to restore the slope and make it less steep than its current condition to make it stable.

Accordingly, the Board found that Section 6.7.1.1. would apply

The Board opened the matter up for public comment.

Fred Sinnott, Owner of the Adjacent Property. Mr. Sinnott advised that some of the off-site restoration is proposed to occur on his property. He said that there is a footing drain outfall in the remediation area that is not shown on the plan. He said he did not object to the applicant modifying the location of the drain subject to his approval of the ultimate plan if that is necessary.

There was a discussion about whether the materials to perform the restoration of the slope could be transported to the site via the Sinnott property. Mr. Sinnott said that to the extent the work is occurring on his property that might be possible, but because he obtains access from a shared driveway, he cannot consent to its use to bring materials to the Chaitin or Clemensen properties.

Jill Sinnott, Owner of the Adjacent Property. Mrs. Sinnott asked about the timing of the work and how the Board can confirm that the work will occur in a timely manner.

There was a discussion about imposing a durational limitation on the completion of the slopes remediation work. Mr. Greenwell indicated that 12 months could be a reasonable timeframe for the work in total, but that a shorter period of time could be specified in the agreements with the neighbors for the work to occur on their properties.

Village Engineer Dennis Letson advised the Board that the best time for the slope to be stabilized with grass would be in September or October, so the work should be able to be completed by November 15.

There was a discussion about the proposed elevation stations on sheet three and how the slope would change at various stations.

There was a discussion about whether the board wanted a formal resolution prepared for this matter, and it was determined that a formal resolution should be prepared for consideration.

There was a discussion about the conditions that should be included in the resolution. In addition to the typical conditions, the following conditions will be added to the resolution:

1. Prior to the Chair's signature on the site plan:
 - a. The footing drain on the Sinnott property shall be located on the plan.
 - b. The plan shall be revised to indicate that the Tulip tree near the common boundary

line between the property and the Sinnott property will be removed.

2. Prior to commencing any work on the Sinnott or Clemensen properties, the applicant shall provide the Board Secretary with an easement or license agreement executed by all parties allowing the work to occur. No work may be commenced on the Sinnott or Clemensen properties without the written consent of the owners of such properties.
1. General Condition: The existing footing drain on the Sinnott property may be modified or relocated as necessary with the property owner's consent.
2. All work to stabilize the slope shall be completed to the satisfaction of the Village Engineer on or before November 15, 2023. If such work is not completed to the satisfaction of the Village Engineer by such date, this site plan shall expire and the applicant shall return to the Board for further review.
3. At the completion of the work, the applicant shall provide an as-built survey with topographical information to the Village Engineer.
4. A stormwater maintenance agreement for the existing system will be required, unless there is one in place.
5. All previous approvals affecting the property, including the conditions thereto, that are not specifically modified by this approval remain in full force and effect.

There was a discussion about whether the 2007 approved site plan should be included in the final plan set, but it was determined that it can be referenced on the plan in the resolution rather than a copy being provided in the set.

Motion to close the public hearing.

Motion: Joseph Heider

Second: Zara Crowley

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

Motion to direct the Board's counsel to draft a resolution of site plan approval with the conditions as discussed for consideration at the Board's April 19, 2023 meeting.

Motion: Joseph Heider

Second: Zara Crowley

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

8:16 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: A special use permit was previously granted on February 17, 2016. Site Plan approval was most recently granted in January 2010. The public hearing on this application was opened at the February 15, 2023 meeting and continued to this evening. The public hearing was held to determine the number of on-site parking spaces and the height of the building on the property.

Village Engineer Letson reviewed the Village's records and located the 2010 signed site plan, which provides the parking count and the dimension of the building height and that plan was entered into the record of the proceeding and circulated to the members of the Board. Mr. Letson also conducted a site inspection and determined that the site is in substantial compliance with the 2010 signed site plan

The Village Engineer's comments dated March 15, 2023 were read into the record as follows:

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

1. Information submitted:
 - a. 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.
 - b. 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.
2. At the prior meeting, the Village agreed to review the project file regarding parking layout and building height. The village files contain the approved plans from the building expansion endorsed by the Chair on 1/29/10. We believe these plans can be referenced in any action taken by the Board.
3. Site inspection indicates that construction is in generally in conformance with the latest site plan and the as-built submitted in support of the current Special Permit.
 - a. There are a small garden and play enclosure on the north side of the site; neither would require approval by the Board.
 - b. A temporary enclosure is in place at the concrete slab west of the building entrance, if this is to be permanent a site plan amendment would be needed.
 - c. Parking striping is faded to varying extents and should be maintained as needed. The loading area striping needs to be installed.
4. From all information submitted and site inspection, the facility is operating in conformance with the previously issued Special Permit. It appears the Special Permit may be renewed.

There was a discussion about the temporary structure located on the property and identified in the Village Engineer's report. Mr. Zweig indicated that this was a COVID era condition to allow attendees to congregate for lunch after Saturday services in a manner that allowed for social distancing that has

remained. There was a discussion about whether site plan approval was required for this feature or whether a temporary (tent) permit would be needed and it was determined that his structure could continue with the required permits from the Building Department.

There was a discussion about whether the parking area or loading area must be restriped as a condition of the approvals. Village Engineer Letson explained that in certain portions of the parking area the striping is significantly faded and the striping of the loading area has never been completed. It was determined that the striping of the parking area did not have to be completed until the parking area was resealed/repaved, but that the striping of the loading area should be completed.

Mr. Zweig advised the Board that in addition to the uses indicated in the application submission the property is also used as a polling place.

The Board opened the matter up for public comment.

There were no comments from members of the public.

Motion to close the Public Hearing.

Motion: Joseph Heider

Second: Cynthia Turner

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

The Board's counsel prepared a resolution of approval for consideration of the Board. It was circulated to the applicant and the members of the Board and read into the record by counsel incorporating changes that were discussed during the hearing.

Motion to approve the proposed resolution as read by counsel granting special use permit and site plan approval (a copy of the resolution is attached to these minutes and incorporated into the minutes).

Motion: Joseph Heider

Second: Cynthia Turner

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

8:42 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.

Mr. Vaccaro explained that this application was heard at the Board's February 15, 2023 meeting and that certain changes to the plan were needed. He summarized the changes as follows:

- Planting – four Green Giant Arborvitae located near the air conditioning units and three boxwoods at fence line at generator location have been proposed
- Some of the notes on the plan have been revised to conform to the existing condition.

- The development coverage amounts in the bulk table have been updated to reflect the existing condition.

The applicant has measured the stone walls located on the property, but has not added the top and bottom of wall elevation to the plan.

The Village Engineer's comments dated March 15, 2023 were read into the record as follows:

State Environmental Quality Review (SEQR)

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

Zoning

5. Zoning R-20 as shown on the plan.
6. Bulk Table
 - a. Previous total coverage was shown as 12.8%; current total coverage has been revised to show the increase to 17.06%.

Site Plan

1. 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.
2. Generator has been added on the south side of the structure. It appears that this installation would raise similar concerns to those discussed regarding the a/c units.
3. Screen plantings are added at the air conditioning units and the generator (4) green giant arborvitae and 3 boxwood respectively.
4. The Board asked for top and bottom of wall elevations to be added to the plan, this is outstanding.
5. No additional comment.

The Board opened the matter up for public comment.

Michele McCarthy- 212 Foss Drive. Mrs. McCarthy gave a background history of the development of the property. She indicated that the original construction spanned two years and there was no issue. When the board issued the final site plan approval she raised two concerns—first, the location of the air conditioning units and second, the screening. She indicated that the air conditioning units were not located as shown on the 2009 approved site plan, but she is not asking for them to be relocated she would like appropriate screening planted. She said that she reviewed the project plans in the Building Department and that the 2009 plan show 12 Inkberry (Ilex Glabra) trees along the common boundary line in the general vicinity to screen the air conditioning locations, but they were never planted. Ms. McCarthy presented photographs of the prior plans showing the 2009 approved landscaping. She also presented photographs of the Jananta property from her property.

Village Engineer Letson asked if these were the approved plans because they appeared to show the air conditioning location before it was moved. It was unclear whether the presented plan was the

approved 2009 landscaping plan and it was determined that further research on that point would be needed.

Mrs. McCarthy indicated that at present there are a total of seven plants being proposed rather than the 12 originally proposed. She indicated that the Inkberry were previously selected because they are native, evergreen and deer resistant; they would be her preference over the plants proposed.

Mrs. McCarthy explained that if the trees had been planted 12 years ago as they should have, at present there would be mature plants providing screening, and what she is asking for is just to have the applicant complete what should have been done originally.

Mr. Vaccaro introduced photographs of the property which show the existing condition and a bramble generally in the vicinity of the area to be landscaped. Mrs. McCarthy explained that these are wild roses located on the Janata property that are not evergreen.

Mr. Vaccaro stated that regardless of the prior plan, it would have to be reconfigured for the existing condition and that the landscaping that has been presented is adequate to provide screening.

He showed a photograph depicting that the current Arborvitae had been eaten by deer but that they would be replaced in a similar location. There was a discussion about why the applicant thought the Arborvitae would thrive if they have previously failed and Mr. Vaccaro explained that deer fencing has recently been installed.

There was a discussion about the stone wall around the air conditioning units on the original plan. Mr. Vaccaro indicated that the stone wall exists, but it is in a different configuration than as shown on the original plan.

Mr. Vaccaro introduced photographs of what was formerly referred to as the stone wall but is now referred to on the site plan as loose stone near the Janata/McCarthy common boundary.

There was a discussion about whether the parties can come to an agreement on the plantings and Mrs. McCarthy said she did not think an agreement could be reached given the history of the application.

The Village Engineer advise the Board about its options on how to proceed with the application.

The Board members asked if the applicant would be willing to install seven Inkberry trees rather than the proposed landscaping.

There was a discussion about whether the plantings could be swapped out in place, or if modifications to the location of the plantings would be needed because of the change in species.

There was a discussion about whether the Board members wanted to see the plan with the landscaping as revised or make the landscaping revisions a condition of the approval, and if they could not be accommodated in place the applicant could apply for a site plan amendment. It was

the Board's determination that the members wanted to see the revised plan before proceeding to a resolution.

Motion to keep the public hearing open and to adjourn the hearing to the Board's April 19, 2023 meeting.

Motion: Cynthia Turner

Second: Joseph Heider

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

9:21p.m. Motion to adjourn the meeting.

Motion: Joseph Heider

Second: Cynthia Turner

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

Respectfully submitted,
Noelle Wolfson
Consulting Attorney