

**Village of Upper Nyack Planning Board Meeting
Wednesday, January 18, 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 7:32 p.m. by the Chairman, William Pfaff.

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

Absent Board members: Karen Olson

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

7:32 p.m. The Chairman opened the meeting and reviewed the agenda. The Chairman advised the Board members that the Chaitin applicant has made a submission for a technical review and a technical review meeting is scheduled for Thursday, January 19, 2023.

7:35 p.m. Review of the minutes from the December 21, 2022 meeting.

The Board members did not have any changes to the proposed minutes.

Motion to approve the minutes.

Motion: Joseph Heider

Second: Cynthia Turner

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

7:36 p.m. **James Boughton and Julie Mowatt, 19 Van Houten Street, County Map 60.18-01-22.** *Continuation from December 21, 2022.* Application for site plan approval for alterations to an existing two-story garage and the addition of a 4' x 10' deck on a property improved with an existing one-family residence in the Residence R-10 District and Hudson Riverfront Overlay District.

Procedural History: ARB approval granted subject to conditions January 9, 2023
Required variances granted subject to conditions January 3, 2023.

Representing the Applicant: Michael Esmay, Architect.

Applicant Presentation: The application is to add a small porch to an existing garage that is being renovated. At the last meeting the application was referred to ARB and ZBA; both have granted approvals. The application is now returning to conclude the site plan review process.

The applicant went through the changes. The revision date has been updated. A note has been added that the garage will not be used for dwelling purposes per the condition imposed by the ZBA.

A note has been updated to reference the grant of the variances. The bulk table has also been updated to reflect the setbacks for all structures on the site as per the ZBA's resolution.

The Village Engineer's comments of 1/18/23 were reviewed:

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

- a. Variance granted by the ZBA on January 3, 2023.

Site Plan

1. Add note to reference the January 3, 2023 variance grant.
2. Should the Rev date of 1-6-22 be 1-6-23?.
3. No additional comment.

There were no additional comments from the Board members.

There were no members of the public who wished to speak on the application.

Motion to Close the Public Hearing

Motion: Cynthia Turner

Second: Joseph Heider

Vote: 4-0, 1 absent

Motion to Approve the following plans, collectively the Site Plan: Addition & Alteration to an Existing 2 Story Garage for Boughton/Mowatt, Dwg. No. 1, 2, 3, and 4, prepared by Michael Esmay, Architect and dated July 25, 2022, last revised January 6, 2023 subject to the following conditions:

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 of the Village Engineer the comments raised in his report dated January 18, 2023 and which are specifically set forth herein as conditions of approval.
3. The Applicant shall comply with the conditions and requirements set forth in the letter from the Architectural Review Board to the Planning Board submitted on this application (ARB Public Hearing Date January 9, 2023), which requires compliance with the architectural plans and finish schedule referenced in such letter.

4. Comments from the Rockland County Planning Department, received December 15, 2022. “As per their letter dated November 28, 2022, should the Board require a stormwater management system, application is to be made to the Rockland County Department of Health for review of the system to ensure compliance with the County Mosquito Code.” The Village Engineer has advised that no stormwater management system is required as a part of the proposed project therefore this condition is not applicable.
5. The applicant shall comply with the conditions of the Zoning Board of Appeals resolution dated January 3, 2023.
6. Prior to the issuance of a Certificate of Occupancy the Applicant shall provide 2 copies of an as-built survey signed and sealed by a licensed professional.
7. 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.”
8. 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.
9. Except as otherwise provided in Village of Upper Nyack Zoning Law Section 10.4.1, this approval shall expire if it is not signed by the Planning Board Chairman within 90 days of the date hereof, if a building permit for the work proposed herein is not issued within 3 years of the date hereof, or if a Certificate of Occupancy or Certificate of Compliance has not been issued within 2 years of the date that the building permit is issued.

Motion: Joseph Heider

Second: Cynthia Turner

Vote 4-0, 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.

Application Procedural History: This is a new application for a special use permit for a Motor Vehicle Service Facility and Site Plan approval for the same.

Present Representing the Applicant: Robert Silarski AIA, S& CO, Architecture and Design

Summary of Applicant Presentation: Mr. Silarski presented the application. He described that the business services only Porches. All vehicle work will occur indoors and all vehicles being serviced on the site will be stored indoors. He explained that cars will typically be trucked to the property. The applicant is proposing to use the existing building and will be able to service/store

approximately 6 cars at any one time; no additional construction is proposed. For these reasons, the applicant's representative argued that this was a low or no impact use.

The applicant's representative explained that his written submission addressed how the project meets all of the applicable special use permit criteria of Upper Nyack Zoning Law Sections 9.5 and 9.6.9. He explained that customer visits to the facilities are rare, 4 employees will work at the facility and that all work and storage of cars and materials will be indoors.

The applicant's representative explained that the only change to the site that the applicant is requesting is to reinstall a roll-up door that was previously removed to create a second service bay at the current main entry location, and the concomitant relocation of that entry to the northern end of the building's east façade. No exterior signage is planned due to the nature of the business and the fact that there are no walk-in customers.

The applicant's representative explained that the business hours are from 7AM to 4PM Monday through Friday, excluding holidays. Given the property's prior history as an automotive service facility the use will not have negative impacts on the surrounding area different than the principal permitted uses in the district.

Village engineer comments.

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. Bulk Table:
 - a. Add "per Section 9.6.9" after Motor Vehicle Service Facility
 - b. Note existing non-conforming bulk values.
3. No site work is proposed for this application, all non-conforming elements are existing; variances are not required.

Site Plan

1. Site plan note 1, correct tax block to block 2
2. Northern "N/F 536 N Highland Ave LLC" is correct, remove "N/F Jaber"
3. At tax lot 59.12-1-16, western property line is the Village line, remove extra lot line.
4. Add lot line at west side of N/F Kemp Parcel.
5. Correct Town of Orangetown to Town of Clarkstown.

6. No water service is indicated. If property is on a well, note well location.
7. Note what fill cap on north side of building is for, UST, etc.

Referrals

1. RC Planning Dept.
 1. The application narrative addresses the issues raised in this comment. While the narrative appears to show the application meets the special permit criteria, the Board will make that determination.
 2. The Clarkstown Planning Board has reviewed the application and deemed it for local determination.
 3. The application was referred to NYSDOT, no comment has been received.
 4. The application was referred to the Trail Conference.
 5. It appears the existing plantings along Route 9W are established and provide adequate screening.
 6. While the EAF mapper does return information, which would normally require additional explanation, in this case, that information is not relevant as the site is not being altered. In addition, the action is Type 2 and the EAF is not required. I recommend an override of this condition.
 7. See site plan comment 1 above. The legal notice listed the correct tax block.
2. Town of Clarkstown. The Planning Board has replied that this matter is for local determination.
3. RC Health Dept. The response indicates no Health Dept. approvals are required for this application.

There was a discussion about the nonconforming aspects of the site (parking location and building setbacks). All such items are preexisting, no aspect of such elements are proposed to change and all such elements are being used as a part of the proposed use. If there is any change to the configuration of the Property or the parking on site variances from the Zoning Board of Appeals will be required.

The Board asked if there was a well on the property. The applicant's representative indicated that he hasn't seen any evidence of a well on the property, but will investigate further.

Agency Comments:

The Rockland County Center for Environmental Health determined that no Rockland County Department of Health approvals were needed in connection with this application.

The New York State Department of Transportation indicated that as currently proposed no approvals from it are required as a part of this application.

The Chairman reviewed the Rockland County Department of Planning Referral Letter dated January 13, 2023.

1. RCP Comment 1: The Board must determine whether the Special Use Permit Criteria are satisfied. Accordingly, the Board and the applicant's representative reviewed the applicable special use permit criteria (Zoning Law Sections 9.5 and 9.6.9) and the Board noted that compliance with the criteria was also addressed in the applicant's written submission.

- a. 9.5.1- Standard: Generally, the proposed use is in keeping with the nature and intensity of the surrounding neighborhood and utility services are available to serve the site. Applicant Response: The applicant is not proposing any significant alterations to the site so the configuration and layout will be in the existing condition. The use is a low intensity use and this property has been used for automotive service in the past. Utility service is sufficient for the use.
- b. 9.5.2- Standard: Site layout, landscaping and screening will not hinder or discourage the use of surrounding lots. Applicant Response: The site is going to be left as is. There is landscaping along 9W. The landscaping appears healthy. The applicant advised that there are a combination of short evergreen trees and shrubs. There was a question about whether all the landscaping shown on the plan was present on the site. The applicant's representative said he would confirm and update as needed. Discussion: A Google Maps image of the site from 2022 and photographs of the landscaping on the property were reviewed and the screening was evaluated. Although the landscaping does not meet the strict requirements of Section 5.3.3.2, the existing plantings provide adequate screening and buffer view of the property; the Board is authorized to grant waivers from Section 5.3.3.2 if they make the required findings that the landscaping buffer is adequate.
- c. 9.5.3- Standard: Operations in connection with a special permit use shall not be more objectional by reason of noise, traffic, airborne particulate matter, odors, fumes, vibrations or other characteristics than other uses not requiring a special use permit. Applicant Response: All work and storage of vehicles will occur indoors. There was a discussion about how many cars could be serviced concurrently. The applicant advised that 6 cars could be serviced at any one time. Air quality and filtration systems will have to comply with all building and other regulations. Because of the nature of this use—repairs other than body repairs to high end vehicles – it will be less intensive than similar and other permitted uses. Moreover, the nature of the business is a low traffic use. Discussion: There was a further discussion about how the Board can monitor compliance with this standard. There was a discussion about the durational limitation that applies to special permit uses and the applicant's representative was advised that the permit would have a duration of 5 years per the zoning law and that it would have to obtain a renewal and demonstrate compliance with the standards at the conclusion of that period.
- d. 9.5.4- Standard: Parking and loading spaces are of adequate size and configuration and are adequately screened. Applicant Response: There are enough parking spaces to accommodate the proposed use pursuant to the code. The applicant has represented that the storage and parking of all vehicles will all be inside. There are expected to be 4 employees working at the site. There was a discussion about whether the parking and storage of cars being worked on should be inside. There was a discussion about whether the surplus spaces next to the building should generally be available for parking/storage of vehicles being worked on. There was a discussion about how cars are delivered to the property (primarily by panel truck).
- e. 9.5.5- Standard: Lighting must comply with Section 6.6. of the Zoning Law. Discussion: Compliance with this section will be required. The applicant's representative advised that no changes to exterior lighting are proposed.
- f. 9.6.9 Standards were also reviewed.

- i. 9.6.9.1 and 9.6.9.2: Standard: Supplemental Bulk Requirements. Zoning Inspector Determination: Although the property is not in strict compliance with these requirements, because the applicant is reusing without modifying existing site improvements, they may continue as nonconforming. However, if any alterations to these improvements are made, a variance from the zoning board of appeals and a modified special use permit will be required.
 - ii. 9.6.9.3: Standard: Underground storage of petroleum products must be underground and in compliance with controlling laws. Applicant Response: Storage of all petroleum products is underground.
 - iii. 9.6.9.4: Standard: Limitation on outdoor storage of inoperative or partially dismantled vehicles. Discussion. There was a discussion about the storage of vehicles on site and a discussion of the operations. The applicant's representative reiterated that cars being worked on will not be stored outside.
 - iv. 9.6.9.5: Standard: All repairs and service work will be performed in a fully enclosed building. Application Response: The applicant confirmed that it would comply with this condition.
 - v. 9.6.9.6: Standard: Vehicle inventory and vehicles being parked onsite awaiting service or pick up must be parked in designated spaces. Applicant Response: Cars being serviced onsite are proposed to be stored indoors.
 - vi. 9.6.9.7: Standard: Requirements related to tow truck parking. Applicant Response: The applicant's representative advised that the applicant is not going to be towing cars or keeping tow trucks on the property. There was a discussion of the transportation of cars to the site since they are most often trucked rather than driven to the site. The applicant's representative advised cars are typically delivered one at a time. The delivery truck looks like a panel truck; the car is dropped off and then the delivery truck leaves the site. It returns to retrieve the car when the service is completed.
 - vii. 9.6.9.8: Standard: Prohibited uses- outdoor spray paint and outdoor storage. Applicant Response: The use will comply with this condition. The applicant does not perform body work.
 - viii. There was a discussion about minor corrections to the map notes.
2. RCP Comment 2, 3 and 4: Response to other agency comment letters. The Town of Clarkstown has determined this to be a matter of local concern. The application was sent to the NYSDOT and the NY/NJ Trail Conference. NYSDOT had no comments and NY/NJ Trail Conference did not submit a response.
 3. RCP Comment 5: Compliance with the landscaping requirements of Zoning Law Section 5.3.3.2. There was a discussion about the landscaping on the site. The Plan will be modified to accurately reflect the existing plantings. The members of the Board generally felt that the existing landscaping was sufficient to provide adequate screening
 4. RCP Comment 6: Requesting certain corrections to the Environmental Assessment Form. The Village Engineer advised that this is a Type II action so no EAF was required. On that basis the board may override Comment 6.
 5. RCP Comment 7: Observation comment- the tax map number on the plan must be corrected to reference tax lot number 59.12-2-2 and 17. The Village Engineer advised that the hearing notice was correct.

There was a discussion about whether ARB approval is required, and it was determined that ARB approval is required because of the alteration of the building to reinstall the rolling door. There was a discussion about the sequence of review. The applicant's representative advised that the applicant must be out of its current premises by March 1st. The applicant's representative will consult with the owner who will decide about whether to proceed with the ARB or to remove the building modifications from the proposal at this time, thereby obviating the need for ARB review.

Motion to open the public hearing

Motion: Joseph Heider

Second: Cynthia Turner

Vote 4-0, 1 absent

There were no comments from the public on this application.

Motion to adjourn the hearing to the Board's meeting of February 15, 2023, to refer the application to the ARB for review and for the Board's counsel to draft a proposed resolution for consideration at the February 15th meeting.

Motion: Joseph Heider

Second: Zara Crowley

Vote 4-0, 1 absent

OTHER BUSINESS

8:57 p.m. Resolution 536 N. Highland LLC, 536 N. Highland Avenue

At the November 16, 2022 meeting the Board directed its counsel to prepare a resolution on this application.

A resolution has been prepared, it was circulated to the members of the Board and it has been posted on the Village's website.

Motion to waive reading of the resolution and to adopt it as drafted. A copy of which is attached hereto.

Motion: Joseph Heider

Second: Zara Crowley

Vote 4-0, 1 absent

8:58 p.m. Resolution 647 North Broadway, LLC, 647 North Broadway

At the December 21, 2022 meeting the Board directed its counsel to prepare a resolution on this application.

A resolution has been prepared, it was circulated to the members of the Board and it has been posted on the Village's website.

There was a discussion about certain modifications to the proposed resolution: (1) correct the east/west directions in “The Current Application” section; (2) add to the Nyack Joint Fire District’s comments and the conditions section the requirement to trim the trees on the north side of the 649 North Broadway driveway as requested by the Fire District; and (3) eliminate the reference to related ownership of 645, 647 and 649 North Broadway in the “Site Layout” Section.

Motion to waive reading of the resolution and to adopt it with the above-described modifications. A copy of which is attached hereto.

Motion: Joseph Heider

Second: Cynthia Turner

Vote 4-0, 1 absent

9:08 p.m. Blinn Subdivision GML Review, Town of Clarkstown

Ann Cutignola, of Tim Miller Associates, Planner for Blinn Family was present to present the application to the Board. She also provided visual studies and project information to the Board in advance of the meeting.

She advised that the Town of Clarkstown received the Planning Board’s letter and the Town Planner thought it would be helpful for her to attend the meeting to explain the project in more detail.

She explained the original configuration of the subdivision, its lengthy approvals history and the proposed plan.

There was a discussion of the three houses (the 2 Blinn houses and the Clemente house) that are visible from the ridgeline.

There was a discussion of the 2016 Balloon test photo. The Chairman and the board members expressed concern over this analysis and its validity to show the true impact to the ridgeline since it did not take the proposed tree removal into account. The Board was very concerned about the visual impacts being similar to the visual impacts of the existing houses.

The Chairman asked about the conservation easement exception area and again reiterated concerns about the visual impacts of the proposed tree removal and construction at the ridgeline.

The applicant’s representative indicated that the proposed houses will be partially visible, but there will be no development within the conservation area (except for the exception area). The exception area is a compromise to allow the conservation easement to balance the rights of the property owner to the view of the Hudson with the conservation of a portion of the ridgeline.

The Board reviewed the provided section view of the property from the Village. The Chairman indicated that because of its small scale it did not provide any meaningful information to allow the Board to evaluate the impacts to the views of the ridgeline from the Village.

There was a further discussion about the balloon test, the section, the visual impacts of the proposed project including the construction and tree removal and how the proposed houses will relate to the existing houses on the ridgeline.

There was a discussion about how the proposed project would affect the Long Path.

The Village Engineer provided additional information about the history of the property, particularly with the conservation easement area and the conservation easement exception.

The Board asked for a more realistic view of what is being proposed and how it will affect the ridgeline. The Board is concerned about the appearance of “notches” in the ridgeline.

The applicant’s representative made the argument that the ridgeline already has several notches and therefore the proposal will not have significant impacts on the ridgeline. That the proposal is a significant compromise on behalf of the owner to preserve some views from the lot while agreeing to preserving portions of the ridgeline. She said that the impacts from tree removal at construction would diminish over time as the vegetation grew. She believes that the balloon test is effective to show the visual impacts.

There was a discussion about whether the applicant would develop the lots or sell them. The applicant’s representative said that the applicant has not decided that question, but that it is possible that the lots will be sold and developed by others.

There was a discussion about the means of vehicular access to the lots.

The Board members discussed the application and decided to send a letter to the Clarkstown Planning Board reiterating their concerns about the visual impacts of this project to the ridgeline and from the Village and urging the Clarkstown Planning Board to adopt a positive declaration of environmental significance for this project under SEQRA and take a careful look at this issue. To that end, the Planning Board requested that the applicant prepare more informative visual analysis, such as a section at a larger scale, or a plan showing how the proposed houses will relate to the existing houses at the ridgeline.

Motion to direct the Board’s counsel to prepare the above-referenced letter for the Chairman’s signature.

Motion: Joseph Heider

Second: Cynthia Turner

Vote 4-0, 1 absent

9:38 pm **Motion to adjourn the meeting.**

Motion: Cynthia Turner

Second: Joseph Heider

Vote 4-0, 1 absent