

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

MINUTES

A meeting of the Planning Board of the Village of Upper Nyack was held on the above date and called to order at 7:31 pm by the Chairman, William Pfaff.

Other Board members present: Karen Olson, Cynthia Turner, and Joseph Heider (via zoom).

Also present: Dennis Letson, Village Engineer; Noelle Wolfson, Esq., Consulting Village Attorney; Janet Guerra, Board Secretary (via zoom).

7:31 pm. The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on February 17, 2022. Chairman Pfaff gave an introduction to the meeting and commented that it was the first hybrid meeting of the Board in the Old Stone Meeting House.

7:34 pm. Motion for approval of minutes from the January 19, 2022 meeting.

First: Karen Olson

Second: Joseph Heider

Vote: 3-0, 1 abstain, 1 absent, APPROVED.

7:36 pm. Board Counsel, Noelle Wolfson, gave an overview of the newly adopted Zoning, Subdivision, Planning Board, and Stormwater Management Laws which will become effective April 15. She advised that all applicants should be referring to those laws for future applications.

7:38 pm. Stuart and Jennifer Chaitin, 617 North Broadway, County Map No. 60.10-01-09. *Continuation from January 19, 2022.* Application for site plan approval for accessory structures (fencing, stone pillars and pool decking) on property improved with an existing single-family residence located in the Residence R-2 District.

Applicant's representative, Rob Knoebel, Esq., gave a presentation of procedural history of the application. Applicant's engineer, Timothy DeBartolomeo, presented the proposed slope stabilization plan and explained how the proposed grades relate to the 2007 grades and confirmed that all work would be performed on the applicant's property. Applicant's counsel requested referral to the Zoning Board of Appeals so that the Applicant could seek the required slope disturbance variance and pillar height variance.

The comments of the Village Engineer were reviewed and discussed.

State Environmental Quality Review (SEQR)

There is no additional SEQR review required for this modification.

Zoning

1. The current submittal is intended to address the Board's request for additional information on the areas disturbed in the rear yard of the site beyond the limit established by the original approval.
2. The Sound Engineering Associates addresses the area most of concern, that being the west area which has been significantly excavated beyond the original approval.
3. A portion of the proposed wall between station 0+75 and 1+00 is shown to be at the existing bottom of exposed rock. Installation of the wall at this location may require additional rock removal as the wall is shown to be 5 feet wide at its base. Suggest the wall be pulled forward to avoid any rock removal.
4. Given the slope above the wall and the resultant additional soil loads installed on the wall, additional parameters should be shown on the drawing, i.e. extent of gravel backfill, type of filter fabric, soil properties for soil backfill(s), depth of topsoil, seeding, fertilization and mulching and any stabilization fabrics to be used.
5. From the Greenwell drawing and the Sound Eng. sections, it appears impacts to adjacent properties are approx. 68 feet, 12 ft on the Sinnott parcel and 56 ft on the Clemenson parcel, approximately where the elevation 42 contour crossed the property lines.
6. The Sound wall section indicates a 1:12 batter at the front face of the wall, but the face is drawn vertically, the batter should be shown on the section.
7. The silt fence detail should show the portion of silt fence that is buried in accordance with the "Blue Book" standard detail.
8. While this plan does address the most disturbed area, it should be noted that the south and north areas have also been disturbed; the red line on the attached 5/11/21 topography is the superimposed original limit of disturbance line shown on the Greenwell drawing.

Site Plan

1. If the Board is satisfied that this new information addresses their comments, the Applicant should be directed to prepare and submit a full site plan set for review.

The public hearing was still open and members of the public were invited to comment

Public Comment:

Fred Sinnott, 615 North Broadway. Mr. Sinnott asked about the erosion that occurred on his property based on the prior disturbance at stations 0 to 50 marked on the plan presented. He stated that he would be willing to work with the Applicant so that the grading on his property could be restored to the 2007 grades. He pointed out that there is an outlet for a footing drain near the proposed work. He also noted that erosion occurs between stations 0 and 25 as shown on the Applicant's plan.

Jillana Sinnott, 615 North Broadway. Mrs. Sinnott said that the Applicant did not reach out to discuss restoring the grade on her property. She also noted that there is a dock on the property that is very loud and it is unclear whether it was installed in accordance with the approved plans. She also said that

the Applicant often sets off fireworks. She reiterated that the Applicant did not reach out about correcting the slope on her property.

Steven Abel, 615 North Broadway. He agreed that the dock on the property is very noisy and that the Applicant has been asked numerous times to address it; but hasn't. He stated that the application should not be considered because of the Applicant's conduct as a neighbor.

The Applicant's engineer indicated that he was aware of the footing drain. As to the erosion at stations 0 to 25, he prepared the plan based on the information that is available and that portions of the slope are vegetated and stabilized. The Applicant's representative indicated that the Applicant is willing to consider working with the adjacent property owners and asked that the owners send them a letter of authorization to work on their property. The Applicant's engineer advised that the proposed retaining wall on the property and the slope remediation was designed so that it could support slope remediation on the neighbor's property, whether that occurs now or at a future date.

There was a lengthy discussion about the next procedural steps. The Applicant asked for the application to be referred to the ZBA so that it could seek the variances that it needs for slope disturbance and pillar height before returning to the Board to conclude the consideration of the site plan application. It was explained to the Applicant that the Planning Board could not grant any approval tonight because it needs to see a full site plan and that the full site plan is still subject to review. There was some discussion about whether the Applicant would modify the plans to incorporate work on the Sinnott property. The Applicant suggested that the Board refer its application to the ZBA and that it would then consider whether to modify the plan to perform work on the neighbor's property and that a change in the scope of work in that area should not affect the variance. The Applicant's counsel stated that the Board could not condition an approval on improvement on the neighboring property. Counsel for the Board agreed that the Board could not require the Applicant to restore the neighbor's slope; but could consider an application that includes restoration on the neighbor's property if the neighbor's consent is provided to perform the work. The Board's engineer explained that if the Applicant is going to extend the scope of work further on the slope that the scope of the variance would not be the same and therefore, the Applicant should finalize the scope of work before making the application for the variance. The Applicant's counsel stated that he thought the Board was using the approvals process to try to leverage the Applicant into performing the work on the neighbor's property, pointing out that Mrs. Sinnott is a Village employee. The Chairman and the Board's counsel both explained to the Applicant that the Board is not trying to compel any work to occur on the neighbor's property (in fact, it was the Applicant's representatives who stated the Applicant's willingness to consider working with the neighbor) and that the Applicant is free to decide if it wants to keep the work in the four corners of its property or extend the work onto the neighbor's property with their consent. However, what the Board will insist on is that the plan that is submitted to the ZBA have the same scope of work as the plan reviewed by the Planning Board. The Applicant reiterated its request for a referral to the ZBA. The board members discussed the two procedural options – refer the application to the ZBA and then have the Applicant return to the Planning Board to complete site plan review if the variances are granted; OR, have the Applicant return to the Planning Board to continue site plan review, providing a full site plan that incorporates the plans reviewed at tonight's meeting, before referring the application to the ZBA. Chairman Pfaff, and members Turner and Heider were in favor of reviewing the full site plan before referring the application to the ZBA. Member Olson stated that she would be willing to refer the application to the ZBA with the Applicant's understanding that if there is a change in the plans a subsequent review by the ZBA may be required. After a discussion, it was the consensus of the Board to

have the Applicant return to the Planning Board with the full site plan before referring the application to the ZBA.

Motion to continue the public hearing to the Board's March 23rd meeting.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

8:58pm. Kristi and Paul Bouzakis, 600 Palmer Drive, County Map No. 60.09-01-04. *Continuation from January 19, 2022.* Application for site plan approval for a semi-inground pool and fence on property improved with an existing single-family residence located in the Residence R-3 District.

The Applicant was represented by Jordan Bari from Westrock Pools.

The Board reviewed the revised plan and the Village Engineer's comments.

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.

Site Plan

1. Zoning

a. The project is compliant with the R-3 zoning requirements.

2. Provide revised project application per Mr. Gdanski's comment response.

3. Infiltration test shall be performed to verify the assumed design infiltration rate.

4. A stormwater maintenance agreement shall be executed for the site.

5. It appears the information requested by the Board has been added to the drawing.

The board asked if there were comments from members of the public and there were none.

Motion to close the public hearing.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

Motion to approve the site plan.

I move to approve this Site Plan (Pool Plan for Bouzakis, 600PAL, Paul Gdanski, PE, PLLC, January 21, 2022).

1. Under the provisions of SEQR this is a Type II action requiring no further review

2. The applicant shall address to the reasonable satisfaction comments of the Village Engineer in his report dated February 23, 2022 and which are specifically set forth herein as conditions of approval. #2 (revised application) and #4 (stormwater agreement).
3. Comments from other Agencies commenting on this plan are herein incorporated as conditions of approval. Rockland County Planning GML review dated November 16, 2021.

A Stormwater Maintenance Agreement in the form acceptable to the Village Engineer and the Board's counsel shall be recorded in the office of the Rockland County Clerk and a copy of such agreement as recorded shall be filed with the Board. The applicant shall pay all applicable recording fees.

4. **Prior to the issuance of a Certificate of Occupancy the Applicant shall provide: (1) An as-built survey [including topographical information, if applicable] signed and sealed by a licensed professional; (2) a certification signed and sealed by a landscape architect or other qualified professional certifying that all landscaping shown on the Site Plan was installed in compliance with the requirements of the Site Plan.**
5. 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."
6. 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.
7. This approval shall be void and of no effect if a building permit for the work proposed herein is not issued within 3 years of the date of this resolution.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

9:07 pm. Lewis Maresca, 505 Spook Hollow Road, County Map No. 60.09-02-25.

Continuation from January 19, 2022. Application for site plan approval for a semi-inground pool on property improved with an existing single-family residence located in the Residence R-4 District.

The comments of the Village Engineer were reviewed and discussed.

State Environmental Quality Review (SEQR)

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

Site Plan

1. Zoning
 - a. Variances for side and rear setback for [pool and side setback for shed required as noted in the bulk table.
2. The base drawing for the application is now the previously approved site plan.
3. Please verify that the contours shown in the rear yard area reflect the leveling of the site which Mr. Maresca indicated he had done previously.
4. The pool is now shown as "Semi On-Ground and the patio area is also added to the plan.
5. The patio area is shown at elevation 260, existing grade in this area varies between 260 and 261.5+/- . Please show the grading to allow the patio to be on a level surface, and if any retaining walls are proposed.
6. Existing roof leaders are connected to the exiting drainage piping in the yard, these should be shown so that all run-off can be accounted for in the design of the proposed piping.
7. A stormwater run-off analysis will be needed to verify the sizing of the proposed 8" pipe.
8. Grading to the proposed catch basins should be shown to provide pitch into them and insure surface run-off is captured as intended.
9. A pipe installation detail should be added to the plan.
10. The stone wall at the east property line is partially shown on the plan. The wall should be surveyed and top and bottom wall elevations added, this will be important to the installation of the proposed catch basin and the design slope of the proposed pipe to Hudson View Rd.
11. The drawing should be expanded to show the full easement and pipe run to the catch basin on Hudson View.
12. The proposed easement shall be secured prior to endorsement of the site plan by the Chairman.
13. Note 10 may be voided if the additional variance for the shed is granted.
14. Please use a standard line type to depict the existing vinyl fence.
15. Proposed equipment should be specified.

The Applicant was present and was represented by Architect, Kier Levesque. Mr. Levesque presented the plan. Chairman Pfaff began to comment on the information shown on the plan. Mr. Maresca interrupted, approached the Board members, and shouted at the member of the Board in a threatening manner voicing frustration and displeasure with the review process. The review ceased, the Clarkstown Police were notified and Mr. Maresca left the meeting.

Motion to adjourn the public hearing to the meeting of March 23, 2022, on the condition that Mr. Maresca is not permitted to attend the meeting in person.

Motion: Cynthia Turner

Second: Joseph Heider

Vote: 4-0, 1 absent, APPROVED.

9:24 pm. 536 Highland LLC, 536 N. Highland Avenue, County Map No. 59.12-02-01.

Application for site plan approval to convert second floor banquet room to offices on a non-conforming restaurant in the Laboratory Office (LO) District.

The Applicant was represented by Architect, Kier Levesque. Mr. Levesque advised the Board that the Board of Trustees has granted a moratorium waiver to allow this application for approvals for property located in the LO district to proceed. He explained that the Applicant wants to convert existing restaurant space to office space and wants to park commercial/construction vehicles on the property overnight. Mr. Levesque advised that the application will require a parking variance.

The Board reviewed the comments of Rockland County Planning dated February 17, 2022. During that conversation there was a discussion about the annexation of the rear portion of the property into the Village.

9:26 pm. There was a brief adjournment.

9:37 pm. Meeting resumes.

The Board reviewed the comments of the Village Engineer and discussed with the applicant whether it would be better off proceeding under the terms of the newly adopted Zoning Law since the extent of the parking variance needed under the terms of that law would be lessened. A discussion about the parking area ensued. Chairman Pfaff asked about the spaces closest to Route 9W in the block of 20 spaces shown on the site plan and whether they were of adequate size and usable. Village Engineer Letson advised about modifications that could be considered to provide more room for those spaces. Mr. Levesque indicated that he would review that area.

Mr. Levesque asked to be referred to the ZBA to seek the necessary parking variance. There was a discussion about whether the 1962 Zoning Ordinance or the newly adopted 2022 Zoning Law, to become effective April 15, 2022, should apply. It was the consensus of the Board and its counsel that the 2022 Zoning Law should be used to calculate the need for the variance and the Applicant's representative agreed. The Board's counsel advised the applicant to provide information to the ZBA about the proposed overnight parking and how it relates to the other uses and parking utilization on the site. Mr. Levesque advised that that information would be provided to the ZBA.

Motion to open the public hearing.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

No public comments.

Motion to refer the application to the ZBA and to adjourn the public hearing to the Board's April 20th meeting.

Motion: Karen Olson

Second: Joseph Heider

Vote: 4-0, 1 absent, APPROVED.

9:07 pm. Rick Deman, 506 North Broadway, County Map No. 60.13-03-16.

Application for site plan approval for a deck in rear yard on property improved with an existing single-family residence located in the Residence R-3 District.

The Applicants were present and were represented by their architect, John Ferraro. Mr. Ferraro presented the proposed plan and explained that there is an existing deck in disrepair on the property and that the Applicant is proposing to remove it and replace it with a larger deck. The Board reviewed the plans. The Chairman noted that the Applicant submitted an evaluation of the area variance criteria; but that was not required since no variance is needed for this application.

The Board reviewed the Village Engineer's comment memorandum.

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.

Site Plan

1. Zoning
 - a. Bulk table should show the proposed setback to the deck in the provided column, 44.2' is shown on the plan.
 - b. The permitted Lot Coverage is 25%, 16% is shown in the table, please correct.
 - c. The project is compliant with zoning.
2. Erosion control measures should be added to the drawing.
3. A note should be added that all excavated material will be removed from the site.
4. As no variance is required, the narrative relating to standards for grant of variance is unnecessary.

In addition, the Board Chairman asked that the Applicant add an "existing" column to the bulk table on the site plan. The Village Engineer asked that the Applicant separate the street frontage to specify the extent of frontage on North Broadway and on Wynddown Road.

Motion to open the public hearing.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

There were no comments from the public

Motion to close the public hearing.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

Motion to approve the site plan.

I move to approve this Site Plan (Proposed Deck Replacement Richard Deman, RO9344, Robert Sorace, PLS, February 8, 2022.)

1. Under the provisions of SEQR this is a Type II action requiring no further review.
2. The applicant shall address to the reasonable satisfaction comments of the Village Engineer in his report dated February 23, 2022 and which are specifically set forth herein as conditions of approval. #1a, #1b, #2 and #3, the addition of an “existing” column on the bulk table and separating the street frontage to specify extent of street frontage on N. Broadway and Wyndendown Road.
3. **Prior to the issuance of a Certificate of Occupancy the Applicant shall provide: (1) An as-built survey [including topographical information, if applicable] signed and sealed by a licensed professional; (2) a certification signed and sealed by a landscape architect or other qualified professional certifying that all landscaping shown on the Site Plan was installed in compliance with the requirements of the Site Plan.**
4. 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.”
5. 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.
6. This approval shall be void and of no effect if a building permit for the work proposed herein is not issued within 3 years of the date of this resolution.

Motion: Karen Olson

Second: Cynthia Turner

Vote: 4-0, 1 absent, APPROVED.

The meeting was adjourned at 10:14 pm.

Respectfully submitted,

Janet Guerra

Board Secretary