

**VILLAGE OF UPPER NYACK PLANNING BOARD  
RESOLUTION OF SITE PLAN APPROVAL**

**Property Address:** 617 North Broadway, Village of Upper Nyack (the “Property”)  
**County Map No.:** 60.10-1-9  
**Zoning District:** R-30 and Hudson Riverfront Overlay District  
**Applicant/Owner:** Stuart Chaitin and Jennifer Chaitin  
**SEQRA Classification:** Type II (6 NYCRR 617.5c11) No further SEQRA review required  
**Date of Public Hearing:** April 21, 2021 (public hearing opened), May 19, 2021 (adjournment only), July 7, 2021, July 21, 2021 (ZBA referral, but no application made), September 21, 2021 (adjournment only), November 17, 2021 (adjournment only), January 19, 2022 (adjournment only), February 23, 2022, March 2022 (ZBA referral), July 20, 2022 (adjournment only), September 14, 2022, October 19, 2022 (adjournment only), December 21, 2022 (adjournment only), February 15, 2023 (adjournment only), March 15, 2023 (public hearing closed)

**SUMMARY AND DESCRIPTION OF THE APPLICATION**

The Property is located on the east side of North Broadway at the end of a shared driveway. It is bordered by the Hudson River to its east and residential properties to its north, south and west. It is improved with a single-family residence, swimming pool, paved driveway, walkways and patios, fencing, an entrance gate and pillars, and related improvements. Existing stormwater management facilities onsite include a drywell gallery to the east of the driveway. In 2013 the Applicant received a Keeping of Animals permit from the Village’s Zoning Board of Appeals (the “ZBA”) to keep chickens on the Property, but at present no chickens are kept on the Property and the Keeping of Animals permit has expired.

Site plan approval for the initial development of the Property was granted in 2007 (*see Plot Plan of Property for Chaitin*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/22/2006 last revised 11/17/2007 (the “2007 Site Plan”)). In connection with that plan, the ZBA granted the Applicant area variances from the pillar height and coverage requirements of the zoning law in effect at the time.

In April of 2021 the Applicant applied for site plan approval to legalize the entrance pillars, which were constructed to a height exceeding the variance previously granted by the ZBA, and existing fencing, walkways and decking surrounding the swimming pool which were not approved as a part of the 2007 Site Plan. During the review of the application, it came to the Board’s attention that significant amounts of grading and disturbance in the western portion of the Property had occurred in violation of the limit of disturbance line established on the 2007 Site Plan creating a steep and unstable condition (the “Disturbed Slope”). This condition has impacted the adjoining uphill properties to the west of the Property – County Map No. 60.10-1-4 (the “Sinnott Property”) and County Map No. 60.10-1-8 (the “Clemensen Property”). Accordingly, the Applicant is also seeking approval of revised grading on the Property to stabilize and restore the Disturbed Slope. The slope remediation work will include the construction of a retaining wall and the addition of fill on the Property, the Sinnott Property and the Clemensen Property to raise the grade and make the slope at the boundary line less steep, more stable, and less susceptible to erosion.

As constructed, Development Coverage on the Property is approximately 39.4% where 25% is permitted by the Zoning Law of the Village of Upper Nyack (the “Zoning Law”). By resolution dated July 5, 2022, the ZBA granted the Applicant an area variance from the Zoning Law’s Development Coverage limitations to allow the 39.4% coverage to remain.

The Applicant has also installed an entrance gate and stone pillars (with lights on top) on the Property. In 2013 the ZBA granted the applicant a variance to allow the pillars to measure 8 feet in height; however, the pillars and gate were constructed at a height that exceed 8 feet. By resolution dated July 5, 2022, the Village ZBA granted the Applicant a variance to permit the pillar to measure 11.75 feet from the base of the pillar to the top of the light and for the gate to measure 9.25 feet in height.

Also on July 5, 2022, the ZBA granted the Applicant a variance from the then-controlling provision of the Zoning Law prohibiting disturbance to slopes exceeding 40% so that the restoration of the Disturbed Slopes could proceed. Although the slopes restoration plan has been modified since the slopes disturbance variance was granted by the ZBA to allow for remediation of the Disturbed Slope on the Property, the Sinnott Property and the Clemensen Property, a recent amendment to the Village’s Zoning Law (LL 1 of 2023) allows the Planning Board to permit disturbance to slopes exceeding 40% in certain circumstances (*see* the Board Findings section of this resolution). Therefore, no additional variances for the proposed alteration to the Disturbed Slopes are required.

**INFORMATION SUBMITTED**

*See Exhibit A Attached*

**AGENCY REFERRALS AND COMMENTS**

Because the Property is adjacent to the Hudson River and the Village’s municipal boundary with the Town of Clarkstown, this application was referred to the Rockland County Department of Planning for review pursuant to General Municipal Law 239-m and to the Town of Clarkstown.

**ROCKLAND COUNTY PLANNING**

The Rockland County Department of Planning, by review letter dated April 13, 2021, commented that the Applicant must comply with the Rockland County Sanitary Code’s mosquito control regulations (Rockland County Sanitary Code (XIX)) and that certain information on the county form required correction. Compliance with the Rockland County mosquito control regulations is made a condition of this approval, and all required information has been corrected.

**TOWN OF CLARKSTOWN**

By letter dated March 29, 2021 the Town of Clarkstown Planning Board determined that this application was a matter of local concern.

**BOARD FINDINGS (see VILLAGE ZONING LAW §10.6)**

The Property is developed with a single-family residence and related improvements. Amended site plan approval is sought for the pillars and development coverage surfaces that were installed in a manner not in compliance with the 2007 Site Plan and to remediate the Disturbed Slopes.

There are no proposed changes to the means of vehicular or pedestrian access to the Property or the provision of utility services. Previously installed stormwater management facilities were reviewed by the Village Engineer and determined to be adequate to meet the demands of the Property; however, this approval will be conditioned upon the Applicant providing proof that a stormwater facilities maintenance agreement has been filed in the Rockland County Land Records or executing and filing such an agreement in the Rockland County Land Records.

No new structures, other than the proposed retaining wall required to be constructed in connection with the reconstruction and stabilization of the Disturbed Slopes, are proposed.

To complete the reconstruction and stabilization of the Disturbed Slopes, the Applicant has requested that the Planning Board permit it to permanently alter slopes in excess of 40%. Pursuant to Section 6.7.1.1 of the Zoning Law, “The Planning Board may permit the permanent alteration of any Steep Slope if it finds that the alteration of the slope will improve the stability of the slope and will improve environmental conditions on the Lot on which the slope is located and in the surrounding area.”

Here, the Applicant’s modification to the Property beyond the limit of disturbance line established by the 2007 Site Plan has caused the slope in the western portion of the Property and the eastern portions of the Sinnott and Clemensen Properties to become unstable and subject to erosion. The Disturbed Slope must be restored to a stable condition. The Applicant’s proposed plan includes the construction of a retaining wall on the Property and the addition of fill to the west of the wall so that the slope in that location can be flattened to provide a consistent and less steep slope from the proposed wall to the location where the slope meets the original grade. This proposal will stabilize the slope and reduce the potential for erosion on the Property and the Sinnott and Clemensen Properties providing a benefit over the existing condition. The written consent of the owners of the Sinnott and Clemensen Properties is required before the Applicant may undertake any work on those properties. As provided in more detail in the conditions of this Resolution, all work to stabilize the Disturbed Slope must be completed to the satisfaction of the Village Engineer on or before November 15, 2023.

**DETERMINATION AND CONDITIONS**

Based on the foregoing, the materials submitted in support of this application, and the information provided at the public hearing on this application, the Planning Board hereby approves the following plans collectively constituting the Site Plan, subject to compliance with the conditions set forth below:

- *Cover Sheet (Sheet 1)*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 2/22/2023;
- *Amended Site Plan For Chaitin (Sheet 2)*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 2/6/2023;
- *Retaining Wall and Grading Detail (Sheet 3)*, prepared by Sound Engineering Associates, LLC, dated 12/7/2021, last revised 2/6/2023; and

- *Proposed Wall and Area of Disturbance (Sheet 4)*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 2/22/2023.

**CONDITIONS TO BE SATISFIED BEFORE THE CHAIRMAN SIGNS THE SITE PLAN**

1. The footing drain outfall within the area to be disturbed on the Sinnott Property shall be located on the Site Plan and may be relocated as necessary with the written consent of the owner of the Sinnott Property, subject to the review and approval of the relocated position by the Village Engineer. Proof of the Sinnott Property owner's consent shall be filed with the Land Use Board Secretary.

2. The Site 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.

3. The Applicant shall address to the reasonable satisfaction of the Village Engineer comment Site Plan 2 raised in his report dated March 14, 2023. That comment provides that on the *Retaining Wall and Grading Detail* (Sheet 3) sheet of the Site Plan set, move arrow denoting rock surface.

4. Note 12 on the Site Plan Cover Sheet shall be revised to read as follows to conform with changes to the expiration of site plan approvals granted by the Planning Board per Village of Upper Nyack Local Law 1 of 2023 and with this Resolution: "Site Plan Approval for this application was granted by resolution of the Village of Upper Nyack Planning Board on April 19, 2023. Once the Site Plan is signed by the Planning Board Chair, it shall expire if a building permit has not been issued for construction in accordance with the approved Site Plan within 18 months of the date that the Site Plan is signed by the Planning Board Chair, or if all improvements permitted or required by the Site Plan approval are not completed and a certificate of occupancy or certificate of compliance has not been issued within two years of the date that the building permit is issued, unless extended pursuant to Village of Upper Nyack Zoning Law (Upper Nyack Local Law 5 of 2022 as amended) Section 10.4.1.2. The above notwithstanding, this Site Plan shall expire and shall be of no force or effect if all of the work to stabilize the Disturbed Slope is not completed to the satisfaction of the Village Engineer on or before November 15, 2023."

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."

**CONDITIONS TO BE SATISFIED BEFORE COMMENCING WORK ON THE SINNOTT OR CLEMENSEN PROPERTIES**

6. Prior to commencing any work on the Sinnott or Clemensen Properties, the Applicant shall provide the Land Use 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.

**CONDITIONS TO BE SATISFIED BEFORE THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY OR AT THE COMPLETION OF WORK**

7. The Applicant shall provide 2 copies of an as-built survey with topographical information signed and sealed by a licensed surveyor to the Village Engineer.

8. The Applicant shall demonstrate that a Stormwater Facilities Maintenance Agreement for the existing stormwater facilities on the Property has been filed in the Office of the Rockland County Clerk, or, if such agreement has not been filed, the Applicant shall execute a Stormwater Facilities Maintenance Agreement for maintenance of the existing stormwater facilities on the Property in a form acceptable to the Village Engineer and the Board's counsel and the Applicant shall cause it to be recorded in the office of the Rockland County Clerk. A copy of such agreement as recorded shall be filed with the Land Use Board Secretary. The Applicant shall pay all applicable recording fees.

**GENERAL OR ONGOING CONDITIONS**

9. All work to stabilize the Disturbed 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 Planning Board for further review. No Certificates of Occupancy or Certificates of Compliance for the pillars or development coverage may be issued until the work to stabilize the Disturbed Slope is completed.

10. The Applicant shall comply with the conditions and requirements of the variance granted by the ZBA by resolution dated July 5, 2022.

11. The Applicant shall make all submissions and obtain all approvals that are required by the Rockland County Department of Health, if any, to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.

12. Unless otherwise specifically modified by this Resolution or the plans approved hereby, all conditions of any prior approval of any board, department or officer of the Village of Upper Nyack shall remain in full force and effect.

13. 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.

14. The Applicant shall comply with the requirements of the New York Uniform Fire Prevention and Building Code, all Village of Upper Nyack laws and ordinances, and all other applicable laws and regulations of any governmental entity or agency with jurisdiction over the Property or its use.

DRAFT

15. Except as otherwise provided in Village of Upper Nyack Zoning Law Section 10.4.1 and in Condition 9 of this Approval, 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 18 months of the date that the Site Plan is signed by the Planning Board Chairman, 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.

**DATED:** April 19, 2023

**VOTE:** Motion to Approve Resolution:

Second:

Vote:

Village of Upper Nyack Planning Board

---

William Pfaff, Chairman

**EXHIBIT A**

**INFORMATION SUBMITTED**

**ORIGINAL SUBMISSION**

Rockland County Department of Planning Referral Form and Application Form, sent 10/17/2020

Rockland County Department of Planning Referral form and application, sent 3/16/2021

Chaitin Site Plan, Project Narrative, dated March 28, 2021

GML 809 Statement, dated March 26, 2021

Property Deed

Village Engineer Memorandum, dated April 21, 2021

Letter from Roy Wanamaker to the Planning Board, dated November 9, 2020

Letter from Roy Wanamaker to Stuart and Jennifer Chaitin, dated January 29, 2014

Village of Upper Nyack Building Department Record Search, dated January 29, 2014

Letter from Roy Wanamaker to Stuart and Jennifer Chaitin, dated January 8, 2014

Letter from Roy Wanamaker to Stuart and Jennifer Chaitin, dated September 24, 2013

**Plans**

- *Survey Showing Coverage and Proposed Fencing*, Chaitin, prepared by Jay A. Greenwell, dated 1/06/2014, last revised 10/12/20
- *Survey Showing Coverage and Proposed Fencing*, Chaitin, prepared by Jay A. Greenwell, dated 1/06/2014, last revised 8/27/20

**SUBMISSION MAY 2021**

Project Narrative prepared by Jay A. Greenwell, PLS, LLC, dated May 26, 2021

Project Narrative prepared by Jay A. Greenwell, PLS, LLC, dated March 28, 2021

**SITE VISIT JUNE 2021**

Planning Board site visit.

Village Engineer Memorandum, dated July 7, 2021

**SUBMISSION JULY 2021**

Project Narrative prepared by Jay A. Greenwell, PLS, LLC, dated June 29, 2021

Project Narrative prepared by Jay A. Greenwell, PLS, LLC, dated March 28, 2021

Department of the Army, NY District, Corps of Engineers Permit Application No. NAN-2008-00191.ETA, stamped November 9, 2009

Department of the Army, NY District, Corps of Engineers, Department of the Army Permit Number NON-2008-00191

Letter of Robert G. Torgersen, dated March 25, 2008 and NYSDEC Letter re DEC Application ID 3-3920-00601/0001, dated July 28, 2008

Summary of Building Permits and Certificates of Occupancy for Property

Letter of Fred Sinnott, dated July 21, 2021

**Plans**

- *Cover Sheet (Sheet 1)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 5/18/2021
- *Amended Site Plan (Sheet 2)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 1/06/2014, last revised 5/18/21
- *Exhibit Showing Added Coverage Areas (Sheet 3)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 1/06/2014
- *Plot Plan of Property (Sheet 4)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 5/22/2006, last revised 11/17/07
- *Revised Plot Plan of Property (Sheet 5)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 2/14/2008, last revised 6/11/08
- *Topo Exhibit for West Portion*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 6/24/2021

**SITE VISIT OCTOBER 2021**

Site visit at Chaitin Property, Chairman Pfaff, Village Engineer Letson, Village Consulting Counsel Wolfson, and applicant representatives



**SUBMISSION FEBRUARY 2022**

Letter from Jillana Sinnott, stamped received February 24, 2022

Letter from Sound Engineering Associates LLC to Stuart Chaitin, dated February 11, 2022

Village Engineer Review Memorandum dated February 23, 2022

**SUBMISSION MARCH 2022**

Letter from Jillana and Fred Sinnott, dated February 28, 2020 [sic]

Letter of Sound Engineering, dated March 14, 2022 responding to the Village Engineer's comment memorandum dated February 23, 2022

Memorandum of the Village Engineer, dated March 23, 2022

**Plans**

- *Cover Sheet (Sheet 1)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 5/18/2021
- *Amended Site Plan (Sheet 2)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 1/06/2014, last revised 3/15/22
- *Exhibit Showing Added Coverage Areas (Sheet 3)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 1/06/2014, last revised 3/16/2022
- *Plot Plan of Property (Sheet 4)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 5/22/2006, last revised 1/17/07
- *Revised Plot Plan of Property (Sheet 5)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 2/14/2008, last revised 6/11/08
- *Topo Exhibit (Sheet 6)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 6/24/2021
- *Topo Comparison Exhibit (Sheet 7)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 11/05/2021, last revised 3/16/22
- *Proposed Site Plan (SEA-100)*, Modification to Site 617 North Broadway, prepared by Sound Engineering Associates LLC, dated 12/7/21, last revised 2/11/2022
- *Proposed Site Plan (SEA-100)*, Modification to Site 617 North Broadway, prepared by Sound Engineering Associates LLC, dated 12/7/21, last revised 3/14/2022

**SUBMISSION JUNE 2022**

- *Amended Site Plan*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 6/7/2022
- *Exhibit Showing Added Coverage Areas Beyond Original Approval*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 6/7/2022
- *Slopes Area, Based on Approved Plot Plan (2008)*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 6/7/2022
- *Proposed Slope Remediation with Area of Disturbance*, Chaitin, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 6/7/2022
- *Proposed Site Plan (SEA-100), Modification to Site 617 North Broadway*, prepared by Sound Engineering Associates, LLC, dated 12/7/2021, last revised 3/14/2022

**SUBMISSION JULY 2022**

Email from Robert Knoebel, Esq, dated July 12, 2022 requesting adjournment

**SITE VISIT AUGUST 2022**

Planning Board site visit to Sinnott Property, August 10, 2022

**SUBMISSION DECEMBER 2022**

Email from Robert Knoebel, Esq, dated December 13, 2022 requesting adjournment

**SUBMISSION JANUARY 2023 (TECHNICAL REVIEW)**

*Proposed Site Plan (SEA-100)*, prepared by Sound Engineering Associates LLC, dated 12/7/2021, last revised 1/11/2023

**SUBMISSION FEBRUARY 2023**

Email from Robert Knoebel, Esq. dated February 2, 2023 requesting adjournment

**SUBMISSION MARCH 2023**

Narrative prepared by Jay A. Greenwell, PLS, LLC, dated February 22, 2023

**Plans**

- *Cover Sheet (Sheet 1)*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 2/22/2023

DRAFT

- *Amended Site Plan For Chaitin (Sheet 2)*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 2/6/2023
- *Retaining Wall and Grading Detail (Sheet 3)*, prepared by Sound Engineering Associates, LLC, dated 12/7/2021, last revised 2/6/2023
- *Proposed Wall and Area of Disturbance (Sheet 4)*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022, last revised 2/22/2023

Village Engineer Review Memorandum dated March 14, 2023

**AGENCY COMMENT LETTERS**

Letter from the Rockland County Department of Planning to the Village of Upper Nyack Planning Board, dated April 13, 2021

Letter from the Town of Clarkstown Department of Planning, dated March 29, 2021 finding that the matters is for local determination