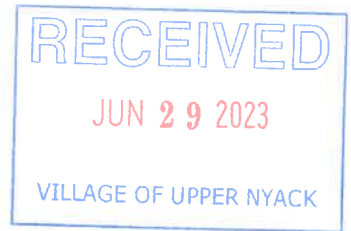


VILLAGE OF UPPER NYACK
ZONING BOARD OF APPEALS

APPLICATION OF GREGORY FISHER
on behalf of
NBROADWAY LLC and 603 NORTH BROADWAY LLC

ADDRESSES: 603 and 611 North Broadway, Upper Nyack NY
TAX SECTIONS 60.10 BLOCK 1 LOT 8 and 10



NARRATIVE SUMMARY
June 29, 2023

The applicant has applied to the Village of Upper Nyack Planning Board for approval of a simple lot merger between the two subject adjacent lots, referred to herein as “Lot 8” and “Lot 10.”¹ The merger would eliminate the existing undersized, landlocked, non-conforming Lot 8, which would be merged into the existing, larger, and improved Lot 10 resulting in significant added lot area to Lot 10. This merger would formalize existing conditions, since Lot 8 has served as the *de facto* back yard to Lot 10 for at least the last 17 years.

However, due to an anomaly in the manner in which the Village Code (as applied here) defines Lot Width, the merger of these two lots cannot be accomplished without a Lot Width variance, as explained in detail below. The variance sought is technical only, as no new development is sought and no changes to the perimeter of any of the lot lines is sought, just the elimination of the lot line between Lots 8 and 10.

A. History and Topography of the Two Lots

Lot 10 is 39,589 square feet and has been improved for many years with a single-family home, a pool, and an accessory cabana. The home faces south and fronts on an easement road that runs from North Broadway eastward down the slope toward the Hudson River. Its side yards are therefore to its east and to its west, and it presently provides over 300 feet of lot width, well in excess of the required minimum of 100 feet.

Lot 8 is an undersized lot measuring just 12,612 square feet. Lot 8 is an anomaly which this application seeks to eliminate. It is undersized, unbuildable, and landlocked.² It was owned for decades by Robert and Doris Clemensen and was contiguous with (although topographically

¹ NBroadway LLC owns Lot 8 and 603 North Broadway LLC owns Lot 10. Gregory Fisher wholly and solely owns and controls both LLCs and he is applying for the relief herein on behalf of both entities.

² Although an approved 1989 subdivision/lot line change involving the north end of Lot 7 contemplated that Lot 8 would be merged into the Clemensens’ adjacent Lot 7, that was never accomplished so Lot 8 has sat as an “orphan” lot of sorts. This application will rectify that and provide a home for Lot 8 where it more properly belongs, as part of the adjacent Lot 10.

distinct from) their adjacent parcel at Sec. 60.10, Block 1, Lot 7, upon which they made their family homestead for decades.

Although Lot 8 was owned by the Clemensens for many years, it is separated visually and topographically from the much higher Lot 7 where the Clemensen house is located. To the rear of the Clemensen home on Lot 7 there is a steep brush-covered slope that drops down approximately 18 to 20 feet before it reaches the adjacent Lot 8 to the east.

In contrast to the absence of any real connection to Lot 7 above, Lot 8 is also directly behind (to the north of) and on the same level as, the Fisher home on Lot 10. Mr. Fisher and the Clemensens have been friends and neighbors for many years. Because of the absence of any substantial usable backyard for Mr. Fisher's house on Lot 10 at 603 N. Broadway, and because Lot 8 is on the exact same level as that Lot 10 house and is directly behind and contiguous to it, Mr. Fisher has been using Lot 8 with the permission and consent of the Clemensens for the last 17 years as the rear yard for Lot 10. Mr. Fisher improved Lot 8 with a lush lawn and elaborate garden and has been exclusively maintaining and using Lot 8 in connection with the home on Lot 10 for almost two decades.

Anyone visiting the Fisher home on Lot 10 would have no clue that the beautiful, lush back yard and garden was on a separate tax lot or that they belonged somehow to any lot or home other than the home on Lot 10. Likewise, anyone visiting the Clemensen home on Lot 7 above can barely even see Lot 8 to the east and below it.

Photographs depicting the current conditions and obvious connection and synergy between Lots 8 and 10 are submitted as part of the application.

Accordingly, with Mr. Fisher (through his LLC, NBroadway LLC) having now recently acquired fee ownership of Lot 8 from the Clemensens, he now wishes to formalize the arrangement and legally merge the two lots, eliminating Lot 8 as a stand-alone lot altogether.

B. The Area Variance Required

The lot line merger requires one technical variance caused by the shapes of the two lots and the way the code defines Lot Width.

Section 2.1.71 of the Village Code defines Lot Width as follows: "The horizontal distance between the Side Lot Lines of a Lot measured at the point where the Lot is the most narrow. ..."

Presently, the Lot Width of the existing Lot 10, as measured per Code, is fully conforming at 301+- feet, since it is measured from the easterly part of the parcel to the westerly part of the parcel (the two side lot lines). However, the addition of Lot 8 to Lot 10 changes the location where the Lot Width is technically measured as required by the Village Code, since it must be measured at its narrowest point, side to side, and Lot 8 is pre-existing nonconforming and is only 74.5' at its narrowest point side to side.

Therefore, we are requesting this technically required Lot Width variance since the new combined parcel would technically provide 74.5 feet of Lot Width, as defined, but 100 feet are required, even though nothing else is changing other than the elimination of the lot line.

C. **The Application Meets the Standards for an Area Variance under NYS Village Law 7-712-b**

This application squarely meets the requirements for the grant of an area variance pursuant to NYS Village Law 7-712-b.

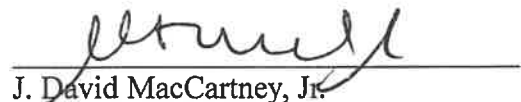
The benefits outweigh any possible detriment to the health, safety, and welfare of the neighborhood or community. There are literally no negative impacts from the granting of the area variance, only positives. All five factors to be considered under NYS Village Law 7-712-b(3) weigh in favor of the grant of the variance sought:

1. No undesirable change will be produced in the character of the neighborhood, nor will any detriment to nearby properties be created by the granting of the area variance. The variance merely confirms existing conditions and a variance is only required due to the technical issue concerning the measurement point of Lot Width under the Code. The merger finally and forever eliminates the odd, undersized, and land-locked Lot 8, substantially increasing the lot area of the resultant Lot 10 in the process.
2. The benefits sought cannot be achieved by any feasible method other than an area variance. The applicant simply seeks to eliminate an existing lot line and there is no other way to accomplish that without a grant of the Lot Width variance.
3. The variance sought is not substantial when viewed in its entirety. The existing lot width of Lot 10 is over 300 feet and that distance is not changing in any way. Likewise, the width of Lot 8 is not changing from existing conditions, and so even though that width is 25.5 feet below the required minimum of 100 feet, that Lot 8 is being absorbed into Lot 10 to create a single, much larger lot. The 25.5 foot width deficit is not substantial in this unique situation, but even if it could conceptually be considered substantial in the abstract, this is mitigated and far outweighed by the net positive of the elimination of Lot 8 and the consequent increase in lot area for Lot 10.
4. There is no conceivable adverse effect or impact on the physical or environmental conditions in the neighborhood or district by the elimination of this lot line.
5. The alleged difficulty was not self-created. Lot 8 is an anomaly that has existed for many decades. That condition was not created by the applicant. To the contrary, the

applicant seeks by this application to eliminate that pre-existing condition and merge that nonconforming lot into the much larger conforming Lot 10.

In summary, the lot line merger proposed herein can only be accomplished via the grant of this technical Lot Width variance. Granting the variance requested to permit the consequent merger of the two lots would most certainly be a net positive for the Village.

Respectfully submitted,



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