

Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, September 15, 2020, 8:00pm
Minutes

A meeting of the Zoning Board of Appeals of the Village of Upper Nyack was held on the above date via videoconferencing in accordance with the Governor's Executive Order 202.1 due to the COVID-19 emergency and called to order at **8:00 pm** by the Chairman, Thomas Englert.

Other Board members present: Stephen Lubeck, Joseph Scarmato and Marion Shaw.

Also present: Noelle C. Wolfson, Esq., Consulting Attorney and Jillana Sinnott, Secretary.

8:00pm: The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on September 8, 2020. The Chairman also reviewed how the Zoom meeting would take place due to the COVID-19 emergency in accordance with the Governor's Executive Order 202.1.

The Chairman spoke about the recent passing of long time Board Member Michael Kuhling. Michael was a dedicated and loyal member of the Board for over 20 years. He made very important contributions to the Board, was a real gentleman, and had a gentle and calming way of speaking, along with his wit. He will be greatly missed. The Board Members expressed their condolences. The Chairman asked for a moment of silence.

8:05pm: Approval of Minutes: Member Stephen Lubeck moved to approve the Draft Minutes from July 21, 2020 as amended; SECOND: Joseph Scarmato; unanimously APPROVED.

8:08pm: Lewis Maresca, 505 Spook Hollow Road, County Map No. 60.09-02-25. Appeal #2020-07.
Said property is located in Residential Zoning District R-4.
The APPLICANT submitted to the clerk the Certificate of Mail receipts of neighbor notification.
The Applicant was represented by Kier Levesque, Architect.

The Applicant requested area variances from the requirements of the Zoning Ordinance of the Village of Upper Nyack for **Article IV, Section 19:2**; minimum livable second floor area and **Article IV, Sections 13:3, 19:1**; two side yard setbacks on an existing single family residence.

The Applicant discussed the submitted plans and the variances needed. The property has two existing non-conforming side yard setbacks. The second floor addition on the south side of 535 square feet does not comply with the 600 square foot minimum for livable area. The Applicant explained that because of the structure of the house it is not possible to get the 600 square foot required area, this is as close as they can get. The Applicant has appeared before the Planning Board on his application for site plan approval for the proposed modifications to the property on several occasions. The Applicant's representative stated that the existing shed will be relocated as depicted on the site plan after the Planning Board approval is granted. The second floor addition will go the Architectural Review Board. No variance for height is needed.

The Board reviewed the application. The Chairman and the Board Members agree that the front view of the house looks unbalanced but this is not something under the purview of the Zoning Board of Appeals.

There were no comments from the public.

MOTION: Member Joseph Scarmato moved to close the public hearing; **SECOND:** Marion Shaw; unanimously APPROVED.

The Board discussed the pre-existing side yard. The second level addition was discussed. The Board is not in favor of the proposed appearance of the exterior of the house after the addition, but the Architectural Review Board will be reviewing the design of the house. Counsel clarified that the proposed second floor addition is not considered a pre-existing nonconforming structure and therefore area variances are required in order to allow that addition to encroach into the required side yard setbacks.

The Board had no further questions.

The CHAIRMAN reviewed the area variance test and the five factors that must be applied (See Village Zoning Ordinance S 17:4, C2).

There will be no undesirable change in the character of the neighborhood. There is no detriment and no neighbors have commented on the application. The variances cannot be achieved any other way as the side yards are existing and the second floor requires a variance. The request of 535 square feet where 600 square feet is required is more than 10% but because of the nature of the proposed variances there will be no substantial impact on the neighbors. The Planning Board and the Village Engineer have reviewed the application and there is no evidence of environmental or physical impact. Yes, this is self-created as the Applicant wants a second level. The benefit to the Applicant outweighs the detriment to the community.

MOTION: The Board moved to approve the Maresca site plan prepared by Kier Levesque, R.A. last revised date of January 27, 2020, for the following variances requested **Article IV, Section 19:2**; minimum livable second floor area from the required 600 square feet to 535 square feet and **Article IV, Sections 13:3, 19:1**; two side yard setbacks from 25 feet required to 22.5 feet proposed on the south side and 25 feet required to 18.4 feet proposed on the north side. This approval is also conditioned on the following: shed on the north side will be relocated to the east side as depicted on the site plan after Planning Board approval, and Architectural Review Board review and approval of the design of the proposed addition is required.

MOTION BY: Joseph Scarmato

SECOND: Stephen Lubeck

VOTE: Unanimously Approved

Other Business:

The Chairman reviewed two GML referrals from the Village of Nyack.

Member Stephen Lubeck recused himself from the Oak Hill Cemetery review

Oak Hill Cemetery, 140 N. Highland Avenue, Nyack, NY 10960, is seeking site plan approval for an accessory building which is greater than 12 feet in height. This is for a communal mausoleum at the top of the hill. The Board had no comments and deemed the application for local determination.

32 Tallman Avenue, Nyack, NY 10960, is seeking site plan approval for the construction of a carport that will provide covered parking adjacent to the dwelling. The Chairman noted that there is a plaque that states that the home is recognized by the Historical Society. The Board deems the application for local determination but will note in the letter that the building was built in 1874 and designated historical.

The Board inquired about the Article 78 decision for Simon. Counsel will get the decision and distribute it to the Board by email.

There was no other business.

The meeting was adjourned at 8:38pm.

Respectfully submitted,
Jillana Sinnott, Secretary