

Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, May 18, 2021, 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, Marion Shaw, Paul Curley and alternate; Meg Fowler.

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

8:09pm: The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on May 13, 2021. 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.

8:12pm: Approval of Minutes will be table to the next meeting as the Board Members were not able to review the changes made in a timely manner.

8:13pm: Peter and Mia Marsh, 661 North Broadway, County Map No. 60.06-01-01. Appeal #2021-01. Continuation from the April 20, 2021.

Said property is located in Residential Zoning District R-1.

The Applicant was represented by Kier Levesque, Architect; Rob Knoebel, Attorney and Peter and Mia Marsh, Homeowners.

The Applicant requested area variances from the requirements of the Zoning Ordinance of the Village of Upper Nyack for **Article V, Section 19:1** and **Article IV, Section 10:4**; Minimum front yard setback (35 feet required, 28 feet, 6 inches permitted per variance granted 6/19/1980, 27 feet proposed) for an existing accessory building on property improved with an existing accessory building on property improved with an existing single family residence. The applicant also requested a modification of a previously granted area variance to permit the use of an accessory building on the property as a pool cabana.

The Chairman, reviewed the application. The Applicant would like to use the tool shed/garage as a pool cabana. The area variances requested are because of discrepancies in what was measured in 1980 when the variance of 28 feet, 6 inches was granted as compared to the 27 feet currently measured and proposed as the existing setback. The floor plans have been revised. The bulk table has been revised to show the accessory building setbacks. The bedrooms have been removed from the interior floor plans. Only the sink and storage cabinets remain in the kitchen. This accessory building will not be a dwelling unit. The Chairman noted that the bulk table still has the wrong date of 2980 instead of 1980.

The Board had no further comments.

The Chairman reviewed the GML recommendations from Clarkstown Planning which deemed the application for local determination. Rockland County Planning's recommendations will be included in the resolution. There was no reply from the Palisades Interstate Park Commission.

The Chairman asked if there was anyone from the public who wished to speak.

There were no comments from the public.

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

The Applicant's attorney, Robert Knoebel noted that the applicant has withdrawn their request that the accessory building be considered a secondary dwelling unit and that henceforth it will only be an accessory building. It will only be used as a cabana/garage and will not be used as a separate living dwelling or be rented out.

The CHAIRMAN reviewed the area variance test and the five factors that must be applied (See Village Zoning Ordinance Section 17:4, (C) (2) regarding the previously approved variance granted on 6/19/1980 of 28 feet, 6 inches permitted where 35 feet is required to the proposed 27 feet.

There will be no undesirable change in the character of the neighborhood. There is no detriment to property values as they are only renovating existing structure. The variances cannot be achieved in any other way as these are pre-existing set-backs and would have to modify the building drastically. The requested variances are not substantial. There is no evidence of environmental or physical impact. The request is self-created as the Applicant purchased the property with the existing conditions. On balance, the benefit to the Applicant outweighs the detriment to the community.

MOTION: The Board moved to grant the following variances for front yard setback depicted on the Marsh Pool Cabana Renovation cover Sheet and First and Second Floor Plan prepared by Kier Levesque, RA, Architect last revised date of April 22, 2021; Variances from **Article IV, Section 10.4 and Article V, Section 19:1**; minimum setback from front yard lot line, where a setback of 35 feet is required, 28 feet, 6 inches permitted per variance granted 6/19/1980 to 27 feet. The Board further moved to modify a condition the original 1962 area variance for the property which limited the use of the subject building to a tool shed/garage to permit its use as a pool cabana. The variances and variance condition modification were granted on the conditions that: (1) The subject building shall be used as a garage and cabana/pool house only and not a dwelling unit, and (2) the applicant shall comply with the comments provided by Rockland County Planning in its letter dated March 30, 2021 as follows: (i) ensure that a review is completed by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code, and (ii) send Rockland county Planning a copy of the final approved plan.. The Board specifically overrides comment 3 provided by Rockland County Planning in its letter dated March 30, 2021 since the applicant has given notice of the application to the Palisades Interstate Park Commission and the Commission has not submitted any response.

MOTION BY: Stephen Lubeck

SECOND: Joseph Scarmato

VOTE: Unanimously Approved

8:33pm: Maria Soraire, 115 Larchdale Avenue, County Map No. 60.05-02-05-01. Appeal #2021-03.

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 Maria Soraire, Homeowner.

The Applicant is requesting a Special Permit pursuant to the requirements of General Ordinance 5.13 of the Code of General Ordinances of the Village of Upper Nyack to keep, harbor or breed chickens located in Residential Zoning district R-4.

Board Member Lubeck noted that the previous owner of the property was granted approval for chickens.

The applicant discussed the request. They have 4 chickens because that is what has hatched. The coop is built on a trailer. The trailer and the fencing will be moved around the property but will always be at least 25 feet from the property line.

Board Member Curley inquired if the fence will be taken up and down with each move and the applicant responded yes, approximately once per week.

MOTION: Member Stephen Lubeck moved to open the public hearing; **SECOND:** Joseph Scarmato; unanimously APPROVED.

Linda Bean, 111 Larchdale Avenue, is in support of the chickens. The property years ago was a farm with cows and chickens and she is glad it will be used for chickens again.

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

The Board had no further questions.

MOTION: The board moved to approve the Special Permit to Maria Soraire to keep up to 6 chickens as pets with the following provisions: 1) the number of chickens is limited to six; 2) there will be no rooster; 3) there will be no excessive noise; 4) the chickens will be penned in the yard at all times; 5) there will be maintenance of clean, sanitary, quite conditions in order to not cause odor nor attract vermin to the neighborhood; 6) no breeding or commercial use is allowable; 7) the chicken coop shall be setback from all property lines by at least 25 feet at all times; 8) this approval is valid for one year at which time the Building Inspector will make a visual inspection. This approval is conditioned on the application obtaining the approval of the ARB for the fencing for the moveable chicken coop.

MOTION BY: Joseph Scarmato

SECOND: Stephen Lubeck

VOTE: Unanimously Approved

Board Member Stephen Lubeck recused himself from the following application and Alternate, Meg Fowler attended.

8:45pm: Trina Hunn and Nick Underwood, 325 North Broadway, County Map No. 60.18-01-35. Appeal #2021-05.

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 Robert Silarski, Architect.

The Applicant is requesting an area variance from the Zoning Ordinance of the Village of Upper Nyack for **Article IV, Section 13:3** and **Article V, Section 19:1**; side yard setback for construction of an addition on an existing single family residence.

The Chairman commented that the addition will stay within the existing setbacks lot line. Thus the existing non-conformities will stay the same. The application was in front of the Planning Board in April and received approval from the Architectural Review Board in May.

Board Member Meg Fowler noted that the bulk table shows the square footage as 188 square feet and it should be 288 square feet for the first and second floor. The applicant will change the plan accordingly.

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

There were no public comments.

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

The Chairman reviewed the GML response from the Rockland County Planning Board, which deemed the application for local determination.

The Board had no further questions.

The CHAIRMAN reviewed the area variance and the five factors that must be applied (See Village Zoning Ordinance Section 17:4, (C) (2) regarding the applicant's request for a minimum side yard setback variance where 25 ft. is required and 16.2 feet at the proposed addition is proposed.

There will be no undesirable change in the character of the neighborhood. There is no detriment to property values. The variances cannot be achieved in any other way given the non-conforming dimensions of the lot and the existing building. The variances requested are not substantial given the circumstances. The variances requested will have no substantial impact on the neighbors as they have a substantial yard. There is no evidence of environmental or physical impact. The request is self-created as the Applicant wants a second floor addition. On balance, the benefit to the Applicant outweighs the detriment to the community.

MOTION: The Board moved to grant the following variances for an addition to the Hunn/Underwood residence as depicted on the site plan by S&Co, Architecture, last revised date of April 30, 2021; Variances from **Article IV, Section 13:3** and **Article V, Section 19:1**; minimum setback from north side yard lot line, where a setback of 25 feet is required, to 16.2 feet.

MOTION BY: Joseph Scarmato
SECOND: Paul Curley
VOTE: Unanimously Approved

There was no other business.

The meeting was adjourned at 9:00pm.

Respectfully submitted,
Jillana Sinnott, Secretary