

**Village of Upper Nyack  
Zoning Board of Appeals Meeting  
Tuesday, March 26, 2019, 8:00pm**

***Minutes***

A meeting of the Zoning Board of Appeals of the Village of Upper Nyack was held on the above date and called to order at **8:00 pm** by the Chairman, Thomas Englert.

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

**Also present:** Robert P. Lewis, Village Attorney and Jillana Sinnott, Secretary.

**Others in attendance:** Hilarie Blumenthal, Meave Tooher, Michael Barna, Morton Korn, Alfred Tonelli, Jen Hatch, Sue Smith, Richard James, Kim Coons, Carolyn Cohen, Kenneth Graefe, Matthew Graefe, Nicholas Graefe, Fran Marton, Jerry Marton, Jerry Marton, David Cantor, Vincent Piazza, Walter Karopczke, Elizabeth Cantor, Paul Collins, Steve Crowley, Joanne Howard, Ben Falchuk, Laura Appelbaum, Fritz Krieger, Mick Ley, Donald Tracy and Christopher Arrigani.

**8:00pm:** The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on March 19, 2019.

Vice Chairman Stephen Lubeck asked the Board for an Approval of the Minutes which he chaired on January 15, 2019.

**8:01pm:** Approval of Minutes: Member Joseph Scarmato moved to approve the Draft Minutes from January 15, 2019 as amended; SECOND: Michael Kuhling; unanimously APPROVED.

**8:03pm:** Chairman Englert reviewed what is in front of the Board. The only issue is the Stop Work Order by the Code Enforcement Official for the new crane. Any other issues should be addressed to the Planning Board. Public comments will be limited to three minutes. All questions should be addressed to the Board and not the Applicant.

The Chairman asked the Board Secretary to read aloud the letter dated March 21, 2019, written to Chairman, Tom Englert, Vice Chairman, Steven Lubeck and the Zoning Board of Appeals Board Members from Roy Wanamaker the Code Enforcement Official.

**8:20pm: Van Houten Holding Corp., 1 Van Houten Street, County Map No. 60.18-01-13. APPEAL #2018-04.**

Said property is located in Marine Business District (MB).

The APPLICANT submitted to the clerk the Certificate of Mail receipts of neighbor notification.

Request to Appeal the decision of the Code Enforcement Official for issuing a Stop Work Order to the Applicant.

The Applicant was represented by Donald S. Tracy, Attorney at Law and Kenneth Graefe, of Van Houten Holding Corp. dba North River Shipyard.

The Applicant's attorney addressed the Board, see Exhibit "A" page 25, line 5 through page 37, line 5 attached.

The Chairman questioned the Applicant about how many cranes are on the property currently and their heights. Mr. Graefe replied that there are two cranes, one 120' and the new one which would have a maximum height of 160' if fully raised, but it is left at a 45 degree angle. This crane has an American flag on it. Member Shaw asked if the taller one has been used and the Applicant stated it had been used last Saturday.

The Chairman asked the Applicant why the crane was needed. Mr. Tracy requested that the Applicant not respond to the Chairman.

Members Kuhling and Lubeck questioned why there were the two cranes shown on the site plan when the Special Permit was approved but the Applicant is stating that there are only two now.

The interpretation of §15:1 (b) (3) (d) from the Code Enforcement Official's letter was reviewed setting forth the criteria for the issuance of a Special Permit. The letter stated that even though the Planning Board decided that machinery is not a structure it would still have to be evaluated for hours of use, site impact and impact of the surrounding neighborhood. The Chairman observed that the Planning Board has such authority under the cited section of the Code and had previously put conditions and standards on other pieces of heavy or noisy equipment.

The BOARD listened to comments from the public.

**Paul Collins, 8 Van Houten Street**, questioned why the Applicant is allowed to work through the Stop Work Order. The Chairman responded that this topic was not going to be addressed as it is an enforcement question.

**Rich James, 315 North Broadway**, noted that the shipyard activities have increased. His children can't go outside to play because of the odors at times. The 200' crane makes him alarmed. Mr. James submitted a petition asking the ZBA to uphold the Building Inspector's properly issued Stop Work Order signed by 151 residents. The petition was read aloud.

**Meave Tooher from Tooher & Barone, LLP representing Goosetown Environmental** addressed the Board stating as follows:

- i. The ZBA has the obligation to enforce any action in defiance of a Stop Work Order as it is in violation of the Zoning Code.
- ii. There are two cranes, one on a barge which should require a Special Use Permit. Storing pieces of the new crane is a violation.
- iii. §15.1 (c) requires a modification to a Special Permit because the crane is considered an accessory use. A drawing, including photos was submitted to the Board of the crane on the property showing increases in its use.
- iv. The shipyard owner did not go to the Planning Board prior to installing the crane, he is now in violation of the Zoning Code.
- v. The Stop Work Order was issued in October 2018 and the building of the crane was started two weeks ago.
- vi. If the Applicant needs modifications to the Special Permit he should return to the Planning Board.

The Chairman asked how tall the crane is. The Applicant responded that it is 160' and they are not using the other pieces.

**Fred Tonelli, 310 Ellen Street**, the cranes are a huge visual impact.

**Hilarie Blumenthal, 300 Ellen Street**, would like to know how we can be assured that the two pieces that the Applicant is storing are not going to be put on the crane. Will the Applicant be using the crane to add more boats to the south side? If so will this exceed what he is allowed to do?

**Suzanne Smith, 311 North Broadway**, stated that the visual affect is stunning, not in a good way and overpowering.

Member Lubeck spoke see Exhibit "B" page 75, line 5 through page 76, line 14 attached.

Vice Chairman Lubeck thinks that the standards and conditions should be imposed and the Applicant should return to the Planning Board. The process was done in 2015 for the Travel Lift.

Member Kuhling states he is unsure that he is able to make a decision without being more familiar with the supporting documents that the Planning Board used to make a decision to approve the Special Permit.

Member Scarmato stated that while he believed that any boatyard should be allowed to have a crane as a necessary tool to do its business, the magnitude of the crane should be regulated and determined by the Planning Board.

The Village Attorney reviewed the 1969 Linder versus Freeport case with the Board. A Stop Work Order was issued and the Village tried to enforce it before the Zoning Board of Appeals made a decision on the stop work order. The court held that the Village of Freeport could not enforce the stop work order until the Zoning Board of Appeals made a decision. The Village of Upper Nyack has not tried to enforce the Stop Work Order. The Applicant is stating that there is a stay on the Stop Work Order until a decision is made by the Zoning Board of Appeals.

The Board moved to close the public hearing as follows:

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

The Chairman asked if the Board was ready to uphold the stop work order and send the Applicant to the Planning Board

There were no further comments from the Board.

**MOTION:** The Board moved to sustain the Stop Work Order issued by the Code Enforcement Official on October 24, 2018. The BOARD requested the Village Attorney to prepare a Draft Resolution to be approved at the next meeting on April 16, 2019.

**MOTION BY:** Stephen Lubeck **SECOND:**

Joseph Scarmato

VOTE: Unanimously Approved

There was no other business.

The meeting was adjourned at 9:30pm.

Respectfully submitted,  
Jillana Sinnott, Secretary