

**Village of Upper Nyack  
Zoning Board of Appeals Meeting  
Tuesday, June 18, 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 **8:12 pm** by the Chairman, Thomas Englert.

**Other Board Members present:** Stephen Lubeck, Marion Shaw and Michael Kuhling.

**Also present:** Robert P. Lewis; Village Attorney, Roy Wanamaker; Village Code Enforcement Official and Jillana Sinnott; Secretary.

**Others in attendance:** Elizabeth Cantor, Fran & Jerry Marton, Maureen Aiad, Karen Arent, Donald Tracy, ESQ., Jonathan Hodosh, Sarah Hollerman, Kenneth C. Graefe, Chris Arligen, Nick Graefe, Matt Graefe, Christine Hogerty, Sue Smith, Jen Hatch, Jakub Bartnik, Kim Coons, Meave Tooher, Hilarie Blumenthal, Marisol Simard, Eileen Kuster-Collins, Paul Collins and Art Gunther.

**8:12pm:** The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on June 11, 2019.

**8:17pm: Maureen Aiad and Jakub Bartnik, 619 North Midland Avenue, County Map No. 60.05-02-26. Appeal #2019-03.**

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

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

Request the following variances from the requirements of the Zoning Ordinance of the Village of Upper Nyack for **Article V, Section 19:1**; Minimum setback from side yard and **Article V, Section 19:2**; Maximum Coverage by Buildings and structures for an in-ground pool located in Residential Zoning District R-1.

The APPLICANT was represented by Karen Arent, Landscape Architect and Maureen Aiad and Jakub Bartnik, Homeowners. The Applicant would like to install an in-ground swimming pool that will align with the addition on the house. They will be taking down maple trees and feel there is enough screening in the back already. A 6' high fence will be installed. A tanning pool 1' deep will be for lounge chairs. A variance is needed for the lot coverage from 20% allowed to 24.4%. A variance is also needed for the side yard setback from the required 30' to be equal to the previously granted variance of 27' for an addition to the house.

The Board discussed and reviewed the variance requests. The Board reviewed the Village Engineer's report from the Planning Board meeting to see if all the items on the report have been addressed.

There were no comments from the public.

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

The **CHAIRMAN** reviewed the five conditions for area variances (S 17:4, c2) of the Village Zoning Ordinance.

There will be no undesirable change in the character of the neighborhood. The requested variance for the side yard setback is in keeping with the 27 feet granted previously for an addition to the house. The variances for side yard setback and impervious surface will not impact on the character of the neighborhood. After review of the Village Engineer's report indicates the variances requested will not have any environmental impact. Over all the benefit to the Applicant outweighs the detriment to the community.

**MOTION:** The **BOARD** moved to approve the following variances, **Article V, Section 19:1;** variance from the required minimum side yard setback of 30' to the current 27' and **Article V, Section 19:2;** Maximum Coverage by Buildings and structures from the required 20% to 24.4% for an in-ground pool on an existing single family residence by Karen Arent Landscape Architect, dated last revised 5/28/19. Applicant must return to the Planning Board for approval.

**MOTION BY:** Marion Shaw

**SECOND:** Stephen Lubeck

**VOTE:** Unanimously **Approved**

**8:28pm: Van Houten Holding Corp., 1 Van Houten Street, County Map No. 60.18-01-13. APPEAL #2019-02.**

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 Building Inspector for a Notice of Violation – Order to Remedy

**8:28pm:** Chairman Englert reviewed the request to appeal before the Board. The only issues to be reviewed by the Board are the Notice of Violation – Order to Remedy issued by the Building Inspector on March 20, 2019 finding that the Property is being operated in a manner that is not in compliance with the amended special use permit and site plan approval issued for the property by the Planning Board of the village of Upper Nyack in 2015 in violation of Sections 3:2, 15:1(b) and 15.85.1 of the Zoning Ordinance of the Village of Upper Nyack, and requesting an interpretation that the Property is in compliance with such approval. The Property that is the subject of this appeal is located in the Village's Marine Business District (MB).

The CHAIRMAN asked the SECRETARY to read the Violation Notice from the Building Inspector.

The SECRETARY read the Violation Notice.

The Applicant represented by Mr. Donald Tracy, ESQ. made a preliminary statement. When the Building Inspector requested an updated survey Mr. Tracy did not think it was necessary but the Applicant obtained one. The Building Inspector compared it to the approval of 2015 and noted the violations. The two prior special permits granted in 2010 and 2015 preserve nonconforming uses that are still in effect. The Building Inspector said there are three things that the Applicant can do. Go to the Planning Board, the Zoning Board or lose the Special Permit. Mr. Tracy said that they can't go back to the Planning Board because in the Village's Zoning Ordinance there is a provision that says that the Planning Board can't receive any applications with violations. In other municipalities you have so many days to cure the violation and after that you could be brought to court. In this Village the Building Inspector relies on the Zoning Board of Appeals. Mr. Tracy would like the Board to remember a few things, such as the site is still under construction and the preservation of the nonconforming uses from the Peterson boatyard. Mr. Tracy would also like to note that as stated by the attorney for the residents, the boatyard is located next to a residential community, but really the residential community is next to a boatyard. The boatyard was there first. The wash pad is not in the wrong place, it has not been built yet. The Applicant has renewed four permits and paid the fees. The Applicant is waiting for the go ahead. The Village Engineer responded today concerning the height of the large building to be constructed.

Mr. Tracy turned the responses over to Mr. Jonathan Hodosh, the Architect for the Application and Sarah Hollerman, from the Hodosh office to answer the alleged violations.

Mr. Hodosh stated that the five elements from the original violation of March 20<sup>th</sup> do not match the letter that was received on June 13<sup>th</sup> from Mr. Wanamaker. In the letter there are references to the crane and other items that were not part of the original notice of violation of March 20<sup>th</sup>. Mr. Hodosh would like to know which correspondence will be the one we are going to discuss.

After discussing with the Village Attorney the BOARD responded that we are not here to talk about the crane. We will only be discussing the notice of violation.

Mr. Hodosh sent a letter on April 10<sup>th</sup> to the Building Inspector to address the five issues with clarifications and how they feel they are either not out of compliance or how the issues have been resolved. The letter was written to more fully understand the violations The Building Inspector response did not address Mr. Hodosh's letter in any way. Mr. Wanamaker responded with the three choices again. Mr. Hodosh would like to go through each violation.

The first item Mr. Hodosh discussed was what is being alleged to be the wash pad is actually an area that was paved with blacktop and has been repaved with concrete. The surface area is still the same. Mr. Graefe stated that there is a 5,000 gallon runoff tank that is pumped out, monitored and the runoff is trucked off the site. It is part of the Storm Management System, which keeps the storm water from going where it shouldn't. Samples are taken and submitted to the DEC. The numbers submitted are in compliance. This is a containment area not a wash area. The wash area has not been constructed yet, it has an open permit which was renewed. Mr. Graefe explained how the system works to keep the water that is discharged to the river clean.

The second item Mr. Hodosh discussed was the parking that is alleged to be occurring in locations that have not been approved for parking. The Applicant has padlocked the gate and marked it with signs saying that the area must be kept clear. "No Parking" signs have been posted on the east side of the fence, so the easement is clear. The Applicant feels that this issue has been addressed and resolved.

The third item Mr. Hodosh discussed was the storage of boats. According to note #7 on the approved site plan for the 2015 Special Permit, parking can take place where needed. The boat in question is not in the parking area. It is where the boat rack used to be. The parking area is not striped because construction is still going on. When the construction is complete the striping will occur.

The fourth item Mr. Hodosh discussed was the storage of materials on the site. This is a working shipyard and it would be impractical to move all the equipment and materials indoors daily when they are being used on active projects. Mr. Hodosh pointed out that the day to day activity in the shipyard is a continuation of preexisting uses in effect since the date of adoption of the local zoning law revision 15:1(b) of the Village zoning ordinance. The resolutions from 2010 and 2015 note that it is further resolved that the Planning Board recognizes the ongoing uses of the shipyard for dock building and marine construction operations which are preexisting nonconforming uses that are being continued at this time. Mr. Hodosh reviewed with the Board which uses are solicited on Drawing AO3A, dated 7/6/10, Items B and C. The Planning Board resolution gave latitude in the parking and the placement of boats and equipment. When the large building is completed it will store a lot of what is now being stored outside. The 2015 resolution also noted a shipyard requires a certain amount of latitude to store equipment and boats.

The fifth and final item Mr. Hodosh spoke about was the mobile lift being stored in a location other than designated. Mr. Hodosh reviewed that the 2015 resolution note #8 says that the mobile lift should be stored in the northwest side if it is available. This is a working shipyard and they try to be compliant when reasonably possible. The striping will be done when the construction of the building is done. They will still have the flexibility to park as noted in the site plan notes.

The Chairman questioned when the large building would be completed. Mr. Hodosh responded that six weeks ago they submitted a drawing for Mr. Wanamaker's approval regarding the height

of the building and how it is calculated. Mr. Hodosh said Mr. Wanamaker said it looked ok to him but he would have to show it to Mr. Letson, the Village Engineer. Mr. Hodosh said they just received the answer from Mr. Letson this morning. Mr. Hodosh said they are anxious to get the building built but are not the ones delaying it, they need the Village to work with them.

Member Lubeck, questioned why the last site plan approval was in 2015 but the wash pad has still not been constructed. Mr. Graefe described the procedure used that was approved by the DEC. The boats are not washed on the ground, it is done on filter fabric which is approved by the DEC. Mr. Graefe stated that the wash pad will go in but these things cost money and there have been some setbacks with a hurricane and other things. When money is made it is invested back into the shipyard. Mr. Graefe said that after the building is built and they can start storing things and working on boats in there, they hope to put in the wash pad, which he hopes will be next year. Mr. Graefe spoke about the tank in the ground and how eventually the water will go into a recycling system so that it can be reused.

The BOARD did not have any further comments at this time.

The BOARD listened to comments from the public.

**Maeve Tooher, with Tooher and Barone, representing Goosetown Environmental** submitted a letter to the Board regarding the points made by Mr. Wanamaker

Mr. Tracy said that he could not hear Ms. Tooher speaking. The Board asked her to move to face the audience more instead of the Board.

Ms. Tooher said that we are here to speak about the violations issued not the Non-conforming use that Mr. Tracy spoke about.

Ms. Tooher said that the wash pad that was built is not what was on the plans that were submitted and is in a different location than depicted on the plan. The Applicant stated that the numbers given to the DEC are good but it should be submitted to the Board for their review instead of just telling us.

Ms. Tooher noted that the parking is designated on the plan and the Applicant has chosen not to comply. The shipyard is not a construction project it is an operating business and the parking should not be overlooked. Ms. Tooher noted that there is a certain time frame in the Village's code to comply with a site plan. The time elapsed has been over 4 years and they have not built the wash pad or parking spaces and boats are not being parked where they should be. Ms. Tooher noted that the code says that equipment cannot be publicly exposed to the neighbors.

Ms. Tooher noted that the mobile lift has three locations that they don't use and it blocks the neighbors' views.

Ms. Tooher said there is lots of explanation from the Applicant as to why the designated areas for the parking spaces, mobile lift and storage areas for the ships are not available, they have created their own hardships.

Mr. Tracy responded that the Special Permit of 2015 doesn't say that there are three locations. It just says that it should go in the northwest corner and if not available it doesn't say it must go

somewhere else. Mr. Tracy noted that we are here to speak about the violations from the Building Inspector, one of them being that the wash pad was put in the wrong place but the Applicant has not yet built the wash pad so how can it be a violation? Mr. Tracy spoke about the striping for the parking. Generally you don't do that until the construction is done. Mr. Tracy notes that the Application for the 2015 Special Permit was made in October of 2014 and did not get approved until six months later. Mr. Tracy spoke about the Article 78 that was filed on the ruling regarding the crane violation that is now in the Supreme Court and how the Building Inspector mentioned it in his letter to put a black mark against the shipyard. The Building Inspector cannot be sued because the Zoning Board made the determination, this should not be what the Zoning Board does. Mr. Tracy thinks that the Building Inspector should take the Applicant to court and not just give it to the Zoning Board of Appeals.

Mr. Hodosh noted that the wash pad has not been built, it is part of an open permit.

**Hilarie Blumenthal 300 Ellen Street**, noted that the plans were an important part of the approval for a Special Permit. Ms. Blumenthal has witnessed parking all over and there are too many boats. Ms. Blumenthal noted that the lift sometimes blocks the driveway. Ms. Blumenthal said that when the boats are sandblasted it goes all over. Ms. Blumenthal has witnessed boats being worked on at the waters and properties edge. Ms. Blumenthal questioned whether this is allowed by the DEC. Ms. Blumenthal would like the Stop Work Order by Mr. Wanamaker to be upheld. Photos were submitted to the Board for the record.

Mr. Hodosh responded that the Applicant has the option to park wherever they need to according to the site plan. Mr. Hodosh said that the Planning Board made sure that those notes were included on the site plan. Mr. Hodosh submitted photos from the 1990's, 2004 and 2007 of the shipyard before Mr. Graefe bought the property. Mr. Hodosh noted that it wasn't like there were no boats on the property previously.

**Mort Korn, 6 Van Houten Avenue**, questioned if the time frame that an Applicant has to complete the Special Permit is one year or the Special Permit becomes null and void.

The Board responded to the question. Mr. Kulhing noted that it was mentioned in the Building Inspector's letter that the Special Use Permit will expire if conditions are not substantially completed within one year from the date of issue. Mr. Lubeck questioned where the building permit had expired. Mr. Wanamaker said they did let it expire but they recently renewed it. There was a discussion by the Board on why the Applicant let the permit expire. The Chairman noted that it was getting off the topic of the violations as we are not here to discuss the Special Permit.

Mr. Graefe, the shipyard owner noted that nobody is forcing him to build the proposed wash pad or building. Mr. Graefe stated that he must perform business legally. Mr. Graefe stated that he came to the Village with a wish list of what he might need as he knew future business could require it in the upcoming years.

**Fran Morton, 4 Castle Heights Avenue**, stated that it is non-conformance to the permit. Ms. Morton noted that in some ways she wanted the boatyard to succeed. Ms. Morton said when the permits in 2010 and 2015 were granted, Mr. Graefe represented himself as a concierge boatyard that would accommodate to people. Ms. Morton said that in 2014, Mr. Graefe asked all the

pleasure boat owners to leave and she feels this was a misrepresentation. Ms. Morton lives near the northwest corner and it is rare that the mobile lift is there but many larger boats are parked there instead almost 60% of the time. Ms. Morton noted that Mr. Wanamaker and the Board represent the Village of Upper Nyack and she looks forward to them to having done their job in representing us.

Mr. Hodosh noted that if the Planning Board saw the larger boats prior to 2015 on their visit they would have already known what was going to be there.

The Chairman noted that the discussion was getting away from the violations that they are here to discuss.

**Eileen Kuster-Collins, 8 Van Houten Street**, spoke about the exception that Mr. Hodosh keeps bringing up that the boat lift can be anywhere. Ms. Kuster-Collins noted that exception is for an exceptional circumstance not as it is being used as an exception to the rule. Ms. Kuster-Collins noted that they are using this a loophole as there are many time that the parking areas are not being used by a boat or the lift is not being used.

Mr. Hodosh noted that note #7 states that parking of actual vehicles and placement of boats can vary depending on the logistical consideration to grant the shipyard flexibility.

**Paul Collins, 8 Van Houten Street**, questioned the equipment storage, he thought only boats and racks where allowed. Mr. Collins noted that the crane can be laid over every night.

The Chairman noted that crane is not one of the topics we are discussing.

**Susan Smith, 311 North Broadway**, noted that the south end of the shipyard is being used for storing materials, sometimes neatly sometimes not neatly. Ms. Smith said at one point for six weeks there was a pile of scrap metal laying here which was not nice to look at.

Maeve Tooher brought up provisions of the code 15:85 and 15:85(b) regarding a permit expiring within one year of issue. The Chairman noted that it is beyond the scope of what is being discussed. The Chairman noted that we are not here to discuss Mr. Wanamaker's letter in its entirety, the Board is addressing the notice of violations.

The BOARD discussed each violation.

The wash pad approved in 2015 has not yet been constructed according to the Applicant so it is not in the wrong place. The Applicant states that if the wash pad is constructed it will be in the place depicted on the approved site plan. The violation is for putting the wash pad in the wrong place but if it is not constructed this would not be a violation.

The violation for parking on the property occurring in areas that have not been approved for parking and blocking the Village easement for the sewage pump station. The Applicant has posted no parking signs and added a padlock to the gate. The Board does not see this as a violation as it has been addressed.

The violation for the storage of materials and boats outside on the property was discussed. In the Special Permit the Applicant was given flexibility as to where he could store such items. This is a working shipyard so there will be materials and boats on the property. Given the flexibility noted in the Special Permit and the fact that the site is a working boatyard and is under construction the storage of materials and boats on the site is not considered a violation.

The violation for the storage of the mobile lift in a location other than as designated on the approved plans was discussed. The northwest corner is to be used if available on one site plan but on the other plan it has three different locations but it is not verbalized in the resolution. The Board does not think it is clearly noted where the mobile lift can and cannot be parked. Member Kuhling felt option two of the designated areas in front of the entrance could cause a problem. The Applicant stated that the mobile lift is not ever left in front of the entrance overnight, they try to put it out on the furthest part of the travel lift pit so it won't interfere with the view of the neighbors, which is not in the Village's jurisdiction. Ms. Blumenthal differed with Mr. Graefe and said the lift and boats are parked in front of everyone's house 90 percent of the time. Mr. Collins said the crane has been in front of his house for over three weeks.

The BOARD discussed that, in general, at the time violations are noted they should be reported and the Building Inspector should act on them immediately to have them remedied.

The BOARD discussed closing the public hearing.

Member Shaw questioned where the mobile lift is allowed to be parked. There was a discussion regarding the location, if it is available it should be parked in the northwest corner but it is not written in the Special Permit where it should be if that area is not available.

**Kim Coons, 6 Van Houten Avenue**, wants to know who decides what is practical and what is available to park the lift.

The Chairman asked the Board if they were ready to make a decision.

Member Lubeck noted that the issues have been remedied but that if violations occur again the Village needs to make sure they are remedied as soon as possible. The Village should make sure that the Applicant sticks to being a good neighbor and adheres to the rules.

Mr. Wanamaker spoke about the lack of parking spaces being laid out per the approved 2015 site plan.

Member Lubeck noted that the permit is still open.

Mr. Hodosh noted that the violation doesn't speak about the permanent spaces being marked, only the letter from the 13<sup>th</sup> mentions that and we are only here to speak about the violations. The



public should read the 2010 and 2015 approvals as there seems to be some misconceptions, which are leading to misunderstanding and miscommunication.

Ms. Blumenthal noted that the visuals were a big part of the approval process.

The Chairman agreed with Mr. Hodosh that the violations only states parking on the property.

There was discussion regarding the easement that the Village has for the sewer system and not an ingress or egress for the shipyard. The Board could not find on the approval how the shipyard has to comply for the driveway. The shipyard is no longer using the area for parking so it is no longer a violation.

Mr. Hodosh noted that in the March 20<sup>th</sup> violation letter the last paragraph says if you do not correct the violations, there is no time limit, it just says by April 22<sup>nd</sup>. The Applicant corrected the violations.

The Chairman understood the letter the same way, if they remedied the violation that there is no longer a violation.

Mr. Wanamaker spoke about the how the parking is violating the site plan approval. Mr. Hodosh said note #7 supersedes it. Mr. Hodosh noted that the striping for the parking is not one of the violations.

Member Kuhling noted that he does not see any note that says that the parking needs to be marked out with striping, it is only seen graphically.

Mr. Hodosh noted it is still an open permit.

Mr. Wanamaker said it was on the last visit to the Planning Board and showed the Board a drawing to the Board that they should have received.

Mr. Hodosh noted that it is a construction site and you don't stripe a parking lot while you still have work going on.

Mr. Hodosh noted that there was no violation issued for the striping, only parking.

Member Kuhling reviewed note 7 again regarding that actual parking may vary depending on logistical considerations.

After some discussion the Board did not feel the need for more information. They will once again review the violations.

The Board moved to close the public hearing as follows:

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

- The Chairman reviewed the violations. The wash pad approval pursuant to the 2015 approval was constructed in a location on the Property that is different from the location depicted on the Approve Plans.

The Board agreed that the wash pad has not been constructed yet as per the Applicant. Therefore there is no violation.

- Parking on the Property is occurring in locations that have not been approved for parking, including within an area that blocks a sewer access easement which runs in favor of the Village.

The Chairman noted that the easement parking issue has been corrected. Member Kuhling spoke about note #7 on the approved site plan. There was a discussion on whether it was a violation because the Applicant did put up “No Parking” signs and padlocked the gate before the date issued by the Building Inspector to remedy the violation. The Building Inspector agreed that it was done by that date. The Applicant can’t stripe the parking lot if it is still under construction. The Board agreed that there was a violation but it had been remedied by the date required, therefore there is no current violation.

- Boats are being stored in locations designated for vehicular parking on the Approved Plans.

The Chairman noted the clause in the 2015 Special Permit note #7 that said boats could be parked as needed in different locations based upon logistical consideration.

- Use of Van Houten access to Village of Upper Nyack Easement for ingress and egress to North River Shipyard, which is not designated to meet safety standards for ongoing uses.

The Chairman noted that this violation was fixed in the correct timeframe.

- Equipment and materials are being stored outdoors in violation of the village Zoning Law, which only permits the outdoor storage of boats and boat trailers in the Marine Business District (see Village Zoning Code Section 15:1(b)).

The Board discussed that the Applicant stated that when the building is built it will be able to store some of the boats and equipment inside. The Board is not sure how he can be limited regarding storage of items outdoors.

There was an outburst of comments from the public. The Chairman stated that the public hearing had been closed.

Member Lubeck told the Board that the Special Permit conditions were issued by the Planning Board not the Zoning Board of Appeals.

The Board does not see anything specific about where storage should be until the building is built.

- Storage of the mobile lift in a location other than as designated on the Approved Plans.

Member Kuhling noted that there is leeway regarding where the mobile lift can be stored as discussed earlier. The Chairman noted that the Applicant is trying to keep it out of the neighbor's site line.

The Chairman asked the Village Attorney, Robert Lewis what should be done now that the Board has decided that none of the items really qualify as violations.

Mr. Lewis will write up a decision and then the Board would have to approve it at the next Zoning Board of Appeals meeting.

The Chairman requested a motion from the Board for Mr. Lewis to write a decision.

Mr. Lewis reviewed with the Board, that what they are requesting him to write, is a decision by the Zoning Board of Appeals, that the violations have been remedied during the required time period set forth by the Building Inspector.

The Board moved to deny the violations set forth by the Building Inspector against Van Houten Holding Corp. and requested that the Village Attorney, Robert Lewis write a resolution to be approved at the next meeting on July 16, 2019.

**MOTION BY:** Stephen Lubeck

**SECOND:** Michael Kuhling

**VOTE:** Unanimously Approved

**10:13pm:** Approval of Minutes: Member Michael Kuhling moved to approve the *Draft Minutes* from May 21, 2019 as amended; **SECOND:** Marion Shaw; unanimously APPROVED.

There was no other business.

The meeting was adjourned at 10:15pm.

Respectfully submitted,

Jillana Sinnott, Secretary