**Village of Upper Nyack**

**Zoning Board of Appeals Meeting**

**Tuesday, May 19, 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, Marion Shaw and Michael Kuhling.

**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 May 12, 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 welcomed Noelle C. Wolfson, Esq. as the new Consulting Attorney for the land use boards.

**8:00pm**: Approval of Minutes:Member Stephen Lubeck moved to approve the *Draft Minutes* from *September 19, 2020* as amended; SECOND: Joseph Scarmato; unanimously APPROVED.

# 8:01pm: Majid Bozorgomid, 312 North Midland Avenue, County Map No. 60.17-01-18. APPEAL

**#2019-04**.

Said property is located in Residential Zoning District R-4.

The Chairman read into the record a Resolution, prepared by former Village Attorney, Robert Lewis, affirming the denial of the Building Inspector to issue a building permit for an interior renovation as a two family residence located in Residential Zoning District R-4.

**MOTION:** The Board moved to approve the Resolution of the Village of Upper Nyack Zoning Board of Appeals for Appeal #2019-04 affirming the Building Inspector’s decision to deny a building permit for an interior renovation as a two family occupancy for the Bozorgomid application.

**MOTION BY:** Stephen Lubeck

**SECOND:** Joseph Scarmato

**Unanimously Approved**

**8:15pm:** **517 North Broadway, LLC, 517 North Broadway, County Map No. 60.10-01-19. Appeal #2020-01.**

Said property is located in Residential Zoning District R-2.

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

Request to appeal the decision of the Building Inspector’s rejection of the application to install a new summer kitchen in a single family residence.

The APPLICANT was represented by Kyle Cauwenberghs of Montana Contracting, Joe Thompson, Architect and Raz Tirosh, Homeowner. The applicant would like to install a second kitchen on the lower level of the house which includes the pool and play area. The house is 4 levels with the current kitchen on the top floor. This second kitchen will not change the use of the home, it will only facilitate entertainment. The homeowner is willing to sign a document stating that the kitchen is for entertainment purposes only.

The Board discussed the application. Member Lubeck noted that carrying food down three levels would be hard and he does not see this house becoming a two family. Member Kuhling would like to see photos to better visualize the application.

The Applicant showed via Zoom the layout of the room. The pool is thirty to forty feet from the house. The ground floor once had a bar but now is mostly a large open play area for the children. The Architect showed where on the plan the kitchen would be. The fourth level is the ground level where the pool is. The proposed kitchen is on the interior back wall.

The Chairman noted that if permission were granted to install the second kitchen the approval would need to include a covenant restricting use of the house to a single family residence. The Village’s Consulting attorney noted that the Village has previously requested covenants that were filed with the Rockland County Clerk.

The Board had no further questions.

The Board listened to comments from the public.

**Martin and Lois Shulman, 518 North Broadway** was worried that the new kitchen would be an external structure and that it might block their seasonal view. He sees now that this is not the case.

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

The CHAIRMAN reviewed the five conditions for use variances (S 17:4, b2) of the Village Zoning Ordinance.

There will be no undesirable change in the character of the neighborhood. The request for a second kitchen cannot be achieved another way because zoning code has restrictions on second kitchens. The request is not substantial as it is internal and will not be visible. There will be no environmental impact as it is an internal kitchen. Yes, this is self-created as the Applicant wants a second kitchen. The benefit to the Applicant outweighs the detriment to the community.

The Board reviewed the GML recommendations from the Rockland County Planning Board which deemed it for local determination.

**MOTION:** The Board moved to approve the request for a second kitchen for 517 North Broadway, LLC, provided the Applicant record a Restrictive Covenant in the Rockland County Clerk’s office providing that use of the premises is limited to a single family dwelling, the form and content of which shall be reviewed and approved by the Village’s consulting attorney. The Applicant shall pay all recording fees associated with the recording of the above-referenced covenant.

**MOTION BY:** Stephen Lubeck

**SECOND:** Joseph Scarmato

VOTE: Unanimously Approved

**8:30pm:** **649 North Broadway, LLC, 649 North Broadway, County Map No. 60.06-01-05.01. Appeal #2020-03.**

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 a variance from the requirements of the Zoning Ordinance of the Village of Upper Nyack for **Article V, Section 19:2**; Minimum coverage of Lot by Buildings and Structures caused by construction of an existing single family residence.

The APPLICANT was represented by Jay Greenwell, Land Surveyor; Tom Rybak, Architect; and Rob Knoebel, Attorney. There was a developed site plan by Brooker Engineering in 2014 with a proposed lot coverage of 19.9%. The project took a long time to complete. During this time the driveway was widened during construction, walkways and retaining walls were added, the radius of the driveway was changed to facilitate turning, flagstone steps and generator pads were added. When the as-built was done the coverage went to 23% which exceeds the allowed 20%. The Applicant asked for forgiveness for the exceedances.

The BOARD reviewed the GML responses. The Rockland County Planning Department recommend that pervious pavers must be used where possible.

The Applicant responded that they are using Belgian block that allows water to flow through. Mr. Greenwell and Mr. Rybak said the driveway on north boundary is macadam but they are making an effort to use pervious pavers where possible including on sections of the driveway.

Board Member Lubeck questioned whether the Applicant is merging the 645, 647 and 649 properties. The Applicant stated no, the properties are being looked at separately as there is no zoning advantage to merging the properties.

The Chairman would like to see the driveway on 647 removed to reduce the amount of impervious surface area. The Applicant stated that this is the only access to rebuild the seawalls and it will be removed after the seawalls are completed. Member Lubeck would like it to be a condition for a CO that the driveway is removed. The only thing being reviewed for this application is to address the as-built condition of 19.9% to 23% of coverage.

There were no comments from the public.

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

The BOARD had no further comments.

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 as it sounds like the gardens will enhance the neighborhood. The variance cannot be achieved any other way as the Applicant needs to do an as-built. The variance requested of 19.9% to 23% is substantial. The Planning Board, Village Engineer and Rockland County Department of Planning have reviewed for environmental impact. The variance is self-created as the project was overbuilt over a period of time. The benefit to the Applicant outweighs the detriment to the community.

**MOTION:** The Board moved to approve the 649 North Broadway, LLC site plan prepared by Jay A. Greenwell, PLS, LLC last revised date June 19, 2019, for the following variance, **Article V, Section 19:2**; for Maximum Coverage of Lot by Buildings and Structures caused by construction from 19.9% to 23% on the conditions that: (1) the Applicant shall use pervious materials where possible to mitigate lot coverage (see conditions that: (1) the Applicant shall use pervious materials where possible to mitigate lot coverage (see Rockland County Planning GML 239-M response letter, dated April 20, 2020, comment 1): and (2) if required by the Rockland County Department of Health, such Department shall review the proposed project and the Applicant shall obtain any required permits (see Rockland County Planning GML 239-M response letter, dated April 20, 2020, comment 2).

**MOTION BY:** Stephen Lubeck

**SECOND:** Marion Shaw

VOTE: Unanimously Approved

**8:30pm:** **649 North Broadway, LLC, 649 North Broadway, County Map No. 60.06-01-05.01. Appeal #2020-04.**

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 variance from the requirements of the Zoning Ordinance of the Village of Upper Nyack for **Article V, Section 19:2**; Minimum coverage of Lot by Buildings and Structures for landscape gardens on an existing single family residence.

The APPLICANT was represented by Jay Greenwell, Land Surveyor; Tom Rybak, Architect; and Rob Knoebel, Attorney. The Applicant discussed the intent to connect the three properties with tiered landscaped gardens, flagstone patio, walkways and fountains. This application requires a variance for coverage from the approved 23% to 24%.

The BOARD discussed the 40% slope regarding when the code was adopted and if it applies to this application, however, no formal determination about the applicability of the limitation on the development on slopes in excess of 40% was made. The disturbance of slope compared to the construction of slope was discussed. The Applicant stated that they are trying to avoid disturbing the slope. Only the staircase will there be a disturbance to the 40% slope.

There were no comments from the public

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

The BOARD had no further comments.

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 as the walkway is just going to connect the properties. The variance cannot be achieved any other way as they have already exceeded the coverage. The variance requested of 23% to 24% is not substantial. The Planning Board, Village Engineer and Rockland County Department of Planning have reviewed for environmental impact. The variance is self-created as the Applicant wants the gardens. The benefit to the Applicant outweighs the detriment to the community.

**MOTION:** The Board moved to approve the 649 North Broadway, LLC site plan by Jay A. Greenwell, PLS, LLC last revised date June 19, 2019, for the following variance, **Article V, Section 19:2**; for Maximum Coverage of Lot by Buildings and Structures for landscape gardens, from 23% to 24% on the conditions that the Applicant comply with comments of the Rockland County Department of Planning’s GML 239-M letter on this application dated February 5, 2020 as follows: (1) the Applicant shall use pervious materials for the additional walkway area where possible, the materials of which shall be subject to review and approval of the village of Upper Nyack Planning Board during the site plan review required for the proposed walkway addition to the subject property: and (2) if required by the Rockland County Department of health, such Department shall review the proposed project and the Applicant shall obtain any required permits.

**MOTION BY:** Joseph Scarmato

**SECOND:** Stephen Lubeck

VOTE: Unanimously Approved

**9:22pm:** **645 North Broadway, LLC, 645 North Broadway, County Map No. 60.06-01-06. Appeal #2020-05.**

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 variance from the requirements of the Zoning Ordinance of the Village of Upper Nyack for **Article V, Section 19:2**; Minimum coverage of Lot by Buildings and Structures for landscape gardens on an existing single family residence.

The APPLICANT was represented by Jay Greenwell, Land Surveyor; Tom Rybak, Architect; and Rob Knoebel, Attorney. This application requires a variance for coverage from the approved 25% to 25.5% for an elevated walkway that you will also be able to walk under. This property is pre-existing, non-conforming. There will be no disturbance of steep slopes.

The BOARD had no comments.

There were no comments from the public

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

The BOARD had no further comments.

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 as the walkway is just going to connect the properties. The variance cannot be achieved any other way as they have already exceeded the coverage. The variance requested of 25% to 25.5% is not substantial. The Planning Board, Village Engineer and Rockland County Department of Planning have reviewed for environmental impact. The variance is self-created as the Applicant wants the walkway. The benefit to the Applicant outweighs the detriment to the community.

**MOTION:** The Board moved to approve the 645 North Broadway, LLC site plan by Jay A. Greenwell, PLS, LLC last revised date June 19, 2019, for the following variance, **Article V, Section 19:2**; for Maximum Coverage of Lot by Buildings and Structures from 25% to 25.5% for a walkway on the conditions that the Applicant comply with comments of the Rockland County Department of Planning’s GML 239-M letter on this application dated February 5, 2020 as follows: (1) the Applicant shall use pervious materials for the additional walkway area where possible, the materials of which shall be subject to review and approval of the village of Upper Nyack Planning Board during the site plan review required for the proposed walkway addition to the subject property: and (2) if required by the Rockland County Department of health, such Department shall review the proposed project and the Applicant shall obtain any required permits.

**MOTION BY:** Stephen Lubeck

**SECOND:** Joseph Scarmato

VOTE: Unanimously Approved

**9:30pm: Paul and Melissa Curley, 211 Kuyper Drive, County Map No. 60.05-02-33. Appeal #2020-02. Appeal #2020-02.**

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 for a Special Permit from the requirements of the General Ordinance 5.13 of the Code of General Ordinances of the Village of Upper Nyack to keep, harbor or breed chickens at a single family residence.

The Applicant was represented by Paul Curley the Homeowner. This request is only for chickens, no other animals. Raising chickens will provide a healthy educational activity and provide fresh healthy eggs for his family. There will be nine chickens and no roosters. Chickens decrease bugs on the property. The chicken food will be kept inside the family residence in a metal can so that the vermin cannot get to it. Hens don’t make much noise and the odor should be minimal. Mr. Curley grew up breeding chickens and is familiar with raising them. There is no fence surrounding the property but the chickens will not be let out of their pen to run around.

The Chairman read a letter from Pat Dempsey, 218 Jewett Road who is closest to the chicken coop who is in support of the request for chickens. Mr. Curley stated that he has spoken to most of the neighbors and they are excited about having fresh eggs.

The Board discussed the request of nine chickens as the Board has not approved a number of more than four to five chickens. The Applicant stated by having nine it allows for loss.

The Secretary read an email that the Village Clerk received from Ms. Green at 220 Jewett Road. Ms. Green received a letter from Mr. Curley stating that he had purchased nine chickens and wanted to know if he had a permit. Mr. Curley stated yes he already is in possession of nine chickens in his basement as he didn’t think the process would take so long to get a Special Permit. He was trying to adhere to the biological time clock of when chickens lay eggs so he had to purchase them early on.

The Board listened to comments from the public.

**Martin Schulman, 518 North Broadway** inquired whether the chickens would be free range and organically fed. Mr. Curley stated that the chickens will not be wandering in the yard, they will be in there enclosure. He has not decided on the feed yet.

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

The Board reviewed the number of chickens. The Board has previously only granted permission for four to five chickens. The Board understands the educational and nutritional benefit but this is a residential neighborhood. The Board discussed putting a condition on the approval that would limit the number of chickens to a maximum of six. Because the applicant, anticipating approval had already purchased nine chicks and was raising them in his basement it was decided that he could initially harbor nine chickens but he would not be allowed to replace any lost to attrition beyond the six permitted.

The BOARD had no other comments.

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 variance cannot be achieved any other way as a Special Permit is needed. The Board has previously granted Special Permits before for harboring chickens. The variance is self-created as the Applicant wants to harbor chickens for his own purposes. The number of chickens will ultimately be limited to six. The Board has had discussion in the past regarding odor, noise and the potential for attracting vermin.

**MOTION:** The Board moved to approve the Special Permit to Paul and Melissa Curley to initially harbor nine chickens as pets. However, as the existing population declines none will be replace beyond the maximum of six chickens approved. The approval is conditioned upon the following provisions: keep nine chickens as pets however as the existing population decreases they will only maintain six chickens with the 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, quiet conditions in order to not cause odor nor attract vermin to the neighborhood; 6) no breeding or commercial use is allowable; 7) approval is valid for one year at which time the Building Inspector will make a visual inspection.

**MOTION BY:** Joseph Scarmato

**SECOND:** Stephen Lubeck

VOTE: Unanimously Approved

There was no other business.

The meeting was adjourned at 9:53pm.

Respectfully submitted, Jillana Sinnott, Secretary