

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, December 21, 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 and called to order at **8:28 pm** by the Chairman, Thomas Englert.

Other Board members present: Stephen Lubeck, Paul Curley and Meg Fowler.

Absent: Marion Shaw.

Also present: Noelle C. Wolfson, Esq., Consulting Attorney, and Janet Guerra, Board Secretary.

8:28 pm: The Chairman opened the meeting, and read the Notice of Public Hearing, which was published in The Journal News on December 14, 2021.

8:31 pm: The Chairman called for a motion to approve the minutes from the November 16, 2021 meeting.

Approval of Minutes with changes: Member Paul Curley moved to approve the *Minutes* from November 16, 2021; **SECOND:** Stephen Lubeck; **VOTE:** 4-0; 1 absent. **APPROVED**

8:49 pm: **Resolution on Maria Belen Sorraire Barrionuevo, 115 Larchdale Avenue, County Map No. 60.05-02-05.01. Appeal #2021-10.**

The Applicant requested a Special Permit pursuant to 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 goats at an existing single-family residence located in the Residence R-1 District.

The Chairman asked if there were any comments from the Board on the Resolution prepared by Village Consulting Attorney, Noelle Wolfson, Esq.

Member Stephen Lubeck commented that he has seen the goat in the middle of the street when the owners are not around; has seen the chickens unpenned and the goat on the neighbor's property.

Chairman Thomas Englert said that violations should be issued.

Member Stephen Lubeck continued that the goat or the chickens could get hit by a car; or the chicken could be prey for predators. He commented that he felt this was irresponsible of the

owners as they were receiving permission to have these animals and they need to be accountable. He stated that as a board, they need to look out for the whole neighborhood.

Chairman Thomas Englert stated that it was unfair for some to follow rules and others not to follow the rules.

Member Paul Curley stated that he did have some reservations and concerns with the Applicant's compliance.

Village Consulting Attorney, Noelle Wolfson, Esq., offered options such as denying the application or giving the permit a one-year expiration and the Applicant would have to affirmatively re-apply at that time.

Member Stephen Lubeck stated that his inclination is to make it a 6-month expiration and if the Applicant lives up to the responsibilities set forth, it can be renewed for one year.

Chairman Thomas Englert commented that the same thing could happen if the Board doesn't grant the application. He further commented that if the Board grants the application, the Board maintains some control and it's a situation that can be enforced better. The advantage to issuing the permit would be that it can be enforced. The Chairman asked Member Meg Fowler if she had any comment.

Member Meg Fowler agreed with the 6-month expiration of the permit.

Member Stephen Lubeck inquired whether there could be monthly inspections.

Village Consulting Attorney, Noelle Wolfson, Esq. replied that she would like to run that by the Code Enforcement Officer.

Member Stephen Lubeck then suggested the alternative of inspections every two months; and further commented that it has to be a physical inspection.

Village Consulting Attorney, Noelle Wolfson, Esq. read the revised Resolution.

**RESOLUTION OF THE
VILLAGE OF UPPER NYACK ZONING BOARD OF APPEALS
Appeal No. 2021-10**

APPLICANT:

Maria Belen Soraire Barrionuevo (the "Applicant")

PROPERTY:

115 Larchdale Avenue, Village of Upper Nyack (County Map No. 60.05-02-05.01)
Residence R-1 Zoning District (the "Property")

NATURE OF THE APPLICATION:

Application pursuant to Village of Upper Nyack General Ordinance 5.13 to keep two (2) Nigerian dwarf goats on the Property.

PUBLIC HEARING DATE:

November 23, 2021

DOCUMENTS REVIEWED

1. Special Permit Application Form to Keep, Harbor or Breed Certain Animals, dated September 8, 2021;
2. Property deed (proof of ownership);
3. *Survey prepared for Maria Belen Soraire Barrionuevo*, prepared by Anthony R. Celentano, PLS, dated March 19, 2021 as marked by the Applicant to show the 20 ft x20 ft pen;
4. Photograph of split rail fencing for pen enclosure;
5. Project narrative dated September 8, 2021; and
6. Photographs presented during public hearing.

FINDINGS OF FACT

1. The Applicant is the owner of the Property.
2. The Property measures approximately 1.5 acres in area and is located on the southeast corner of Larchdale Avenue and Midland Avenue in the Residence R-1 Zoning District.
3. The Property is improved with a single-family residence, access driveway, mobile chicken coop, fencing, and related improvements.
4. The Property is bounded to the east, south and west (across Midland Avenue) by residential properties and to the north (across Larchdale Avenue) by the Marydell Faith and Life Center.
5. In May of 2021 the Applicant received a special permit pursuant to Village of Upper Nyack General Ordinance 5.13 permitting the keeping of six (6) chickens on the Property subject to conditions.
6. In addition to keeping six (6) chickens on the Property, the Applicant currently keeps one (1) Nigerian dwarf goat on the Property and has applied for permission to keep two (2) Nigerian dwarf goats on the Property as pets.
7. The Applicant has testified that Nigerian dwarf goats are approximately 19 inches tall, weigh approximately 50 to 75 pounds, and are generally quiet and friendly towards people.
8. The Applicant has testified that the goat currently located on the Property has been neutered and that any additional goats brought to the Property will be spayed or neutered; it being the intention to keep the goats as pets and not for breeding.
9. The Applicant testified that the goats will be kept in a 20 ft x 20 ft fenced pen and will not require any additional structural enclosure or building as they sleep in the existing chicken coop on the Property and can be brought into the house when needed. The fencing for the pen will be a cedar wood post and rail fence with posts that are six (6) feet high (three (3) feet above ground and three (3) feet below ground) with chicken wire mesh attached to the fence.

10. The Applicants testified that the Property is well-suited for the keeping of the goats because of its large size, its location within the Village, and the lack of impact to the surrounding neighbors in terms of noise, odors or otherwise given the specific configuration of the Property and neighborhood, as demonstrated by the support for this application expressed by several neighbors.

11. Members of the Board reported their personal observations and concerns about both the Applicant's goat and the chickens walking freely outside of the property line, including on the surrounding streets.

12. Email correspondence received by the Board from a neighbor asked about providing mitigation of noise impacts related to the goat.

BOARD DECISION

In reliance on the above finding of fact the Zoning Board of Appeals hereby GRANTS the Applicant a special use permit pursuant to Village of Upper Nyack General Ordinance 5.13 to permit the keeping of not more than two (2) Nigerian dwarf goats on the Property subject to, and provided the Applicant strictly complies with, the Conditions of Approval set forth below.

CONDITIONS OF APPROVAL

1. There shall be permitted a maximum of two (2) Nigerian dwarf goats on the Property. No other breed of goat shall be permitted without amendment of this approval.

2. There shall be no excessive noise on the Property.

3. The goats shall be kept within the fenced area in the yard or kept on a leash if taken off the Property. It is a condition of this approval that the goats shall not be permitted to roam outside of the boundaries of the Property unleashed.

4. The Applicant shall maintain a clean, sanitary, quiet condition in order not to cause odor nor attract vermin to the Property or the neighborhood.

5. No breeding or commercial use is allowed. The Applicant has specifically represented that the goats kept on the Property will be neutered or spayed to prevent breeding. All goats kept on the property shall be neutered or spayed.

6. Fencing on the Property shall comply with all applicable requirements of the Village of Upper Nyack Zoning Law.

7. The Applicant shall comply with all other municipal, county, state and/or federal rules and regulations applicable to the keeping of goats on the Property.

8. The Building Inspector or Code Enforcement Officer shall inspect the premises every 2 months to ensure compliance with the conditions of this resolution of approval.

9. This approval shall be valid for a period of six (6) months from the date hereof and shall expire on June 21, 2022.

DATED: December 21, 2021

Chairman Thomas Englert and Member Stephen Lubeck agreed that they agreed with the Resolution.

VOTE: Motion to Approve Resolution: Paul Curley
Second: Steven Lubeck
Yes: 4 (Englert, Curley, Lubeck, Fowler)
No: 0
Absent: 1 (Shaw)

8:50 pm: Steven and Lisa Schmittgall, 10 Riverton Drive, County Map No. 60.13-02-81.15. Appeal #2021-12. Appeal from the Zoning Ordinance of the Village of Upper Nyack seeking an area variance from the requirements of **Article V, Section 19:4**; for a side yard setback variance for an after the fact patio, pavilion and retaining walls on property improved with an existing single-family residence located in the Office Business (OB) District.

Chairman Thomas Englert asked the Board if they had any questions or concerns.

Motion to open the public hearing.
MOTION: Stephen Lubeck
SECOND: Paul Curley
VOTE: 4-0, 1 absent. APPROVED.

The Applicant was represented by Ramya Ramanathan from Atzl, Nasher & Zigler, Engineers. She explained that this application was to bring the property to conformity.

The Applicant / Homeowner, Lisa Schmittgall, explained that the property is for sale and is under contract.

Chairman Thomas Englert inquired whether these non-conformities were discovered during the sale and the Applicant confirmed that they were.

Chairman Thomas Englert asked the members of the Board if there were any comments on the need for the two-foot variance. Member Paul Curley commented that he didn't think it needed to be two feet over the line; but was ok with the variance. Member Stephen Lubeck agreed.

Motion to close the public hearing.
MOTION: Stephen Lubeck
SECOND: Meg Fowler
4-0, 1 absent. APPROVED.

ZBA FIVE FACTORS

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 side yard setback variance for an after the fact patio, pavilion and retaining walls.

1. There will be no undesirable change produced in the character of the neighborhood or a detriment to nearby properties by the granting of the area variance.
2. There is no other method feasible by the applicant to pursue; other than an area variance, since the structures are built already and it does not seem necessary to have them removed.
3. The requested area variance is over 10 percent; but not substantial in the context of the property.
4. After extensive review by Village Engineer, Dennis Letson, there is no evidence that the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The alleged difficulty was self-created; which consideration shall be relevant to the decision of the Board of Appeals; but shall not necessarily preclude the granting of the area variance. The benefit to the Applicant outweighs the detriment to the community.

Village Consulting Attorney, Noelle Wolfson, Esq. read the comments from Rockland County Planning in their communication dated October 20, 2021 into the record.

1. The distance from the side property line to the patio and to the pavilion must be indicated on the site plan.
2. The bulk table must be amended to indicate the required variance and include the distances required and provided.

The Village Consulting Attorney further commented that both the changes have been made.

Member Stephen Lubeck commented that variances should be specific to this structure in the decision.

Village Consulting Attorney, Noelle Wolfson, Esq. stated that the condition is that the variance is in compliance with the submitted plan.

Motion to approve the variance on the condition that all improvements are constructed and maintained in accordance with the Site Plan Prepared for Stephen and Lisa Schmittgall, prepared by Atzl, Nasher & Zigler, PC, dated July 21, 2021, last revised November 15, 2021

MOTION: Stephen Lubeck

SECOND: Paul Curley

VOTE: 4-0, 1 absent. APPROVED.

Village Consulting Attorney, Noelle Wolfson, Esq. mentioned that the Applicant will have to go before the Planning Board at the January meeting. The representative, Ramya Ramanathan, asked if that would be as-is; and Village Consulting Attorney, Noelle Wolfson, Esq. agreed that it would be.

9:03pm Motion to adjourn.

MOTION: Stephen Lubeck

SECOND: Paul Curley

VOTE: 4-0, 1 absent. APPROVED.

The meeting was adjourned at 9:25 PM.

Respectfully submitted,

Janet Guerra
Board Secretary