

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, July 5, 2022, 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, Marion Shaw.

Absent: Paul Curley and Meg Fowler.

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

8:00 pm: The Chairman opened the meeting, and read the Notice of Public Hearing, which was published in The Journal News on June 28, 2022.

8:01 pm: The Chairman called for a motion to approve the minutes from the April 5, 2022 meeting and the May 3, 2022 meeting.

April 5, 2022:

Motion: Stephen Lubeck

Second: Marion Shaw

VOTE: 3-0; 2 absent. APPROVED.

May 2, 2022:

There was no quorum of attending members from that meeting present. Adjourned to September 6, 2022 meeting.

8:02 pm: Stuart Chaitin, 617 N. Broadway, County Map No. 60.10-01-09.

Application for area variances from the requirements of Village of Upper Nyack Zoning Law §4.4.2 Row 4, Col. 9 (Development Coverage), §6.7.1.3 (Slope Disturbances) and §6.3.1 (Height of Walls/Fences) on a lot improved with a single-family residence in the Residence R-30 district.

The applicant was represented by Jay Greenwell, PLS & Robert Knoebel, Esq.

Mr. Greenwell gave a summary of the history of the property and the construction on/alteration of the property which created the need for the requested variances.

As per Mr. Greenwell, the three variances requested are:

1. Disturbance to 40 % slopes in the western portion of the property- due to home construction and disturbance beyond area of disturbance. The slope is very steep and it is eroding creating a potentially unstable condition. The applicant is proposing to build a retaining wall and then to backfill the area to the west of the wall to lessen and stabilize the slope. The approach was to take the 2008 approved slopes as the basis for determining what the slopes would have been if the area was constructed per the approved plan.
2. Development Coverage- The property owner has installed walks, walls, patios and other improvements, the aggregate area of which exceed the maximum permitted development coverage. Coverage of 27.4 % was previously approved. This variance arises primarily out of the new code's approach to net lot area as a basis for development coverage. If the slope deduction is taken out, then the coverage is 23.3% of the Property's gross lot area.
3. Fence (pillar and gate) height- 2013- Zoning Board granted a variance for the height of the pillars. Shown on the plan for 8 feet. When homeowner installed the pillars, they varied from 8 feet on the plan with one lower and the other higher. When the light is included as part of the pillar the maximum height of the pillars is 11.75 feet.

Mr. Greenwell continued by stating that: (1) The hope is that the slope disturbance, which is in the nature of a slope restoration, will be a benefit by making the slope less steep and more stable. (2) As to Coverage- All improvements are existing, and their continued use will not cause additional disturbance. There is no visual issue- the lot does not seem "jammed full" of coverage. A good deal comes from small yard elements. (3) Regarding the pillars, they are existing, and their legalization is being requested. The gate is not opaque.

As per Mr. Greenwell, the applicant worked out significant slope restoration details with the Planning Board and with Dennis Letson, Village Engineer. He continued that the certificates of occupancy for the house and the pool have been issued.

Motion to open the public hearing.

Motion: Stephen Lubeck

Second: Marion Shaw

VOTE: 3-0; 2 absent. APPROVED.

Fred Sinnott- Property owner to the west of the subject property, would like to point out that any remediation will be entirely on the Chaitin property. Mr. Sinnott advised that he has lost 4 feet of his property and that in his view the cause of the loss is Mr. Chaitin undermining the cliff. Mr. Sinnott advised that he will not assume any liability for continued erosion after the slope is restored on the Chaitin property if the slope restoration is limited to the Chaitin property since the cause of the erosion stems from Mr. Chaitin's disturbance of the slope.

Discussion about the relative issues of not rectifying the entire slope, both on site and off site.

Steven Abel- Said that no variance should be granted based on the fact that Mr. Chaitin is a bad neighbor. He said that Mr. Chaitin's dock is noisy and he will not rectify it.

[Brief Adjournment]

Robert Knoebel, Esq. - Advised that during the break, the applicant's representatives spoke with the Sinnotts. Applicant would be willing to have the engineer mark the points on the lot so that the portion of the slope on the Sinnott property that has deteriorated can be restored.

Motion to close the public hearing.

Motion: Stephen Lubeck

Second: Marion Shaw

VOTE: 3-0; 2 absent. APPROVED.

The CHAIRMAN reviewed the area variance and the five factors that must be applied (See Village Zoning Law Section 12.3.3.2) regarding the applicant's request for area variances.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
No undesirable change. The remediation of the slope will be a benefit in terms of stopping erosion; and to minimize loss of soil from Sinnott property. The applicant's representatives have indicated that he will work with the Sinnotts to provide remediation on the Sinnott property. Slope mitigation will not negatively affect the neighborhood.
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue; other than an area variance.
Given the fact that the slopes have already been disturbed to an unstable condition, there is no alternative to the variance to allow them to be restored.
3. Whether the requested area variance is substantial.
Yes, 46.5% for the slope disturbance.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
As per Dennis Letson, Village Engineer, the slope remediation, particularly if in concert with Sinnotts to rectify the entire slope, including the portion on the Sinnott property, would be beneficial.
5. Whether 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.
Yes, but not outcome determinative.

MOTION

Based on the analysis of the statutory area variance standard as discussed during the hearing on this application, MOTION to grant Area Variances from the following sections of the Village Zoning Law:

Bulk Requirement	Code Section	Permitted/Required	Proposed
Maximum Development Coverage	4.4.2 (R. 4, C. 9)	25% maximum permitted by code 27.4% maximum permitted by prior variance	39.4% proposed
Pillar Height	6.3.1	6 ft maximum permitted by code 8 ft maximum permitted by prior variance	11.75 ft from the base of the pillar to the top of the light 9.25 ft for gate
Disturbance to Slopes in excess of 40%	6.7.1.3	No Disturbance Permitted	3,461 sf (46.5%) of disturbance

The Variances are granted subject to the following conditions:

1. Compliance with the following plans as they may be modified by the Planning Board during the site plan review process provided that such modifications do not allow a greater deviation from the zoning law than permitted by the grant of this variance:
 - a. *Amended Site Plan (Cover Sheet), Chaitin*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022 last revised 6/7/2022;
 - b. *Exhibit Showing Added Coverage Areas Beyond Original Approval, Chaitin*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022 last revised 6/7/2022;
 - c. *Proposed Slope Remediation With Area of Disturbance, Chaitin*, prepared by Jay A. Greenwell, PLS, LLC, dated 5/4/2022 last revised 6/7/2022;
 - d. *Proposed Site Plan (SEA-100)*, prepared by Sound Engineering Associates LLC, dated 12/7/2021 last revised 3/14/2022.
2. This variance is conditioned on the grant of site plan approval by the Planning Board and shall be invalid and of no force and effect if Site Plan approval by the Planning Board is denied.
3. The following comments of the Rockland County Department of Planning in its letter dated April 13, 2021. Item 1 and 2 have already been addressed.
4. The applicant shall update the bulk table on the site plan to reflect the R-30 district requirements.

Motion: Steve Lubeck
Second: Marion Shaw

Vote: 3 (Lubeck, Shaw, Englert)- 0, 2 absent (Fowler, Curley)

8:45pm: Soraya Scroggins and Adam Budgor, 11 Tompkins Court, County Map No. 60.14-01-12.7. Application for area variances from the requirements of Village of Upper Nyack Zoning Law §4.4.2 Row 4, Col. 9 (Development Coverage), Row 4, Col. 10 (Building Coverage), Row 4, Col. 11 (FAR) and §§6.7.1.1, 6.7.1.2, 6.7.1.3 (Slope Disturbances) on a lot improved with a single-family residence in the Residence R-30 district.

Applicant was represented by Donald Brenner, Esq., Jay Greenwell, PLS; Ken DeGennaro, PE, Booker Engineering, and the homeowners: Soraya Scroggins and Adam Budgor.

Jay Greenwell went through the variances requested.

He said that the slopes formula has a dramatic impact on this lot. He went through the slopes map. There is a lot of erosion on the sides of the house that is evident when it rains. The slopes are a small percentage of the lot; but it is impossible to do the proposed work without disturbing and restoring the slope. The slopes are not natural to the site. They were artificially created and not properly stabilized; and that is why they need to be stabilized. That disturbance predates even the original slopes requirements, so there was no regulation of slopes when the property was developed.

The applicants have hired design professionals to reposition the area within the tall white retaining wall supporting the existing pool which improves the appearance from the shoreline and river. Because the living space to be created under the pool is not part of the existing building, the lot coverage will increase. The new building area and the area that is subterranean count toward building coverage and FAR. Both need variances but this is mitigated by the fact that a lot of it is below grade.

When design started, the applicant thought coverage was only impervious coverage. The code regulates Development Coverage, which is all hardscape.

Noelle Wolfson, Esq., Village Consulting Attorney, read the comments of Rockland County Planning into the record. The Board discussed the Rockland County Planning Comments.

Motion to open the public hearing.

Motion: Stephen Lubeck

Second: Marion Shaw

VOTE: 3-0; 2 absent. APPROVED.

No public comment.

Motion to close the public hearing.

Motion: Stephen Lubeck

Second: Marion Shaw

VOTE: 3-0; 2 absent. APPROVED.

The CHAIRMAN reviewed the Area Variance test and the five factors that must be applied (See Village Zoning Law Section 12.3.3.2) regarding the applicant's request for an area variance.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

No negative aspects; benefit neighboring property by stabilizing slopes and preventing erosion.

2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue; other than an area variance.

There is no other way to achieve applicant's goal because of the original configuration of the property and the new zoning law.

3. Whether the requested area variance is substantial.
Yes, it is substantial.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

May improve environmental conditions. Dennis Letson, Village Engineer, said that installation of the retaining walls in the north will provide stabilization. Applicant is installing stormwater dissipaters, rain gardens, and landscaping which will result in a beneficial and more stable condition

5. Whether 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.

In a sense the hardship is not self-created because it resulted from the original construction of the house on the lot.

MOTION

Based on the analysis of the statutory area variance standard as discussed during the hearing on this application, MOTION to grant Area Variances from the following sections of the Village Zoning Law:

Bulk Requirement	Code Section	Permitted/Required	Proposed
Maximum Development Coverage	4.4.2 (R. 4, C. 9)	25% (maximum permitted by code and by FM 7279)	36.2%
Maximum Building Coverage	4.4.2 (R. 4, C. 10)	12% (maximum permitted by code and by FM 7279)	17.9%

Maximum Floor Area Ratio	4.4.2 (R. 4, C. 11)	0.20 maximum permitted	0.22
Disturbance to Slopes 40% or greater	6.7.1.3	No Disturbance Permitted	100% (2,125 sf of disturbance)
Disturbance to Slopes 25%-39%	6.7.1.2	No more than 20% disturbance permitted	100% (1,847 sf of disturbance)
Disturbance to Slopes 15% to 24%	6.7.1.1	No more than 35% disturbance permitted	100% (1,238 sf of disturbance)

The Variances are granted subject to the following conditions:

1. Compliance with the following plans as they may be modified by the Planning Board during the site plan review process provided that such modifications do not allow a greater deviation from the zoning law than permitted by the grant of this variance:
 - a. The following plans prepared by Brooker Engineering, PLLC, all dated 5/3/2022 last revised 6/24/2022
 - i. Title Sheet (Si-1)
 - ii. Site Plan (Si-2)
 - iii. Existing Conditions and Demolition Plan (Si-3)
 - iv. Grading and Utility Plan (Si-4)
 - v. Soil Erosion & Sediment Control Plan (Si-5)
 - vi. Construction Detail (Si-6)
 - b. The following plans prepared by Jay A. Greenwell, PLS, LLC
 - i. Existing Conditions Survey, dated 9/28/2021 last revised 5/10/2022
 - ii. Slope Category Map, dated 4/18/202 last revised 5/10/2022
 - c. The following plans prepared by Laguardia Design Landscape Architect, dated 4/29/2022 last revised 5/10/2022
 - i. Tree Removals Plan (L2.1)
 - ii. Planting Plan (L5.1)
 - iii. Electrical Plan (L6.1)
2. This variance is conditioned on the grant of site plan approval by the Planning Board and shall be invalid and of no force and effect if Site Plan approval by the Planning Board is denied.
3. The following comments of the Rockland County Department of Planning in its letter dated June 15, 2022 are incorporated as conditions of this approval: 2, 4, 5. With regard to item 1, the board, by granting the requested variances, has determined that the mitigation efforts as outlined by the applicants in their submission materials and during the public hearing on this application will outweigh the negative aspects of the steep slopes disturbance as most of the slopes have been previously disturbed and larger portions of those slopes are in a deteriorating condition and will be improved by the proposed work.

Motion: Steve Lubeck

Second: Marion Shaw

Vote: 3 (Lubeck, Shaw, Englert)- 0, 2 absent (Fowler, Curley)

The meeting was adjourned.

Respectfully submitted,

Janet Guerra

Board Secretary