

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, December 12, 2023, 7:30 p.m.**

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 7:32 p.m. by the Chairman, Thomas Englert.

Other Board members present: Meg Fowler, Beth Wittig, Steve Lubeck

Absent: Paul Curley

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

7:32 p.m.: Review of the minutes of the meeting of November 8, 2023.

The Chairman asked if there were comments on the draft minutes.

The members of the Board did not have any comments on the draft minutes.

Motion to approve the minutes of the November 8, 2023 meeting.

Motion: Meg Fowler

Second: Beth Wittig

VOTE: 4 yes (Englert, Fowler, Wittig, Lubeck) – 0 no, 1 absent (Curley)

7:33 p.m.: Allison and John Rohlwing, 23 West End Avenue, County Map 60.17-03-04.

Application for area variances from the requirements of Village of Upper Nyack Zoning Law §4.4.2 (Bulk Table), Row 6, Col. 5 (minimum required front yard) to permit a minimum front yard of 32.42 feet where 35 feet is required, and §4.4.2 (Bulk Table), Row 6, Col. 11 (maximum floor area ratio (FAR)) to permit a FAR of 33% where 25% is the maximum permitted to allow for the addition to an existing single-family residence located in the R-10 Zoning District

Applicant Representative: Kier B. Levesque, R.A.

Mr. Levesque presented the application. He explained that the applicants are proposing to remove the existing front porch/front stoop and replace it with a covered porch that will run the full length of the existing residence to make a connection with the driveway so the walkway from the driveway is covered.

Mr. Levesque explained that the house was built in 2015. It is one of the only properties in Upper Nyack accessed only from the Village of Nyack. The improvements will be a benefit to the surrounding neighborhood, because it is an aesthetic improvement.

Mr. Levesque explained the front yard setback variance and further explained that the house has a bay window in the front façade and that the porch must be wide enough to provide walking clearance past the window, which is one reason why it must extend into the required front yard to the extent it does. The intent is to provide a covered walkway from the driveway to the front door. He further explained the Floor Area Ratio (FAR) variance that was required. He indicated that the variance was needed because the house is existing non-conforming as to FAR and the addition will slightly increase the already nonconforming FAR.

Mr. Levesque explained that the applicant was previously before the Planning Board and the Architectural Review Board and would return to the Planning Board to complete the site plan review process if the variances are granted. The Architectural Review Board has recommended approval of the architectural design of the porch.

The Chairman asked about the access to the Property and Mr. Levesque explained how the covered porch would provide covered access from the driveway. The Chairman also asked about the proposed railing. Mr. Levesque explained that the railing was only required by code for a small portion of the porch because of its distance from grade, but he and the applicants wanted to add the railing around the whole porch for its aesthetic effect. The Board members generally agreed that the railing around the entire porch was attractive.

Mr. Lubeck asked about a note in the bulk table about the prior variance granted and if the owner of the property was correctly referenced. The Board's counsel indicated that the Village could provide Mr. Levesque a copy of the prior variance so that he can confirm whether the information is correct and update it as needed.

Mr. Lubeck said that it in his view the proposed modifications to the house will improve the character of the house and the Board Members agreed.

Ms. Fowler indicated that in addition to improving the aesthetic, front porches provide a benefit of improving the streetscape and sense of community by providing an outdoor space near the streetscape for residents.

Ms. Wittig indicated that the additional 210 square feet of FAR seemed to overstate the increase since the 56 square foot existing porch will be removed, making that variance less substantial.

The Board's counsel noted that this application was subject to review by the Rockland County Department of Planning because of the Property's proximity to the Village of Nyack. By letter dated November 9, 2023 the Rockland County Department of Planning recommended approval of this application with no further comments. Counsel also noted that this is a Type II action under SEQRA.

There was a discussion about whether the existing front yard setback was accurately measured on the proposed plan, but it was agreed that the extent of the variances from the Zoning Law requirements was correct. The applicant will review this aspect of the plan and will correct it as needed.

Motion to Open the public hearing.

Motion: Steve Lubeck

Second: Beth Wittig

VOTE: 4 yes (Englert, Fowler, Wittig, Lubeck) – 0 no, 1 absent (Curley)

There were no members of the public who wished to speak on the application.

Motion to Close the public hearing.

Motion: Steve Lubeck

Second: Beth Wittig

VOTE: 4 yes (Englert, Fowler, Wittig, Lubeck) – 0 no, 1 absent (Curley)

The Chairman reviewed the statutory area variance balancing test.

The benefit sought by the applicants is the ability to enlarge the front porch on the residence to make the porch more usable and to provide better access to the residence. There is no corresponding detriment to the community as the variance for the front yard setback is minor and the FAR variance, although numerically large, will not have a substantial impact because the front porch improves the aesthetic of the front of the home.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the granting of the area variance. It will not. The addition of the porch will be an improvement over the existing aesthetic.

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. It cannot because the porch must be as wide as proposed to provide walking clearance past the bay window and the property is already nonconforming as to FAR so any modification would likely require a variance.

3. Whether the requested area variance is substantial. The front yard setback variance is not numerically substantial as it is less than 10%, nor will it have a substantial negative impact on the community. Although the FAR variance is numerically substantial- 25% FAR is the maximum permitted and 33% is proposed, overall the addition of the porch will be a benefit to the house and its aesthetic so it will not have a substantial negative impact on the community.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. No, it will not. This is a small addition to the existing residence and is a Type II action under SEQRA. The Village Engineer will review this application as a part of the Planning Board review process and his comments will have to be addressed as a part of that review.

5. Whether the alleged difficulty was self-created. Yes, because the applicants are proposing this addition, but the self-created nature of the variances, on its own, does not preclude the grant of the variances.

Motion to grant an area variance from the requirements of Village of Upper Nyack Zoning Law §4.4.2 (Bulk Table), Row 6, Col. 5 (minimum required front yard) to permit a minimum front yard of 32.42 feet where 35 feet is required, and §4.4.2 (Bulk Table), Row 6, Col. 11 (maximum floor area ratio (FAR)) to permit a FAR of 33% where 25% is the maximum permitted, based on the application of the area variance standard as evaluated and as discussed at the public hearing, and subject to the following conditions:

1. **Compliance with the following plans as they may be revised by the Planning Board, provided that such changes do not increase the magnitude of the variance granted by this resolution.**
 - a. **Rohlwing Porch, 23 Westend Avenue, prepared by Kier B. Levesque, R.A.:**
 - i. **Cover Sheet, dated 7/31/23, last revised 10/9/23**
 - ii. **Porch Plans & Specifications (A-1), dated 7/31/23**
 - iii. **Elevations (A-2), dated 7/31/23**
 - iv. **Details & Section (A-3), dated 7/31/23**
 - b. **The applicants shall update the bulk table to reflect the grant of the variances and the date of this resolution and the existing front yard setback.**
2. **Unless otherwise specifically modified by this Resolution or the plans approved hereby, all conditions of any prior approval of any board, department or officer of the Village of Upper Nyack shall remain in full force and effect.**

Motion: Beth Wittig

Second: Meg Fowler

VOTE: 4 yes (Englert, Fowler, Wittig, Lubeck) – 0 no, 1 absent (Curley)

7:57 p.m. The meeting was concluded.