

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, May 3, 2022, 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 **8:04 pm** by the Chairman, Thomas Englert.

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

Absent: Marion Shaw.

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

8:04 pm: The Chairman opened the meeting, and read the Notice of Public Hearing, which was published in The Journal News on April 26, 2022.

8:06 pm: The Chairman called for a motion to approve the minutes from the April 5, 2022 meeting. There was no quorum of attending members from that meeting present. Adjourned to July 5, 2022 meeting.

8:07 pm: Approval of the Draft Resolution of the Appeal of Mr. John Stickler, 324 North Broadway, County Map No. 60.17-2-48, affecting the Property Commonly Known as Hartell's Jukebox Deli, 326 North Broadway, County Map No. 60.17-2-47 ("Subject Property"). Appeal #2022-01.

Motion: Paul Curley

Second: Meg Fowler

VOTE: 3-0; 1 absent (Marion Shaw); 1 abstention (Stephen Lubeck). **APPROVED.**

8:08 pm: Lou Maresca, 505 Spook Hollow Road, County Map No. 60.09-02-25.

Appeal #2021-13. Application for area variances from the requirements of Village of Upper Nyack Zoning Law §6.9.3 (pool setback), §4.4.2 Row 6, Col. 6 and 7 (side and rear yard setback for patio), and §6.5.6 (side yard setback for shed) on a lot improved with a single-family residence in the Residence R-10 district.

Lawrence Garvey, Esq. represented the Applicant.

The Chairman, Thomas Englert, asked about the pool and whether it was partially inground.

Mr. Maresca explained that it is a one depth pool of 52 inches deep. It will be dug 24 inches into the ground and 28 inches will be above the ground. He explained that it's the only flat area in his yard that will be able to accommodate a pool of this size.

The Chairman asked if the Applicant was going to move the trampoline from where it is currently located. Mr. Maresca confirmed that it will be moved.

Noelle Wolfson, Esq., Consulting Attorney, stated there are two separate variances needed for the pool: a setback to the patio and a setback to the pool. For the patio, 25 feet is required for side and rear and we

have 6.8 to the side; and 5.8 to the rear. For the pool, 30 feet is required and we have 12 feet to the side and 12 feet, 3 inches to the rear. There is also a shed which is 3 feet, 6 inches from the property line.

Mr. Maresca stated that he would be willing to shift the pool in any direction.

Member Meg Fowler had a question about the drainage situation.

Discussion about drywells on the property.

Member Meg Fowler suggested that the Applicant move the pool diagonally to reduce both the variances. The Applicant agreed to do that.

The Chairman suggested that 15 feet should be the goal and the Applicant stated that he would keep it to a 15-foot setback from the side and the rear.

Noelle Wolfson, Esq., Consulting Attorney asked for clarification if the Applicant was speaking about just the pool or the patio and the pool. The Applicant stated he meant that the pool would be 15 feet from the side and the rear. Member Paul Curley stated his opinion that that was reasonable.

A discussion followed about the need for the patio to be evaluated. The Chairman asked what the Applicant could do with the patio. Member Paul Curley suggested that the patio could be smaller on certain sides.

Member Meg Fowler suggested that the pool be 15 feet from the side and rear yards and the patio be 10 feet from the side and rear yards. The Applicant stated that he was not opposed to that. The Chairman said that that was a good compromise.

Noelle Wolfson, Esq., Consulting Attorney, asked the question about the pool equipment which has the same setback. The Applicant stated that if he eliminated a dry well, they could move the pool equipment. Ms. Wolfson said that she wouldn't want to commit to that and that Dennis Letson, Village Engineer, would have to review.

Discussion about what is near the pool equipment near the neighbor's house. Determined that there are buffer zones.

Member Stephen Lubeck said that you can get very quiet pool pumps.

Member Paul Curley commented positively that this is an obscure corner of the property; so, it's as far away as it can be from the other two houses. Member Meg Fowler agreed.

Discussion about the existing shed which has a setback of 3.6 feet where 5 feet is required. Mr. Maresca said that he can get a letter from that neighbor with whom he has a good relationship.

Member Meg Fowler advised that the Applicant should be very careful how close the trampoline is to the pool. Mr. Maresca said it would be recessed into the ground with netting around it --6 feet high.

Motion to open the public hearing.

Motion: Stephen Lubeck

Second: Paul Curley

VOTE: 4-0; 1 absent (Marion Shaw). APPROVED.

No public comment.

Motion to close the public hearing.

Motion: Stephen Lubeck

Second: Meg Fowler

VOTE: 4-0; 1 absent (Marion Shaw). APPROVED.

The Chairman, Thomas Englert, said that we still have the issue of the bulk table needing to be updated.

Noelle Wolfson, Esq., Consulting Attorney, said that the Board can grant the variances on the parameters that 15 feet will be the setback for the pool; 10 feet will be setback for the patio, keeping the pool equipment where it is at 5.8 feet rear yard setback and the shed where it is at 3.6 feet side yard setback. The variances would be granted on the condition that the plan is updated and the bulk table is corrected to reflect:

1. The correct zoning district in bulk requirements.
2. The variances that were granted.

Ms Wolfson also said that it would be helpful if the plan was revised to fix the arrows because it's hard to tell where the arrows are measuring to.

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 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.

There won't be a detrimental change to the neighborhood or nearby properties due to a privacy fences and trees that offer a buffer; and the neighbors have not objected.

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

Given the size of the property and the desire to have a pool, it does not seem that there is an alternative to an area variance.

3. Whether the requested area variance is substantial.

It is substantial; but the Board has required that the setbacks required be reduced to 15 feet from the property line for the pool; and 10 feet from the property line for the patio. The pool equipment will be shielded from the neighbors and the existing shed is small enough that it won't be a problem.

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

The Village Engineer and the Board have explored the question of drainage and the question of dry wells should be resolved before going back to the Planning Board for approval so that we are assured there won't be any physical or environmental impact.

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.

It is self-created; because the Applicant wants to have a pool.

Motion to approve the variances based on the following conditions:

Variance from §6.5.6 (side yard setback for shed) from the Village's Zoning Ordinance which requires a five-yard setback to submit a 3.6-foot setback. Variance from §6.9.3 (pool and pool equipment setback) from the Village's Zoning Ordinance which requires the pool to be 30 feet from the property line to be setback 15 feet from the side and rear yards; and the pool equipment to be setback 5.8 feet where 30 feet is required. And, variance from §4.4.2 Row 6, Col. 6 and 7 (side and rear yard setback for patio) from the Village's Zoning Ordinance which requires a 25-foot setback, to be setback 10 feet from the property line. The bulk table will be updated to reflect the correct zoning laws' zoning district and bulk requirements and the variances as granted and that it is subject to the site plan approval by the Planning Board.

MOTION: Stephen Lubeck

SECOND: Meg Fowler

VOTE: 4-0, 1 absent. APPROVED.

8:50 pm: 536 Highland LLC, 536 N. Highland Avenue, County Map No. 59.12-02-01.

Appeal #2022-3. Application for an area variance from the requirements of Village of Upper Nyack Zoning Law §6.1.3.1.1 (minimum number of parking spaces) in order to convert second floor banquet room to offices on a restaurant in the Office Business (OB) District.

Kier Levesque, R.A., represented the Applicant.

The Chairman, Thomas Englert, asked about the number of parking spaces. He stated that in the narrative it says 41 vs 44; but in the drawing it only shows 39 spaces.

Mr. Levesque explained that the building was recently sold and is now owned by 536 North Highland LLC. They are also a mechanical equipment company and they want to move their design and drafting offices to the second floor which is currently banquet space for the restaurant. The parking for the restaurant and the banquet space is already deficient by close to 50%. Mr. Levesque said he was unsure how it was approved with insufficient parking. He continued that there is a typo on the narrative and that it's not four spaces deficient; it's three. There are 41 spaces on the property and the Planning Board has reviewed the application and asked that the curb on the north entry be re-configured, so that one space right near the entry is protected by the curb. The curb cut won't be changed at either the south or north entry. Mr. Levesque said that all 44 parking spaces are shown on the plan.

Discussion of two more handicapped spaces in the lower right-hand corner of the plan, which brings the total to 41. The need is for 44 spaces using the current calculation under the new zoning code. Chairman Thomas Englert stated that there is a letter from Rockland County Planning relative to the General Municipal Law that went into a lot of detail to make sure there is efficient flow of traffic and not to create an unsafe access condition; also pointing out a 30% variance from the onsite parking requirements.

Discussion that Rockland County Planning based that on the old plan and the old zoning code; so it's irrelevant.

The Chairman explained that RCP also said under no circumstances can vehicles park in the state right of way. He also inquired about a discrepancy between the site plan and the GML review application.

Noelle Wolfson, Esq., Consulting Attorney, addressed that. In 2021, the Village of Upper Nyack annexed part of this property from Clarkstown; so, RCP comments #3 and #4 should be overridden with a supermajority vote if the Board is inclined to grant any kind of variance for this project because RCP didn't take that annexation into consideration.

Chairman Englert continued that RCP comment #5 states that a review will be done by NYS Department of Transportation. He asked Mr. Levesque the status of that. Mr. Levesque stated that he had received nothing; but the Applicant isn't changing the entrances or curb cuts; so, nothing changes coming off Route 9W.

Ms. Wolfson stated that RCP's comment #5 should be incorporated as a condition to any granted variance.

Chairman Englert asked about comment #6, that the Town of Clarkstown be given the opportunity to comment. Mr. Levesque said he had received no correspondence. Ms. Wolfson explained that once referred, agencies have 30 days to respond; and if they have not; we assume there is no comment.

Ms. Wolfson stated that comments #7 and #9, the Board will want to incorporate as conditions.

Member Stephen Lubeck commented that he didn't think three parking spots was significant because the office would be in operation during the day; and the restaurant would need parking primarily in the evening.

Discussion about overnight parking designations. Mr. Levesque said that the time frame is 5pm until 9am for the overnight parking. They are existing spaces. The Planning Board had no objection to that.

Member Paul Curley inquired whether there will be a restaurant operating here.

Mr. Levesque said that the owner is actively looking for a restaurant tenant. Mr. Curley commented that he didn't recall seeing the lot overflowing or fully occupied during restaurant operations.

Motion to open the public hearing.

Motion: Stephen Lubeck

Second: Paul Curley

VOTE: 4-0; 1 absent (Marion Shaw). APPROVED.

No public comment.

Motion to close the public hearing.

Motion: Stephen Lubeck

Second: Meg Fowler

VOTE: 4-0; 1 absent (Marion Shaw). 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 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.

There won't be a change to the neighborhood or detriment to nearby properties. Existing use continues and it's just a matter of parking spaces.

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

Based on the drawings and Mr. Levesque's comments, there is no place for more parking spaces. This variance is the only way to achieve the Applicant's goal.

3. Whether the requested area variance is substantial.

The variance is 10%. Not substantial.

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

There is no real change except in the drawing of parking lines.

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.

It was self-created as the Applicant wants more office space.

Noelle Wolfson, Esq., Consulting Attorney, detailed how the letter from RCP dated February 17, 2022 would be addressed in the granting of the variance:

Comment #1 would be incorporated regarding the prohibition of parking in the state right of way.

Comment #2 does not need to be addressed.

Comments #3 and #4 will be overridden due to RCP not taking into consideration the municipal annexation of the property from Clarkstown.

Comment #5 would be incorporated but to the extent that no permit is needed.

Comment #6 does not need to be addressed.

Comment #7 would be incorporated as a condition of approval.

Comment #8 we did not receive any comments so that is satisfied.

Comment #9 would be incorporated as a condition of approval.

Comment #10 was just for observation so it does not need to be addressed.

Motion to grant the variance with the above conditions and overrides.

Motion: Stephen Lubeck

Second: Paul Curley

VOTE: 4-0; 1 absent (Marion Shaw). APPROVED.

9:16 pm: Richard and Danielle James, 315 North Broadway, County Map No. 60.18-01-40.

Appeal #2022-2. Application for an area variance from the requirements of Village of Upper Nyack Zoning Law §4.4.2, Row 4, Col. 6 (side yard and total side yard setback) to allow the construction of a raised patio on a lot improved with single-family residence in the Residence R-30 District.

The Applicant was represented by Kier Levesque, R.A.

The variance requested is for one side yard at 11.16 where 25 feet is required; and the total side yard at 36.24 where 50 feet is required. Mr. Levesque also requested that all of the existing non-conforming conditions be memorialized as per the Planning Board suggestion. Planning Board gave conditional approval based on getting the variance from ZBA.

Noelle Wolfson, Esq., Consulting Attorney, stated that the only variances the ZBA can consider is for the deck since that is all that was noticed. She continued that everything else can continue as non-conforming structure. They do not need variances to continue in their present state.

Motion to open the public hearing.

Motion: Stephen Lubeck

Second: Meg Fowler

VOTE: 4-0; 1 absent (Marion Shaw). APPROVED.

Mr. Levesque spoke during the public hearing. He stated that the side yard is heavily planted and there's a fence so we're not going to be putting a structure in alongside of the property where there's no foliage or visual barrier. He also noted that the Rockland County Planning department has required that the Village of Nyack comment and he did not recall anything coming back and no conditions.

Member Paul Curley commented that the Village of Nyack sent a letter saying that they consider this to be a matter of local determination.

No further public comment.

Motion to close the public hearing.

Motion: Stephen Lubeck

Second: Paul Curley

VOTE: 4-0; 1 absent (Marion Shaw). 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 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 detriment to nearby properties. The non-conforming side-yard setbacks are not being exacerbated. No apparent impact on the neighbors caused by building the patio.

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

No way to achieve the objective without the variance.

3. Whether the requested area variance is substantial.

Not substantial in that the existing conditions are not being exacerbated.

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

No evidence that this variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood.

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, it's self-created in that the Applicants want a patio.

The Chairman said he would entertain a motion to approve the plan as presented to the Board for an 11.16 feet setback where 25 feet is required on the north boundary; and 36.24 feet where 50 feet total overall is required for the side yard setbacks.

Motion: Stephen Lubeck

Second: Paul Curley

VOTE: 4-0; 1 absent (Marion Shaw). APPROVED.

The meeting was adjourned at 9:32 PM.

Respectfully submitted,

Janet Guerra
Board Secretary