

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, September 6, 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: Paul Curley, Stephen Lubeck, Marian Shaw and Meg Fowler.

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

8:01 pm: The Chairman opened the meeting, and read the Notice of Public Hearing, which was published in The Journal News on August 30, 2022.

8:02 pm: The Chairman called for a motion to approve the minutes from the May 3, 2022 meeting.

Motion: Stephen Lubeck
Second: Meg Fowler
VOTE: 5-0; APPROVED.

The Chairman called for a motion to approve the minutes from the July 5, 2022 meeting.

Motion: Paul Curley
Second: Stephen Lubeck
VOTE: 5-0; APPROVED.

8:03 pm: 647 North Broadway LLC, 647 North Broadway, County Map No. 60.06-01-05.2.
Application for area variances from the requirements of Village of Upper Nyack Zoning Law §6.7.1.1 (Slope Disturbances 15-24%) and §6.7.1.3 (Slope Disturbances greater than 40%) on a vacant lot in the Residence R-40 district.

The applicant was represented by Jay Greenwell, PLS, Robert Knoebel, Esq., Tom Ryback, RA and Greg Hasaj, AIA.

Mr. Greenwell explained that the Applicant is before the ZBA to request area variances with respect to steep slopes. He continued that Mr. Letson recommended to the Planning Board that the board override the recommendation of Rockland County Planning that the project be disapproved. He stated that you cannot get to the buildable portion of the property unless you disturb the slopes.

Board Discussion:

Chairman Thomas Englert stated the 24% of the 40% slope is a lot and a problem.

Robert Knoebel, Esq. said that there isn't that much 40% slope.

Member Stephen Lubeck asked what portion is affected.

Robert Knoebel, Esq. replied: about half.

Chairman Englert asked for the Applicant's representatives to show the Board (on the plans) where the disturbance would be.

Mr. Greenwell said that the total amount of slope disturbance is a square 70x70 totaling 4,900 square feet.

Member Stephen Lubeck ask why the dwelling wasn't located in the white area (referencing the plan.)

There was discussion about the Planning Board requested that there be emergency access.

Member Meg Fowler said that the house could be pulled back out of the slope range altogether. She asked what the thinking was regarding the elevations. She commented that there is a lot of excavation. She said that they can take the whole building and shift it back and up and achieve the same thing and there would be much less disturbance.

The Chairman asked again why the house couldn't be moved back.

Discussion about the lengthy timeline of the application.

The Chairman stated that he wasn't sure how relevant the delays are to the matter before the ZBA. He stated that the Board wants to minimize the slope disturbance. He suggested a continuance so that the Applicant's representatives could review again and see if the house could be moved back, referencing that Rockland County Planning clearly doesn't want the Board to grant the variance.

Member Stephen Lubeck said that he'd like Dennis Letson to be at the next meeting. The Chairman agreed.

Mr. Greenwell agreed that would be a benefit.

Tom Ryback said that he disagreed with the Board's assessment of the slope.

Member Meg Fowler said that the Applicant's representatives should consider raising the elevation of the entire structure as it's brought back so that the whole structure shifts up the hill a bit so that you would be disturbing less.

Mr., Greenwell asked if they were to pull the house back and re-design so that the lower portion was not disturbed, would the board have any issue with the upper level (elevated walkway) disturbance.

The Chairman said that his other concern is the emergency access. He asked how emergency vehicles turn around.

Mr. Greenwell said they would use the existing driveway as it's u-shaped.

Mr. Greenwell commented that they will ask for a continuation and they will see how far they can pull the house back.

Mr. Ryback asked if they move the house back 10 feet, would that be acceptable.

The Chairman said that the Board wants to minimize the disturbance and he couldn't say if it will be 10 feet.

Noelle Wolfson, Esq., Village Consulting Attorney stated that the next meeting would be October 11, 2022 and the re-submission deadline is September 26, 2022.

Motion to continue the public hearing to the October 11, 2022 meeting.

Motion: Stephen Lubeck

Second: Meg Fowler

VOTE: 5-0; APPROVED.

8:33pm: Christina Wright/David Rogow, 308 N. Midland Avenue, County Map No. 60.17-01-19.

Application for an area variance from the requirements of Village of Upper Nyack Zoning Law §6.6.3.1 (Fences—max 6 feet high) addressing a violation notice on an existing single-family residence in the Residence R-10 District.

Represented by the homeowner, Christina Wright.

Ms. Wright stated that she has a great number of deer in her yard. She said that she planted arbor vitae about 7 years ago on the front of her house facing Midland Avenue; and on the side facing Highmount Avenue. She said the deer left the plants on the side alone; but the plants on the front of the house look like lollipops. She continued that she put up a deer fence; but they can still get into the yard. Ms. Wright explained the arbor with the cedar panels/fencing attached and acknowledged it may be too high at 7'4".

Member Stephen Lubeck said that the drawing shows 6'8" on one side and 8' on the other.

The Chairman said that the drawing must be wrong. The Applicant agreed with that.

Discussion of some other decorative items on top of the fencing/arbor that are no longer there.

Member Stephen Lubeck said that the Applicant's architect needs to re-draw the drawing because when the ZBA grants a variance, it has to be correct and at this point the drawing says 8 feet.

The Chairman told the Applicant that her property is treated as though it's a front as the Applicant is on a corner. He continued that the fence needs to be 6 feet.

Noelle Wolfson, Esq. Village Consulting Attorney told the Applicant that if she reduced her fence to 6 feet, she wouldn't need a variance; but she would still need a license from the Village because it's in the right of way.

The Board advised the Applicant she wouldn't have to come back if she made the fence 6 feet. The Applicant agreed.

The application was withdrawn for code compliance.

8:43pm: Lewis Maresca, 505 Spook Hollow Road, County Map No. 60.09-02-25.

Application for an amendment to a previously granted area variance from the requirements of Village of Upper Nyack Zoning Law §6.9.3 (Inground Swimming Pool setbacks) for a 14-foot rear yard setback and 14.8-foot side yard setback in lieu of the required 30-foot setback (15-foot side and rear yard setback permitted by variance granted May 3, 2022) on an existing single-family residence in the Residence R-10 District.

On May 3, 2022 the Board granted the applicant, among other variances, variances from Village Zoning Law Section 6.9.3, which requires a pool to be setback at least 30 feet from a side and rear lot line to permit the proposed pool to be located 15 feet from the side and rear lot lines. The pool has been installed and when preparing the as-built survey after its installation, the survey revealed that the pool is, in fact, 14.8 feet from the side lot line and 14 feet from the rear lot line. The applicant is seeking a modification to the May 3rd variances for the pool setback to permit a rear yard pool setback of 14 feet and a side yard pool setback of 14.8 feet.

No one was in attendance to represent the Applicant.

Motion to open the public hearing.

Motion: Stephen Lubeck

Second: Paul Curley

VOTE: 5-0; APPROVED.

No public comment.

Motion to close the public hearing.

Motion: Stephen Lubeck

Second: Paul Curley

VOTE: 5-0; APPROVED.

Given the minor nature of the proposed modification and the fact that the papers submitted to the Board described in detail the modification to the previously granted variance, the Board decided the application based on the application submitted. Except as expressly provided, all other provisions of the May 3rd variance remain in full force and effect.

Motion to approve the requested amendment to the May 3, 2022 variance to permit the proposed pool to be located 14.8 feet from the side lot line and 14 feet from the rear lot line.

Motion: Stephen Lubeck

Second: Paul Curley

VOTE: 5-0; APPROVED.

Member Stephen Lubeck recused himself for the following application and left the meeting.

8:47pm: Michelle Feit, 402 N. Broadway, County Map No. 60.13-03-37.

Application for an area variance from the requirements of Village of Upper Nyack Zoning Law §4.4.2, column 14 (Parking areas, access driveways and walkways setbacks) on an existing single-family residence in the Residence R-20 District.

The Applicant, Michelle Feit, represented herself.

Ms. Feit said they are in the process of fixing their existing driveway, and an existing wall of railroad ties. They seek to solve a problem because they have three cars and they all have to back out of the driveway and don't have a clear line of sight. They are seeking to widen the driveway-- going almost to the property line. There will be no change in the way it looks from the street or the neighbor view. Ms. Feit said the wall is 2 feet high and the changes are not that significant. She also said there would be no landscape change.

Chairman Englert asked for clarification of what would be happening with the wall.

Ms. Feit explained that they are just pushing it back a foot from the property line. She said the wall is holding up the ground and it's 2 feet high.

Member Meg Fowler asked what is on the other side and Ms. Feit said there are trees.

Member Meg Fowler asked about drainage. And, she inquired about the driveway material and whether it will be replaced with macadam—which is what is currently there. Ms. Feit replied in the affirmative.

Motion to open the public hearing.

Motion: Paul Curley

Second: Meg Fowler

VOTE: 4-0; 1 recusal. APPROVED.

No public comment.

Motion to close the public hearing.

Motion: Paul Curley

Second: Meg Fowler

VOTE: 4-0; 1 recusal. APPROVED.

ZBA FIVE FACTORS

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 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 evidence that expanding the driveway will have a negative effect on neighbors or neighboring properties.

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.

To expand the driveway, the Applicant will need a variance. There was a thorough discussion about the property's uniqueness; and there is no feasible way without a variance.

3. Whether the requested area variance is substantial.

The variance is substantial; but in the overall scheme of things, in terms of the size of the property and the impact on the neighbors, it's pretty minimal; and it has been reduced to where it's not egregious.

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

It will not 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.

It is self-created as the Applicant wants a larger driveway.

Motion to approve the variance:

Variance from §4.4.2 Col A (minimum distance from driveway to property line) from the Village's Zoning Ordinance which requires a driveway to be setback five feet from the side lot line to permit the driveway to be setback 0.9-feet from the side lot line. The variance is granted subject to the following conditions:

1. Compliance with the plans submitted for this meeting as they may be modified by the Planning Board during the site plan review process, provided the driveway setback shall be setback from the side lot line by at least 0.9 ft. This variance shall be of no force or effect if Site Plan approval by the Planning Board is denied.
2. This variance shall expire pursuant to the terms of Section 12.4.9 of the Village Zoning Law

Motion: Meg Fowler

Second: Marion Shaw

VOTE: 4-0; 1 recusal. APPROVED.

The meeting was adjourned at 8:51 PM.

Respectfully submitted,

Janet Guerra
Board Secretary