

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, November 15, 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, Marian Shaw and Meg Fowler.

Absent: Paul Curley

Also present: Noelle C. Wolfson, Esq., Village Consulting Attorney; Dennis Letson, Village Engineer; Mike Nolan, Code Enforcement Officer; 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 September 27, 2022.

8:00 pm: The Chairman called for a motion to approve the minutes as amended from the September 6, 2022 meeting.

Motion: Stephen Lubeck

Second: Meg Fowler

VOTE: 4-0; 1 absent, APPROVED.

8:01 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.

Jay Greenwell explained that they shortened the walkway and pulled the disturbance out of the lower slope area. He said that the upper slope area would have an upper walkway. He continued that the slopes would be disturbed for the installation of utilities and then restored. He summed up by saying that they fit the house where the slope disturbance would be minimized.

Discussion about elevations and excavation.

Jay Greenwell showed the evolutions of the plans to the Board.

The comments of the Village Engineer, below, were reviewed.

State Environmental Quality Review (SEQR)

Under the provisions of 6NYCRR Part 617.5c11 and 617.5c17, the project is a Type 2 action. No further review under SEQR is required.

Zoning

1. The site plan has been extensively reviewed several times to address the County Planning, Village Planning and Zoning Board comments regarding the extent of slope disturbance.
2. Variances for slope disturbance required as shown on the bulk table
 - a. 13.2% of slopes 40% or greater where none permitted, (previous plan 7/22 was 24%).
 - b. 42.6% of slopes 15%-24% where 35% permitted, (previous plan 7/22 was 47%).

Site Plan

1. It may be helpful for the applicant to indicate if slopes being disturbed are temporarily or permanently altered by the disturbance.
2. RC Planning comment
 - a. The County recommended disapproval of the project based on the slope disturbance proposed.
 - b. The applicant's Consultants have revised the plan to address this comment and comment by the Village Planning and Zoning Boards.
 - c. I suggest that the RC Planning disapproval comment may be over-ridden by the Board.

Dennis Letson made further comments: Mr. Greenwell has indicated how much of the slope disturbance will be permanent or temporary. Mr. Letson believes that the Board has it within their purview to override the County's recommendation. He commented that the lot would never be created by subdivision today due to it being contrived and difficult with serious building envelope constraints. He stated that a lot of the slopes along river are not natural.

Mr. Greenwell commented that the property is well served by the owner because if someone came in to develop this lot there would be a lot more variances.

Meg Fowler commented that since they moved the house the rear yard setback has to be revised.

There was no public comment.

Motion to close the public hearing:

Motion: Stephen Lubeck

Second: Marion Shaw

VOTE: 4-0; 1 absent, APPROVED.

Village Consulting Attorney, Noelle Wolfson, Esq. stated that to override Rockland County Planning, the Board will need a super majority.

The chairman evaluated the statutory area variance standard and the 5 factors, summarized as follows:

1. No undesirable change to the character of the neighborhood. The slopes disturbance has been substantially reduced, much of it is temporary and the house is architecturally consistent with the neighboring property (649 North Broadway)
2. No feasible alternatives for the applicant to pursue other than a variance. The lot has an irregular shape and slopes throughout making some variance necessary. A significant portion of the slopes disturbance is temporary and it has been minimized.
3. Not substantial in impact because disturbance has been minimized.
4. The Village Engineer and the Planning Board has reviewed and will continue to review this application to ensure that physical and environmental impacts are minimized.
5. The hardship is not really self-created because it arises from the shape and topography of the lot.

Motion to grant the following variances:

1. Variance from Village Zoning Law Section 6.7.1.1, disturbance to slopes between 15% and 24%. Maximum permitted disturbance per Section 6.7.1.1 is 35%, disturbance of 42.6% proposed
2. Variance from Village Zoning Law Section 6.7.1.3, disturbance to slopes greater than 40% no disturbance permitted, disturbance of 13.2% proposed.

The grant of these variances is 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 that they may not be modified to exceed the extent of disturbance permitted by the variances. These variances shall be of no force or effect if Site Plan approval by the Planning Board is denied or if it is not granted by the Planning Board within 12 months of the date of this variance.
2. These variances shall expire pursuant to the terms of Section 12.4.9 of the Village Zoning Law.
3. Rockland County Planning Comments and Override:
 - a. The Board overrides Rockland County Planning's recommended Disapproval and comment 1 of its letter dated 8/30/22. The irregular configuration of the site and the available building envelope on the property make it exceedingly difficult to use the property without slopes disturbance. The applicant has worked very closely with this Board and the Planning Board to revise its plan to minimize disturbance to the slopes to the maximum extent practicable. Moreover,

following construction the slopes will be stabilized and, with regard to the western slope disturbance, restored, to prevent excessive erosion.

- b. Comments 2 and 3 in Rockland County Planning's 8/30/22 letter shall be incorporated as conditions of approval of this application.

Motion: Stephen Lubeck

Second: Meg Fowler

VOTE: 4-0; 1 absent, APPROVED.

8:21pm: Maria Belen Soraire Barrionuevo, 115 Larchdale Avenue, County Map No. 60.05-02-05.01. Appeal #2022-05. Request for 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-40 District.

Represented by the homeowner, Maria Belen Soraire Barrionuevo; and Chase Altneu.

The homeowner, Maria Belen Soraire Barrionuevo stated that they would like to keep their pet goat, Loki. She stated that they were granted a 6-month permit; and they would like to re-apply and not have to come back every six months. She also said they got another baby goat yesterday.

Chairman Thomas Englert stated that their permit expired in June.

Chairman Thomas Englert commented that the applicants have complaints against them.

Chase Altneu said that they were told it was a bystander.

Chairman Thomas Englert asked the applicants whether they thought bystanders didn't have rights. He continued that the whole reason the Board granted only six months was to ascertain whether they could abide by the rules.

Chase Altneu stated that they do abide by the rules for the most part.

Chairman Thomas Englert stated that the Board would like to see the rules followed consistently.

Maria Belen Soraire Barrionuevo stated that they don't understand why they can't keep their pets on their property. She stated that their neighbors do not complain.

Member Stephen Lubeck stated that the regulations are set up for the health, safety and welfare of all the neighbors.

Maria Belen Soraire Barrionuevo mentioned deer.

Member Stephen Lubeck stated that one cannot compare the two. He stated that the applicants are keeping the goat as a domestic animal.

Code Enforcement Officer Mike Nolan was asked to report. He stated that there have been multiple motorist complaints that the animal was off leash and off property. He stated that he had been sent photos and videos of the goat walking down Midland Avenue, zigzagging across the double yellow line.

Maria Belen Soraire Barrionuevo asked Mike Nolan whether he had ever seen any problems when he was at the property.

Code Enforcement Officer Mike Nolan stated that he had not. He stated that he had stopped by randomly and never had a problem. He reported that he looks at how the chickens and goats are kept; but that the biggest concern is the goat off property without a leash.

Member Stephen Lubeck stated that the stipulations of the permit were such that the goats and chickens had to be penned. He asked Mike Nolan if they were unpenned when he was there. Mr. Nolan replied in the affirmative.

Member Stephen Lubeck repeated that the animals have to be penned up.

Village Consulting Attorney, Noelle Wolfson, Esq., stated that if the property is fenced, the animals can be on property without a leash.

Dennis Letson, Village Engineer, stated the applicants are not applying for a renewal. He stated that this is a new application; and issues have been raised and the applicant's response is that the majority of the time things have been complied with. He stated that the chickens are to be penned; and the goats shall be kept in the penned area or on a leash if off property. He stated the applicants have admitted that they violated the conditions of the permit.

Chairman Thomas Englert asked Mike Nolan about any noise complaints.

Mr. Nolan said that someone called and said the goat was less than 12 feet from the property line.

Member Stephen Lubeck said that he is an animal lover; but everyone has to play by the rules.

Chairman Thomas Englert said that there are also safety issues and this situation can cause accidents

Member Stephen Lubeck said that he avoids Larchdale Avenue because of the goats. He said that he is not the only one. He fears that it could have a tragic end.

Chase Altneu said that Mother Nature is not kind.

Member Stephen Lubeck said that the applicants have to comply; and that the Board is not going to give the applicants carte blanche. He continued that the Board looks at the community as a whole.

Chase Altneu said that there are kids speeding down their street.

Chairman Thomas Englert said that it's wrong to have the goats off the property unleashed.

Member Stephen Lubeck said that the Board will give the applicants another six months.

Chairman Thomas Englert said that that was too much time and he prefers 3 months.

Member Stephen Lubeck said that the code compliance officer will be checking.

Chase Altneu asked if the permit was granted.

Chairman Thomas Englert stated that the permit expired.

Member Stephen Lubeck stated the Board is granting a permit for 3 months. He said that he didn't want the applicants to have to get rid of the chickens and goats.

Maria Belen Sorraire Barrionuevo said that they are good members of the community and they don't appreciate the language that's being used like "being watched". She continued that she works with dying children with cancer. She said that the neighbors are happy with the animals; and that they don't hear the complaints.

Member Stephen Lubeck stated that he sees the animals outside with no sign of either of the applicants.

Chase Altneu said that they accept the fact that they are granted the 3 months and that they will assess things on their end.

Chairman Thomas Englert stated that the 3 months starts today.

Motion to open the public hearing:

Motion: Stephen Lubeck

Second: Meg Fowler

VOTE: 4-0; 1 absent, APPROVED.

No public comment.

Motion to close the public hearing:

Motion: Stephen Lubeck
Second: Marion Shaw
VOTE: 4-0; 1 absent, APPROVED.

The applicants were instructed to re-apply by the February meeting.

There were questions and discussion about how one gets on the Board.

Motion to grant the applicants a General Ordinance Section 5.13 keeping of animals special use permit on the following conditions, which are substantially similar to the conditions of the previously issued permit:

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 to ensure compliance with the conditions of this resolution of approval.
9. **This approval shall be valid for a period of three (3) months from the date hereof and shall expire on January 11, 2023.**

Motion to approve:

Motion: Stephen Lubeck
Second: Meg Fowler

VOTE: 4-0; 1 absent, APPROVED.

Motion to adjourn:

Motion: Stephen Lubeck

Second: Marion Shaw

VOTE: 4-0; 1 absent, APPROVED.

The meeting was adjourned at 8:51 pm.

Respectfully submitted,

Janet Guerra
Board Secretary