

**Village of Upper Nyack
Zoning Board of Appeals Meeting
September 21, 2021, 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 **8:01 pm** by the Chairman, Thomas Englert.

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

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

8:01pm: The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on September 14, 2021. The Chairman also reviewed how the Zoom meeting would work. The Chairman also welcomed Meg Fowler as a regular Board member and thanked her for her willingness to serve on the Board.

Approval of Minutes: Member Stephen Lubeck moved to approve the Draft Minutes from June 15, 2021 as amended; **SECOND:** Marion Shaw; unanimously APPROVED.

8:05pm: Chairman Thomas Englert called for a motion to open the public hearing on the Place application.

MOTION: Member Stephen Lubeck moved to open the public hearing; **SECOND:** Marion Shaw; unanimously APPROVED.

8:06pm: Thomas Place, 323 Front Street, County Map No. 60.17-01.06.

Application for an area variance from the requirements of the Zoning Ordinance of the Village of Upper Nyack, **Article IV, Section 13:3**; required side yard for a two-level deck and above-ground pool on property improved with an existing single-family residence located in the Residence R-4 District.

The Applicant submitted to the clerk the Certificate of Mail receipts of neighbor notification.

The Applicant was represented by Kier Levesque, Architect. The Homeowner, Thomas Place, was also in attendance.

Kier Levesque explained that the Applicant was before the Planning Board on July 7, 2021 and that a side yard setback variance was required. Mr. Levesque indicated the correction that this is an above-ground pool, not an inground pool as indicated on the agenda. The purpose of the deck is to accommodate the proposed pool in light of the existing site topography. He further explained that the Applicant will need a side yard setback to permit a setback of 18.083 feet where 25 feet is

required. Mr. Levesque's opinion is that there is no alternative and that this is the best use of the property.

Chairman Thomas Englert agreed to the correction about it being an above ground pool. Chairman Englert asked the applicant to describe the swim spa.

Mr. Levesque explained that a swim spa is a pool that has a mechanical current maker so that you can swim in place allowing for a pool with a smaller footprint.

Chairman Englert asked for the dimensions of the pool and Mr. Place provided that it's approximately 19.25 feet by 8 feet by 5 feet depth.

Chairman Englert asked if the wood fence is outside the property and there was a discussion about the fencing and the proximity of the fencing and propose pool and neighboring homes.

Chairman Englert inquired whether there was any comment from the neighbors. Mr. Place said that none of the neighbors expressed any comments to him.

Chairman Englert asked about something marked "slate" —a triangle indicated on the plans that appears to go beyond the property line. Mr. Levesque explained that those improvements are being removed.

Chairman Englert asked for clarification that the closest anything will be to the property line would be at the 18.1-foot setback requested; and asked what the slate area was. Mr. Levesque indicated it's a landing at the bottom of the steps—required by code to have something other than mud to stand on. Chairman Englert also inquired about the stonewall that would be built; and indicated that the setback should be measured from that corner.

Member Meg Fowler had the same question and indicated that it's two feet closer to the side property line.

Kier Levesque confirmed that it's 16.1 feet from the property line.

Chairman Englert requested revised drawings showing that setback variance and Mr. Levesque agreed to provide.

Chairman Englert had comments that it is a two-level deck requested; that the slate area was fairly large; and inquired whether the outdoor kitchen was new and Mr. Levesque indicated that it was.

The Board discussed, at length, whether the side yard setback should be measured to the deck or the retaining wall. The Board ultimately decided that since the retaining wall is an integral part of the deck, the setback should be measured from the retaining wall.

There were no comments from the public.

Noelle Wolfson, Esq. reported that this application was subject to GML review and Rockland County Planning had a favorable “approve” recommendation. Ms. Wolfson further commented that the Planning Board has not approved the application. They did a preliminary review and referred it to ZBA. If this Board approves the application, they will have to go back to the Planning Board to conclude the Planning Board application process.

The Board had no further comments.

MOTION: Member Stephen Lubeck moved to close the public hearing; **SECOND:** Member Marion Shaw; unanimously APPROVED.

The Chairman reviewed the area variance test and the five factors that must be applied (See Village Zoning Ordinance S 17:4, C2) regarding the Applicant’s request for a minimum side yard setback variance where 25 ft. is required and 16.1 ft. is proposed (given the Board’s interpretation that the setback must be measured from the wall).

- The Board does not see that this variance will be an undesirable change to the neighborhood. The neighbors are pretty distant from the property and there doesn’t seem to be anything out of character to the neighborhood. The deck could, perhaps, be smaller; but there will still most likely be a need for an area variance and making the deck smaller will make it less usable. In practical terms, there is probably no other method feasible for the applicant to pursue other than the area variance. The Chairman noted that the mathematical extent of the variance was somewhat large. Dennis Letson, Village Engineer, reviewed the application prior to the July Planning Board meeting. He had a few minor comments that the Applicant has either addressed or will be able to address before the next Planning Board meeting, and there were no significant environmental issues that came up during the Planning Board review. This is a Type II action under the New York State Environmental Quality Review Act, so no SEQRA review is required. The proposed deck will not have any adverse impact on the physical or environmental conditions of the neighborhood. The condition is self-created as the Applicant wants the pool, but the fact that a hardship is self-created does not necessarily preclude the grant of the variance.

MOTION: Based on the information above, the Board moved to approve the area variance sought by the Applicant as depicted on the Place Deck & Spa, Deck Plan, prepared by Kier B. Levesque, R.A, dated May 5, 2021 on the condition that revised plans are submitted with the change to the bulk table showing 16.1 feet as the setback to the side yard and on the condition that the improvements are built in accordance with such plans as revised.

MOTION BY: Stephen Lubeck
SECOND: Paul Curley
VOTE: Unanimously Approved

8:45pm: Rappaport, 118 Highmount Avenue, County Map No. 60.17-02-72. Permit #2021-09. Application for Special Permit to keep and harbor chickens and a goose at an existing single-family residence located in the Residence R-4 District.

The Applicant submitted to the clerk the Certificate of Mail receipts of neighbor notification.

The Applicant was represented by Ashley and James Rappaport Cho, the daughter and son-in-law (and next door neighbors) of the Applicant.

Member Stephen Lubeck recused himself from this application as the Applicants are his neighbors.

Chairman Thomas Englert questioned the Applicants as to the plan for chickens and inquired if it was 12 chickens and a goose they sought to keep and whether it was one coop or two and whether the coop was on one property. The Applicants confirmed the number was 12 chickens and a goose and that it was one coop. The Chairman explained that the Board has always limited the number of chickens to six. The Applicants explained that they have one third of an acre and the father/father in law (neighbor) has one third of an acre. They offered their opinion that 12 chickens are the minimum that makes sense because they keep each other warm and the older ones teach the younger ones—some will be molting and won't lay eggs.

Chairman Thomas Englert commented that numerous applicants have complied with the six-chicken limit.

The Applicants commented that they don't keep the chickens as pets; they keep them for eggs as there are members of the family who have allergies.

Chairman Englert commented that they've had these chickens without a permit and the Applicants agree that that was the case.

The Applicants commented that the neighbors were supportive. They explained that the goose honks for only three reasons: feeding time, when someone approaches and to warn the chickens of a predator. They further commented that the chickens were quiet as well. The Applicants stated that they didn't know they needed a permit.

Chairman Thomas Englert asked the Applicants how they found out they needed a permit. The Applicants stated they didn't know they needed a permit and were delayed due to having to get a survey.

Chairman Thomas Englert inquired where the coop is situated and the applicants replied that it is on the property located at 118 Highmount Avenue.

Noelle Wolfson, Esq. commented that the Board can only consider the application for 118 Highmount; not the neighboring property. The Applicants agreed that they understood that.

Chairman Thomas Englert asked the Board members if they had any comments.

Member Paul Curley commented that he keeps chickens and he started with nine and now has seven -- and had agreed with the Board that this should be reduced to six through attrition -- and he does not agree that 12 chickens are the minimum necessary. There was discussion about the number of chickens and the number of eggs produced. Mr. Curley expressed that he sympathized; but allowing 12 rather than six would set a new precedent.

Chairman Thomas Englert said he was reluctant to do that.

Member Marion Shaw commented that this was one coop for two families.

Chairman Thomas Englert reminded the Board of Ms. Wolfson's comment that it can only consider the application for 118 Highmount. He inquired whether the Applicants would agree to not replacing any chickens until the number got to 6 if the application was approved.

Member Meg Fowler commented that it seemed logical to use the two properties. Ms. Wolfson stated that there is no legal authority to spread the permit over two properties and that each permit would need to stand on its own and reminded the Board that there is also a goose and the approval will run with the lots.

Member Meg Fowler inquired whether they would be able to have a fenced area that could include both property lines. Ms. Wolfson replied that each application would be separate and that all approved chicken permits have fencing on that lot and that it runs with the land.

The Board opened the public hearing.

MOTION BY: Paul Curley

SECOND: Marion Shaw

VOTE: APPROVED

Yes: 4 (Englert, Curley, Shaw, Fowler)

No: 0

Abstain: 1 (Lubeck)

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Comments from the public:

Karen Tarapata, 127 Castle Heights Avenue, commented that the coop was much too close to the property line; and that the goose honks every sunrise and sunset and that she has kept a log of the same. She said that she understands the desire to protect the chickens; but doesn't feel that the chickens being closer to her house than the Applicants' house is fair. She also commented that her objection is to the goose; not the chickens.

The Applicants disputed the distance of the coop from their house vs Ms. Tarapata's. They also denied that the goose honks at dawn and dusk. They also mentioned that the goose is quieter than a dog barking.

Vincent and Ann Morgan, 121 Highmount Avenue, commented that the chickens have not bothered them; nor has the goose.

Anissa Walker, 210 Glenbrook Road, commented that she supports the Applicants. She said she didn't even realize they had chickens until they moved. She is in support and prefers natural noises to radios and landscapers.

Rob Picardi, 209 Glenbrook Road, stated that he's been their neighbor for years and he misses the chickens. He reiterated what Ms. Walker said that he prefers the chickens to landscapers and dogs. He stated that chickens are a benefit because they eat ticks.

Daniela Pescher, 114 Highmount Avenue, stated that she has no objection to the chickens and the goose. She stated that they are up early at 5am and don't hear the goose until 8am; and they enjoy hearing the chickens and the goose. She commented that it's a natural sound. She commented that the Applicants live healthy and want to nourish their family in a healthy way.

Thomas Gaffney, 121 Castle Heights Avenue, commented that he wanted to focus on the goose. He stated that it's loud and annoying and an uncomfortable sound. He said it's closer to his deck and they hear it frequently when they sit on their deck. He stated that the chickens are fine. He also commented that this is why we don't allow roosters, because of the sound they make. Mr. Gaffney said that on Sunday, three different times during the day the goose honked. He said it's close (50 feet from his deck) and loud.

Chairman Thomas Englert asked if there were any more comments.

MOTION TO CLOSE THE PUBLIC HEARING BY: Marion Shaw

SECOND: Meg Fowler

VOTE: APPROVED

Yes: 4 (Englert, Curley, Shaw, Fowler)

No: 0

Abstain: 1 (Lubeck)

Chairman Thomas Englert commented that the Board is in a difficult situation and would like to hear more comments from the Board.

Member Meg Fowler commented that when you look at the plan and see the depth of the properties, it's believable that the neighbors are close and that it can be a burden. The Chairman agreed and said it's believable that the goose is causing discomfort.

Member Paul Curley commented that he didn't know what this goose sounded like so he did some research and found out that geese are good guardians of chickens; but the fact that they are good guardians also means they can be annoying in residential, suburban or urban areas. He felt it was unfortunate that the Applicants didn't take apply for a permit when they should have, because now the Applicants have bonded with the goose; but the neighbors are complaining.

Chairman Thomas Englert stated that this is a difficult situation and it was all done without a permit; and they are in a situation that has to address the neighbors. He stated that there is a noise ordinance and this seems to fall under that purview.

There was more discussion about the proximity to the neighbors and that hearing the goose is disturbing.

Chairman Thomas Englert said that they needed to come to a decision. He said that the chickens don't seem to be a problem and that they could grant the 12 chickens; but the Applicants couldn't replace any until the number became less than six. He stated that on the issue of the goose, the Board shouldn't be granting an application for a goose. He commented that as per Member Paul Curley, there are other ways to protect the chickens.

The Applicants objected and offered to put up more fencing.

Chairman Thomas Englert stated that that wouldn't solve the problem of the goose; and asked the Board for any other comments.

Member Paul Curley said he was on board with granting the special permit to allow 12 chickens with attrition down to six; but no goose; but added a query about finding a humane solution and there was discussion about a time frame to allow the Applicants to make arrangements to remove the goose from the Property. It was decided that six weeks was a fair time frame for the Applicants to do that. Mr. Curley commented that he felt badly; but so many issues had to be balanced.

There was discussion about including conditions in the motion.

MOTION: The Board moved to approve the Special Permit to the Applicants to keep chickens only (no goose and no roosters) with the following provisions: 1) the number of chickens is 12 with attrition down to six chickens and the goose is not permitted; 2) there will be no excessive noise; 3) the chickens will be penned in the yard at all times; 4) there will be maintenance of clean, sanitary, quiet conditions in order to not cause odor nor attract vermin to the neighborhood; 5) no breeding or commercial use is allowable; 6) the goose will be removed from the property within six weeks; 7) this approval is valid for one year at which time the Building Inspector will make a visual inspection.

MOTION BY: Paul Curley

SECOND: Marion Shaw

VOTE: APPROVE

Yes: 4 (Englert, Curley, Shaw, Fowler)

No: 0

Abstain: 1 (Lubeck)

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There was no other business.

The meeting was adjourned at 10:00pm.

Respectfully submitted,

Janet Guerra, Secretary