

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, November 16, 2021, 8:00pm**

DRAFT 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 **8:00 pm** by the Chairman, Thomas Englert.

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

Absent: Meg Fowler.

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 November 9, 2021. The Chairman also reviewed how the Zoom meeting would take place.

8:16pm: Restart meeting after disruption.

8:17pm: Approval of Minutes: Member Stephen Lubeck moved to approve the Draft Minutes from September 21, 2021; SECOND: Marion Shaw; VOTE: 4-0; 1 absent. APPROVED

8:19pm: Maria Belen Soraire Barrionuevo, 115 Larchdale Avenue, County Map No. 60.05-02-05.01. Appeal #2021-10.

Said property is located in the Residence R-1 District.

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

The Applicant was represented by Maria Belen Soraire Barrionuevo and Chase Altneu.

The Applicant is requesting a 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-1 District.

The Applicant, Maria Belen Soraire Barrionuevo, explained that she currently keeps one Nigerian dwarf goat as a pet but hopes to acquire a second goat.

Chase Altneu, a resident on the subject property, clarified that they would like the permit to allow them to have two goats on the property. He explained that they take the goat on hikes and walks and otherwise is and will be in the pen. He continued that the pen will be in the backyard and it's only for sleeping or when they are not around the house to make sure the goat doesn't disturb anyone.

He explained that the goat is 6-7 months old and won't get bigger. He explained that the goat is not aggressive and is very friendly and good with kids and adults.

Chase Altneu showed the post and rail fence with chicken wire attached, which is intended to keep the goats on the property. He continued that the goat eats poison ivy so he's helpful. He showed pictures of the goat and explained that he's like a little dog.

BOARD DISCUSSION:

Chairman Thomas Englert said that he's seen the goat and chickens in the road. He asked the Applicant if they are going to keep the animals on the property or let them roam in the road.

Chase Altneu explained they had vermin and flies as a result of keeping the chickens in one location. He said the chickens may go into the road; but they haven't had any complaints and they only let the chickens out when they are outside.

Chairman Englert noted that the prior special use permit allowing the applicants to keep chickens on the property requires the chickens to be penned.

Member Stephen Lubeck explained that his dog gets agitated when he sees loose chickens and a goat and that this has happened numerous times. He explained that one day he walked on the street near the subject property and heard a rooster and that chickens were running across the road. He further stated that the Applicant took the goat off the last permit they applied for and then got the goat anyway.

Chase Altneu stated that the roosters have been removed from the property. The Applicant alleged that Member Stephen Lubeck came onto the property aggressively without permission.

Member Stephen Lubeck explained that the applicant frequently violates the conditions of the permit allowing the keeping of chickens by allowing the chickens to roam outside of the enclosure and that compliance with those conditions is required.

The Applicant stated that people around neighbors in the vicinity of the property have not complained about the goat or chickens.

Chase Altneu acknowledged that the chickens were being kept in a manner not permitted by the previously issued special use permit, but that such violation was not out of disrespect for the Upper Nyack community, but rather due to practical constraints of managing the chickens on the property.

Chairman Englert reiterated that the Applicants need to comply with the previously issued special permit allowing the keeping of chickens on the property. He stated that they need to move the coop and always keep 25 feet from the property line. The Chairman also stated that he has also seen the animals running free.

Chase Altneu asked if they could propose something different; a new method. He stated that they do live on a busy corner and have a large plot of property. He asked if they could re-edit the permit they have.

Village Consulting Attorney, Noelle Wolfson, Esq. stated that the Applicants would have to make an application to amend the permit.

Chairman Englert stated that chickens are not the subject of this application; but the Applicants would need to comply with the permit that was issued. He stated that if a modification is requested, the Applicants would need to file a separate application. Chairman Englert stated that the Board has issued numerous permits and they all contain the same conditions as the Applicant's permit. Chairman Englert stated that they would need to focus on the goats. He advised the Applicants to be aware because people are watching and the building inspector is watching.

Chase Altneu expressed the view that the neighboring property owners were in favor of the keeping of the chickens and the goat on the property and requested that the board should adopt a more lenient approach to permitting and enforcement.

Chairman Englert explained that the Board is only asking that the Applicants comply with the previously issued permit.

Member Paul Curley stated that he has chickens and that he went through this process. He explained that he agreed to the conditions of keeping the chickens in an enclosure. He continued that everyone else does as well. He explained that perhaps that's restrictive and that's less enjoyable; but when you agree to conditions and then blatantly violate them, it is not acceptable, and it does not reflect well on the current application.

Chairman Englert reiterated that Applicants must comply with the permit.

Chase Altneu stated that they are not blatantly ignoring the conditions; but that the conditions didn't work for them.

Chairman Englert explained that the Board hopes they will comply. He further inquired if they are asking for one goat.

The Applicant clarified that they are seeking approval to keep two Nigerian dwarf goats on the property.

Member Stephen Lubeck asked if the goats were male or female.

The Applicant stated that the goat is a male; but neutered. She continued that they are just for pets.

Chairman Englert asked the Applicants if they will keep the goats in the pen.

The Applicant stated that the goat will be inside the house and he won't be outside unsupervised.

Chairman Englert responded that he has seen the goat out on the street.

Chairman Englert asked the Applicants if they have a leash.

The Applicants said they go on hiking trails with no leash.

Chairman Englert stated that the Board has given permits before and there are conditions which are a pen and a leash.

Member Stephen Lubeck explained that the Board approved a permit for the Summit School for animals and that they are there for therapy for the children.

Chase Altneu said that the goat sleeps with the chickens.

Village Consulting Attorney Noelle Wolfson, Esq. stated that the reason for keeping the animals is not part of the consideration in the permit review process.

Chase Altneu stated that the goat is their pet and that he brings joy to the neighborhood.

Chairman Englert asked the Applicants again if they will agree to keep the goats in the enclosure.

Both the Applicant and Chase Altneu affirmed that they would.

Member Paul Curley asked if there is a barn for the winter.

The Applicant replied that there is a chicken coop and that they are hearty animals and they can stay out in the winter. She explained that the coop is insulated and that the goat sleeps in the chicken coop with the chickens.

Chairman Englert asked if there were any other questions from the Board.

Member Marion Shaw stated that she has seen the goats on Larchdale Avenue. She stated that the animals need to be kept in the enclosure.

MOTION: Open the Public Hearing

MOTION BY: Marion Shaw

SECOND: Paul Curley

VOTE: 4-0, 1 absent. APPROVED.

COMMENTS FROM THE PUBLIC ON THIS MATTER:

Jason Jacobsen stated that he, his wife and his daughter all enjoy the goat and the chickens. They have a good time with them; and they support their application.

Bob Stien stated that he's sorry that this has become contentious. He stated that the Board spends a lot of time to help the community. He stated that Chase and Belen are wonderful neighbors. He explained that he is south of the Applicants; and that he's comfortable having the chickens and the goat. He stated that clearly there have been some issues; but, they are agreeing to the conditions. Bob Stien said that he hopes they will get to keep the goats and the chickens. He stated that they did a great job with the enclosure. He further commented that he hopes everyone can move on in a positive way. He expressed that perhaps the chickens and goats have been where they weren't supposed to be; but that happens with animals sometimes, even dogs. He went on to say that there's so much extra stress; and he'd love to see going forward that everyone listens to each other. He stated that we all have wonderful neighbors; and feels fortunate to be in the community.

Linda Bean stated that she lives two doors down. She said that the goat is just adorable and friendly; and that she supports the Applicant's application. She continued that the Applicants are wonderful neighbors; and she's happy to have animals back on the property.

Chase Altneu thanked the neighbors for their comments.

MOTION: Close the Public Hearing

MOTION BY: Stephen Lubeck

SECOND: Marion Shaw

VOTE: 4-0, 1 absent. APPROVED.

Chairman Englert stated that the application is for two Nigerian goats and that the condition is that they be kept in the pen. He continued that the Board heard from the neighbors that they are in favor of the goats being in residence. The Chairman asked if there were any other comments.

Member Stephen Lubeck stated that he has no problem with goats or chickens; but he does have a problem with not abiding by the rules. He explained that if the Applicants are getting rats and insects, perhaps the pen is not being cleaned properly. He expressed that if the Board grants the permit, how does the Board know that the Applicants will comply.

Village Consulting Attorney Noelle Wolfson, Esq. replied that when the Planning Board grants special permits under the zoning ordinance, they have durational limitations which are now three years; and they have to be renewed. She stated that this Board can consider that kind of durational limitation and renewal period so that it can be a check back to make sure conditions are being complied with.

Member Stephen Lubeck inquired whether in the interim if the Applicants are not compliant, can the Board revoke the permit at any time.

Village Consulting Attorney Noelle Wolfson, Esq. responded that if the Applicants are non-compliant with the permit, they could be issued a violation which results in a prosecution in local justice court and a fine if they're convicted of the violation.

Chairman Englert stated that with the Summit School, there is a semiannual inspection. He suggested the same or a quarterly inspection for this Applicant.

Village Consulting Attorney Noelle Wolfson, Esq. responded that the permit would have to be affirmatively renewed.

Member Stephen Lubeck stated that the Board should remember that this will set a precedent. He stated that a permit was granted to the Summit School for their therapy program; and now the Board is granting these types of permits to residents. He inquired as to how far the Board wants this to go. He stated that the Applicants have one half or three quarters of an acre. He asked what the Board would do if an Applicant with 1/10 of an acre applied for this kind of permit.

Chase Altneu stated that they have 1.5 acres; and that the animals stay within the property 95% of the time.

Chairman Englert expressed that the public hearing is closed and the Board needed to concentrate on hearing from the Board Members. He asked Member Marion Shaw how she feels.

Member Marion Shaw said that perhaps there should be an inspection every 3 months or 6 months.

Chairman Englert stated that for the Summit School it is 6 months; but expressed that it should be every 3 months for this application.

Member Stephen Lubeck asked if the Board is going to grant the Applicant's permit, should there be a stipulation that it's because they have a large property to restrict residents with much smaller lots in more developed areas of the village.

Member Paul Curley said that it should be on a case by case basis. He stated that the mere fact that two goats are approved here, doesn't mean that it would be approved on a much smaller lot.

Member Stephen Lubeck stated that he thinks it should be part of the basis of the decision that an applicant has a larger lot.

Chairman Englert stated that we can incorporate that into the decision as part of the rationale of granting the permit. He further explained that as Paul Curley said, it's a case by case.

Member Stephen Lubeck stated that the Board needs to have that in the decision because it's not fair to the people we have granted permits to before who have complied with the rules, like Paul Curley.

Village Consulting Attorney Noelle Wolfson, Esq. explained that the Board can make a decision that incorporates that or you can direct that a resolution be prepared, if you want to make sure the Board gets the wording correct.

Chairman Englert agreed.

Member Stephen Lubeck stated that he is not opposed if the Applicants abide. He said that the language has to be strong.

Chairman Englert stated that the decision has to do with the size of the property and asked for Village Consulting Attorney Noelle Wolfson, Esq. to take the lead and she agreed to draft a resolution for consideration at the next meeting.

Village Consulting Attorney Noelle Wolfson, Esq. explained that next month it would just be consideration and voting on the resolution.

9:04 pm: Stanley and Dorit Kramer, 520 N. Midland Avenue, County Map No. 60.09-02-37. Appeal #2021-11

Said property is located in the Residence R-3 District.

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

The Applicant was represented by the Homeowners, Stanley and Dorit Kramer, Steve Collazuol, Engineer and Kathleen McHugh from Anthony Sylvan Pools.

The Applicant is requesting a total lot coverage variance from the requirements of the Zoning Ordinance of the Village of Upper Nyack, **Article V, Section 19:2** for an inground pool and deck on an existing single-family residence.

Kathleen McHugh from Anthony Sylvan Pools explained that she designed the pool under tight parameters. She stated that it is a small pool—320 square feet. She explained that she would have Steve Collazuol, the Engineer, go over the details.

Steve Collazuol explained that the Applicants were before the Planning Board. He explained that there is a 0.69 percent increase in total ground coverage. He stated that they have accommodated Dennis Letson's memorandum, removing a gate, setting a fence along Foss Drive which is out of the right of way and along the property line, and adding a staging area for materials. He further stated that the plan depicts the coverages in the lower right-hand corner. He explained that the big number when you look at the plans is that the slate walk paver patio existing is 1404 square feet and proposes 1242 square feet, however they're adding the proposed pool, which is 320 square feet over the length of 24 feet.

BOARD DISCUSSION:

Chairman Englert asked how the access road is being handled.

Steve Collazuol replied that in Dennis Letson's memorandum, #6, he requested the stabilized construction entrance be shown on the plan. Steve Collazuol stated that that is shown on the plan and the most logical place with a reasonable access with respect to topography and getting to the

site was off Foss Drive. And in the lower left-hand corner, the plan to see a typical stabilized construction entrance. He further explained that at the completion of the project that would be removed and the landscaping restored in that it's mostly lawn in that area, and that would then be seeded and/or sided. He further explained that in the lower left-hand corner, there is the detail for the silt fence.

Chairman Englert confirmed that the increase in total lot coverage was 0.69 percent and Steve Collazuol agreed.

Chairman Englert asked the Board if there were any other questions.

Member Marion Shaw commented that it was a small percentage.

Member Paul Curley added that although the application shows an increase in the percentage of ground coverage, there is a pool and also a pond and much of what is considered impervious is actually semi-pervious. He further commented that he has no issue with this modest increase in total ground coverage for this type of structure.

MOTION: Open the Public Hearing

MOTION BY: Stephen Lubeck

SECOND: Marion Shaw

VOTE: 4-0, 1 absent. APPROVED.

No public comments.

MOTION: Close the Public Hearing

MOTION BY: Stephen Lubeck

SECOND: Marion Shaw

VOTE: 4-0, 1 absent. APPROVED.

Chairman Englert said that he went to see the site. He said he appreciated the landscaping and the little pond that's there. He stated that he viewed where the pool would be constructed and he found it to be very amenable and not in any way offensive. He further commented that his opinion is that the Board should grant this small increase in ground coverage. He asked if there were any other comments from the Board.

Member Stephen Lubeck commented that he had no problem with it.

Village Consulting Attorney, Noelle Wolfson, Esq. clarified that the maximum permitted coverage is 25% and what is proposed will be 28.18%. She wanted to make sure that the resolution does not say they can have a 0.69% over the maximum permitted coverage. The 0.69% is the increase over what is existing, but the variance granted should be to allow a coverage of 28.18% where a maximum of 25% is permitted.

The CHAIRMAN reviewed the area variance and the five factors that must be applied (See Village Zoning Ordinance Section 17 (C) (2)) regarding the applicant's request for a total lot coverage variance from the requirements of the Zoning Ordinance of the

Village of Upper Nyack, **Article V, Section 19:2** for an inground pool and deck on an existing single-family residence.

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 impact on the neighborhood.

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, there's really not any other way. There were alternative sizes and locations of pool, but none met the applicant's needs. They require their variance.

Whether the requested area variance is substantial. Clearly, it's not. It's less than 1% when compared with the existing condition.

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district. Dennis Letson did a very thorough job, it's all been addressed. There won't be any adverse effect.

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, they want to have a pool; but it seems like a reasonable request. On balance, the benefit to the applicant outweighs the detriment to the community.

MOTION: Based on the information above, the Board moved to approve the requested area variance for total lot coverage by buildings and structures from the maximum 25% permitted to 28.18% proposed, as depicted on the *Proposed Pool Plan, 520 North Midland Avenue*, prepared by Steven J. Collazuol, dated July 16, 2021, last revised October 13, 2021.

MOTION BY: Stephen Lubeck

SECOND: Paul Curley

VOTE: 4-0. APPROVED.

MOTION: To adjourn.

MOTION BY: Stephen Lubeck

SECOND: Marion Shaw

VOTE: 3-0, Paul Curley absent—no longer on zoom. APPROVED.

No other business.

The meeting was adjourned at 9:25 PM.

Respectfully submitted,

Janet Guerra
Board Secretary