

**Village of Upper Nyack  
Zoning Board of Appeals Meeting  
Tuesday, January 3, 2023, 7:30pm**

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 7:33 by the Chairman, Thomas Englert.

**Other Board members present:** Paul Curley and Beth Wittig

**Board members absent:** Meg Fowler; Steve Lubeck (abstain)

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

**7:35 pm:** The Chairman called for a motion to approve the minutes from the November 15, 2022 meeting.

A quorum of board members present at the November 2022 meeting was not present and therefore consideration of the minutes was tabled until the February meeting.

No comments from members present.

**7:35pm:** **James Boughton and Julie Mowatt, 19 Van Houten Street, County Map 60.18-01-22.** Application for area variances from the requirements of Village of Upper Nyack Zoning Law §4.5.5.4 (Accessory Uses, Structures and Buildings) and §4.5.6.1 (No Building, Structure or Use may Encroach into any Required Yard) for alterations to an existing two-story garage and the addition of a 4' x 10' deck on a property improved with a single-family residence in the Residence R-10 District and Hudson Riverfront Overlay District.

**Representing the Applicant:** Evan Freidman.

**Discussion:**

**Review of the Bulk Table:** The board members reviewed the bulk table. It was the general sense of the members that the building setbacks should be measured to the building nearest the lot line, rather than just to the garage. The board members also thought that there should be two entries in the bulk table for the side yards, one to reflect each yard. There was a discussion about whether the total side yard dimension in the bulk table was correct since it reads 158.5', but the side yard dimensions shown in the plan are 102' and 6.50' for a total of 108.50'. This should be checked and corrected as needed.

**Application Procedural History:** The Board's counsel explained that the Planning Board reviewed this application at its meeting of December 21, 2022. The Planning Board referred the application to the ZBA and the ARB at that meeting. This application is a Type II action under

SEQRA. Counsel advised the Board that the Planning Board referred the application with no objection to the granting of the variance.

**Discussion about use of proposed building.** There was a discussion about the improvements being proposed to the building—new roof, new siding and the proposed porch—giving the building the appearance of a cottage. The Board questioned whether the improvements were proposed to make the building habitable as a dwelling. The applicant’s representative explained that the building had a slab floor and was not well suited to conversion to a dwelling, and nor was that the intended use of the modified building. The Chairman suggested that a condition be included prohibiting the use of the building for dwelling purposes.

Mr. Freidman provided a summary of the application and an analysis prepared by the applicant’s architect, Michael Esmay, addressing the statutory area variance standard and it was entered into the record.

There was a discussion about how the lower level of the garage is accessed.

**Referral Agency Comments:** A comment letter was provided by the Rockland County Department of Planning. Rockland County Department of Planning’s letter including one condition, that an application must be made to the Rockland County Department of Health for review if a stormwater management system is required. Counsel advised the Board members that at the Planning Board’s meeting on 12/21/22 the Village Engineer advised that no stormwater management system would be required for this application.

**Motion to open the public hearing.**

**Motion:** Paul Curley

**Second:** Beth Wittig

**VOTE:** 3-0, 1 absent (Fowler), 1 abstain (Lubeck)

No public comment

**Motion to close the public hearing.**

**Motion:** Paul Curley

**Second:** Beth Wittig

**VOTE:** 3-0, 1 absent (Fowler), 1 abstain (Lubeck)

The Chairman reviewed the factors of the area variance test, which can be summarized as follows:

There will be no undesirable change to the character of the surrounding neighborhood or detriment to the surrounding neighborhood. The structure is currently existing and an improvement to it would be beneficial to the neighborhood

There are no feasible alternatives for the applicant to pursue other than the variance because the garage is an existing nonconforming structure and there is no way to achieve objective without a variance.

The addition of the 4'x10' deck is minor and not substantial.

No evidence of physical or environmental impact and this is a Type II action under SEQRA.

Although the hardship may be classified as self-created in that improvement is desired, because this is an existing nonconformity nothing can be done to improve the condition without the variances.

**MOTION TO GRANT THE VARIANCES:**

**Based on the application of the area variance standards as evaluated at the public hearing on this application, the following variances are granted with conditions as stated below:**

**Variances from Village of Upper Nyack Zoning Law §4.5.5.4 (prohibition against accessory buildings in required yards) and §4.5.6.1 (prohibiting buildings from projecting into required yards) to permit an existing garage to encroach into a required front yard such that a 0.61 foot front yard is provided where a 35 foot front yard is required by Village of Upper Nyack Zoning Law §4.4.2 (row 6, col. 5), subject to the following conditions:**

- 1. Compliance with the following plans: Addition & Alteration to an Existing 2 Story Garage for Boughton/Mowatt, Dwg. No. 1, 2, 3, and 4, prepared by Michael Esmay, Architect and dated July 25, 2022, last revised October 15, 2022 as the same may be modified during review by the Planning Board provided that no modification may increase the dimensional nonconformity of the garage.**
- 2. The applicant shall correct the bulk table as needed to: (1) add a row for each side yard; (2) measure each yard dimension to the closest portion of the nearest building, and not exclusively to the garage; and (3) confirm whether the combined side yard dimension is accurate and correct as needed.**
- 3. The garage building may not include a dwelling unit nor shall it be used for dwelling purposes.**
- 4. This variance is conditioned upon the applicant obtaining site plan approval from the Planning Board and shall be null and void if site plan approval by the Planning Board is denied or the pending application before the Planning Board is withdrawn before a determination thereon is made.**
- 5. This variance shall expire pursuant to the terms of Section 12.4.9 of the Village Zoning Law.**

**Motion:** Beth Wittig

**Second:** Paul Curley

**VOTE:** 3-0, 1 absent (Fowler), 1 abstain (Lubeck)

**7:59 Motion to adjourn the meeting**

**Motion:** Beth Wittig

**Second:** Paul Curley

**VOTE:** 3-0, 1 absent (Fowler), 1 abstain (Lubeck)