

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, June 15, 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 in accordance with the Governor's Executive Order 202.1 due to the COVID-19 emergency and called to order at **8:00 pm** by the Chairman, Thomas Englert.

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

Also present: Noelle C. Wolfson, Esq., Consulting Attorney and Jillana Sinnott, Secretary.

8:00pm: The Chairman opened the meeting and read the Notice of Public Hearing, which was published in The Journal News on June 8, 2021. The Chairman also reviewed how the Zoom meeting would take place due to the COVID-19 emergency in accordance with the Governor's Executive Order 202.1.

8:03pm: Approval of Minutes: Member Stephen Lubeck moved to approve the Draft Minutes from April 20, 2021 as amended; SECOND: Joseph Scarmato; unanimously APPROVED.

Approval of Minutes: Member Stephen Lubeck moved to approve the Draft Minutes from May 18, 2021 as amended; SECOND: Joseph Scarmato; unanimously APPROVED.

8:06pm: Summit School, 339 North Broadway, County Map No. 60.18-01-01. Appeal #2021-07.

Said property is located in the Residence R-2 District.

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

The Applicant was represented by Deborah Dolan, School Principal and Anna Sicari, Animal Care Coordinator.

The Applicant is requesting a Special Permit pursuant to the requirements of the General Ordinance 5:13 of the Village of Upper Nyack to keep and harbor a pig.

The Applicant explained that this will be a small Kune Kune pig to be used in their therapy animal program and will join the chickens and goats that were previously approved by the Board. There is an existing 8x12 shed that the pig will share with the goats. The Applicant noted that the animal therapy has been a tremendous success and the goats have become well known and loved around the community. They are taken on daily walks around town.

The Chairman and the Vice Chairman had visited the site and noted that it was clean and tidy. There was a changing of classes while they were visiting and the students seemed very involved with the animals. The Chairman questioned whether they will be walking the pig as they walk the goats. The Applicant said they will try to walk it but are not sure if the pig will want to. At all other times the pig will always be kept in the pen.

Member Paul Curley questioned why this type of pig was chosen. The Applicant stated that she has visited many farms and found these type of pigs to be very similar in character to dogs and are very people friendly.

Member Joseph Scarmato questioned whether there have been any complaints from the neighbors. The Secretary noted to her knowledge there have not been any complaints.

The Board had no further comments.

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

There were no comments from the public.

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

MOTION: The Board moved to approve the Special Permit to The Summit School to keep 1 miniature pig as a pet for their institutional animal therapy program for children at the school with the following provisions: 1) the number of pigs is limited to one; 2) there will be no excessive noise; 3) the pig will be penned in the yard or kept leashed if it is not 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) this approval is valid for one year at which time the Building Inspector will make a visual inspection.

MOTION BY: Stephen Lubeck

SECOND: Paul Curley

VOTE: Unanimously Approved

Board Member Stephen Lubeck recused himself from the following application and Alternate, Meg Fowler attended.

8:22pm: Thomas and Susanna Willingham, 125 Highmount Avenue, County Map No. 60.17-03-09. Appeal #2021-06.

Said property is 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 Thomas and Susanna Willingham, the Homeowners.

The Applicant is requesting an area variance from the Zoning Ordinance of the Village of Upper Nyack for **Article III, Section 6:3**; for fence exceeding six feet in height on an existing single family residence.

The Applicant explained to the Board that they have received a provisional approval from the Architectural Review Board for the architectural aspects of a fence and gate pending the Zoning Board of Appeals review. If the ZBA does not approve the area variance requested they have approval for a 6 ft. high fence and gate. The applicant would like to have a 7 ½ ft. high fence and gate to keep the deer off their property and stop them from causing more damage to their property. Currently there is a fence on the south and west sides of the property. They will be adding a fence to the east and north side of the property. The Highmount Avenue

side of the property has a high hedge and the fence will be placed behind the hedge so it will not be seen. There would be a 7 ½ ft. high self-closing gate recessed thirty feet back from the street. There would also be a gate for pedestrians to go through.

The Chairman noted that the hedge is 8 ft. high and the fence will probably be hidden and the east side most of the boundary is covered with shrubs and trees. Currently the south and west both already have fences that are 6 ft. high, why would there be a need to make the new fencing 7 ½ ft. high? The Board has not previously approved any requests for a fence over six feet tall.

The Applicant explained that the existing fences on the south and west side are solid fences that the deer cannot see through and are therefore not likely to jump over. The Applicant wants a new fence on the north and east side which will be see-through, but they are concerned that deer will jump over the fence unless it is more than 6 feet high. At 7 ½ ft. high they should not be able to jump over. They have tried sprays but they don't seem to work.

Member Joseph Scarmato noted that everyone in the Village has deer problems, it is a difficult problem. He would like to see a letter from the neighbor stating that she was ok with having a 7 ½ ft. high fence in the open space between the properties.

Member Marion Shaw thought that maybe because there is such a problem with deer in the Village, the Board of Trustees should look to increase the height of fencing allowed for the future.

Member Paul Curley noted that some other municipalities might allow deer fencing of more than 6 feet in the side and back yards, but even so, there would be concern about allowing more than 6 ft. high in the front yard, in particular, in any areas where there is no hedge, such as around the proposed gate.

Member Meg Fowler spoke about what other municipalities allow. There is an increasing number of deer which is probably going to bring more applications in front of the Board for higher fencing. Allowing higher fencing is something the Board of Trustees should review.

Village Counsel noted that the new Comprehensive Plan has not been adopted yet and most likely there will be changes made to the Zoning Ordinance, so the allowance of higher fencing may be able to be addressed at that time.

The Chairman suggested that the Applicant may want to return to the Zoning Board at a later time after the Comprehensive Plan is adopted. The Board needs guidance from the Board of Trustees and is uneasy about making a decision for one isolated case when there is a global issue in the village.

Member Joseph Scarmato suggested installing a 6 ft. fence with the possibility of being able to extend it at a later date.

Member Meg Fowler noted that the grading is working in the Applicant's favor as deer are less likely to jump uphill or on paved area.

There were no other Board Comments.

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

There were no public comments.

MOTION: Member Joseph Scarmato moved to close the public hearing; **SECOND:** Meg Fowler; unanimously APPROVED.

The CHAIRMAN reviewed the five factors that must be applied (See Village Zoning Ordinance Section 17:4; (C) (2) regarding the area variance requested, for a fence exceeding six feet in height.

There would be an undesirable change in the character of the neighborhood as there are no other neighboring properties which have fences or gates which are 7 ½ feet high. The Applicant has not shown that the benefit sought by the Applicant cannot be achieved by a 6 ft. high fence. The requested variance is substantial. There is no evidence of adverse impact on the environmental conditions of the neighborhood. The request is self-created as the Applicant planted foliage and now wants to keep the deer off their property. On balance, the benefit to the Applicant of permitting this variance does not outweigh the detriment to the community.

There were no further comments from the Board.

MOTION: The Board moved to deny the Willingham application for a 7 ½ ft. fence and front gate as it would result in an undesirable change to the neighborhood. It would set an undesirable precedent. The requested variance is substantial; and the Applicant has not shown that a 6 ft. fence and gate would not be adequate to achieve the benefit sought by the Applicant.

MOTION BY: Joseph Scarmato

SECOND: Meg Fowler

VOTE: Unanimously Approved

8:59pm: Paul and Melissa Curley, 211 Kuyper Drive, County Map No. 60.05-02-33. Appeal #2021-07.

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 Paul Curley, the Homeowner.

The Applicant is requesting an area variance from the Zoning Ordinance of the Village of Upper Nyack for **Article V, Section 19:1**; rear yard setback for an in-ground pool of an existing single-family residence.

The Applicant reviewed that he had previously appeared in front of the Board asking for a 10 ft. setback from the rear lot line. He took the suggestions made at his last appearance in front of the ZBA that a 15 ft. setback would be more appropriate to request. The decking area will be 15 ft. from the rear neighbor's property, which is heavily wooded and deep. There should be no impact to the neighbor. The applicant feels that the pool is located in the only appropriate location on the property. The applicant noted that he has images from google maps of nearby pools that are closer to neighboring houses. The Board was not interested in seeing the photos. The Planning Board has reviewed the application and had no objections to

the general location of the pool and its proximity to the rear lot line, although site plan approval for the pool has not yet been granted.

The Board noted that the 15 ft. setback is an improvement from what was proposed at the last meeting. The Board had no other comments.

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

There were no public comments.

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

The Board had no further questions.

The CHAIRMAN reviewed the area variance and the five factors that must be applied (See Village Zoning Ordinance Section 17:4; (C) (2) regarding the applicant's request for a minimum rear yard setback variance where 30 ft. is required and 15 ft. is proposed.

There will be no undesirable change in the character of the neighborhood. There is no detriment to property values. The area to the rear is heavily wooded providing a buffer for the rear neighbor. The proposed construction cannot be achieved in any other way as there are no other feasible or desirable locations for the proposed pool on the property. The variance requested although numerically substantial, will have no substantial impact on the neighbors as they have a large yard. There is no evidence that any environmental or physical impact would result. The hardship is self-created as the Applicant wants an in ground pool. On balance, the benefit to the Applicant outweighs the detriment to the community.

MOTION: The Board moved to grant the following variance: Variance from **Article V, Section 19:1**; rear yard setback for the proposed pool and pool decking, where a setback of 30 feet is required, 15 feet is permitted on the condition that the pool and pool decking area are installed in the location depicted on the Site Plan prepared by Jay A., Greenwell, PLS, LLC, last revised May 24, 2021.

MOTION BY: Stephen Lubeck

SECOND: Joseph Scarmato

VOTE: Unanimously Approved

There was no other business.

The meeting was adjourned at 9:09pm.

Respectfully submitted,
Jillana Sinnott, Secretary