



## ***Village of Nyack Planning Board***

**November 7, 2022 Minutes**

**Members Present:**

Peter Klose - Chair  
Laura Rothschild  
Miguel Ortiz-Crane  
Jennifer Knarich -  
Peter Voletsky -  
Matthew Croussouloudis- alternate –  
Karen Roberts alternate-- absent

**Also Present:**

Walter Sevastian, Village Attorney  
Manny Carmona - Building Department  
Bob Galvin—Village Planner ABSENT

**COVID-19 PANDEMIC STATUS~ IN PERSON**

**Conflict Check:** The Chairman polled the members of the Board regarding the issue of possible conflicts of interest regarding the application. All others affirmed there were no conflicts of interest or reasons for recusal, unless otherwise noted.

**Other Business:** Chairman stated that the minutes for the September 12, 2022 meeting were distributed to Planning Board Members for their review prior to this meeting and at that time asked if there were any corrections. As there were no corrections, Chairman made a motion to approve the **October 3, 2022** Minutes as distributed. Motion seconded by Voletsky -- passed 5-0.

**1. 8 HART PLACE. Fred Hodder. Application for tree removal.**

**Village Planner/Inspector** The Subject Property is in the TFR Zoning District. The arborist has indicated that the oak tree is in “rapid decline”. He recommended that the best way to mitigate the situation would be to remove the tree. The Subject Property is in the SFR Zoning District. The residence is located on the west side of Hart Place at the southwest corner of its intersection with Fifth Avenue. The property is 0.22 acres and occupied by a 2 ½ story, single-family residence.

Request is for a permit to remove a 30” Oak Tree that is located directly adjacent to the east side of the residence on the Fifth Avenue side of the house. Arborist’s letter from John Bolton, O’Sullivan Tree Care dated August 31, 2022, provided an assessment of the tree. The arborist indicates that the oak tree is in rapid decline. The tree is adjacent to and close to the side of the house which would be a target if the tree came down. The arborist indicated that the tree has high occupancy and multiple targets. He indicated that removal is the best way

*to mitigate this situation. Recommendation – The Applicant does not have any trees in the side yard facing Fifth Avenue. It is recommended that the Applicant should plant an appropriate tree away from the house in the side yard facing Fifth Avenue.*

*Upon the express written finding of an arborist licensed in the State of New York that the proposed significant tree removal will not result in or cause, increase or aggravate any of the following conditions:*

- impaired growth or development of the remaining trees or shrubs on the property of the applicant or upon adjacent property,*
- soil erosion, sedimentation or dust, drainage or sewerage problems, or*
- any other dangerous or hazardous condition, and*
- only if a significant tree to be removed is replaced elsewhere on the property or in the immediate neighborhood.*

**SEQRA DETERMINATION** – *This action is a “Type II” action based on 617.5 (c)(12) “construction or expansion of a single family, a two-family or a three-family residence on an approved lot .....” therefore, ending the SEQRA process. LWRP – based on the Village Code, as a Type II action, this is consistent with LWRP policies.*

**APPLICANT-** Stated that the oak is in rapid decline - agrees that the foliage will be replaced.

**Klose** recommends a replacement foliage to the owner to decide what is appropriate-- applicant agrees to replace appropriate shrubbery or other small more appropriate tree on the property to mitigate stormwater runoff. moves to approve on condition of replacement foliage If the applicant did not follow the replacement of foliage, then there would be an open permit to remove the tree Fred: has already put in a few bushes and trees. It is okay to look at the list of recommended trees. wants to keep the backyard open. not prepared to answer the question. prefer to take down the diseased tree, which would allow more sunlight. Building Inspector will provide the list of trees when issuing the building permit

**Public comment-** none

**Board-** Chairman Klose moves to close the public hearing with respect to the Application to permit *removal of the Oak Tree*. Motion seconded by Rothschild. Vote- 5-0 to close Public Hearing--

Chairman Klose finds that this is a Type II action for SEQRA moves to approve the application for

*permit to remove the requested trees subject to the applicant planting reasonable replacement foliage in the form of trees or bushes to replace loss of tree from the list of Village Trees. If the applicant cannot identify a tree from the list of approved Village Trees, then will return to the Planning Board for future approval of an alternate tree. Motion seconded by Rothschild. Vote: 5-0 to approve the application subject to the applicant replanting foliage as aforesaid.*

**2. 245 N Midland Avenue. Paul Tong. Site plan application for conversion from one nonconforming use to another nonconforming use.**

***Village Planner/Inspector*** -ARB approved original project on March 16, 2016; ARB re-approved the project on October 17, 2018 ARB re-approved project on September 21, 2022. ZBA issued a Special Permit on May 23, 2016. ZBA will need to re- approve the project. The Planning Board approved the original project on June 6, 2016. and again in December 2018.

***Village Planner--*** The Subject Property is located at the southeast corner of North Midland and Sixth Avenue in the TFR district. It is adjacent to the 3-story Rose Gardens along Francis Avenue to the east. It is across Sixth Avenue from the Nyack Ambulance Corps and an adjacent residential multi-family building to the northeast. It is located just north of a two-family residence and driveway.

***Project Description--***The proposed action is an application for the renovation of an existing mixed-use building currently housing a workshop, offices and 2 second floor apartments. The applicant is planning to renovate the first floor by adding 3 new apartments and removing the office and workshop uses. The second-floor entry near the parking area will be relocated to meet a code requirement and the existing entry off North Midland Avenue to the second-floor apartment will remain. The proposed action is located at the intersection of Sixth Avenue and North Midland Avenue. It is located on a 6,595 square feet corner property in the TRF zone. The 2-story building has been used as an office and workshop on the first floor with two apartments upstairs. The proposal is to renovate the first floor by adding three new apartments and maintain the second floor with its two apartments with a relocated entrance. The site has seven (7) parking spaces which will be maintained. Applicant also shows the planting of two American Hornbeam Street trees. The updating of the exterior of the property should be re-approved by the ARB.

***SEQRA*** Nothing has changed on this application; however, the Planning Board approval has expired and is, therefore, considered a new application. Rockland County Department of Planning comments dated 8/31/22 were received and reviewed. Similar to the original application, the Planning Board will need to assume Lead Agency status for SEQRA at this meeting. The proposed project remains an unlisted action. The Planning Board can provide recommendations to the ZBA. The Planning Board can re-issue a Negative Declaration so

*that the ZBA can make its final determination on the re-approval of required variances for the application. ARB has already re-approved the application. The Negative Declaration has been provided with a Coastal Assessment consistency review. Based on the ZBA determination, the Planning Board can act on the site plan application at subsequent meetings.*

*County Planning GML Referral-- The Board should review the County's GML referral letter. Rockland County Planning again questioned whether a use variance was required for this application. It is the Building Department's position and a determination from the ZBA that this is a change from one non-conforming use to another non-conforming use pursuant to the requirements found in Article I, VON 360-1.9D (2) and is not a Use Variance request: VOB 360-1.9D. Nonconforming uses. Any nonconforming use may be continued indefinitely, but: (2) Shall not be changed to another nonconforming use without a special permit from the Zoning Board of Appeals and then only to a use that, in the opinion of said Board, is of the same or a more restricted nature. County Planning also questioned the bulk table and parking requirements. Their position is that the parking should be based on two-family in the TFR. The County incorrectly indicates that Applicant has used parking for single-family homes in the TFR (this is incorrect – Applicant used RMU requirements). County Planning also stated that the Planning Board should be assured that the site has the capacity to accommodate the number of units.*

*Planner suggests that the Board request the Applicant to provide a Narrative which addresses each of the County's GML objections for the Board's record. The Village Planner can draft a resolution for the next meeting in December as previously done including any rationale for any conditions overridden by the Planning Board.*

*Manny will review to see if open space variance required, but generally this is for Subdivision Approvals, which are generally not applicable. The applicant will respond to the Rockland County Municipal Planning Comments in connection with the request for updated Special Permit application and the ZBA will be dealing with the comments from the Rockland County Municipal Planning Board.*

*One member of the Public Adam Tracey appeared at the Board to ask about and comment on the parking -- Kier Levesque indicated that there are 7 spaces #7 - 15 feet between spaces, between parking spaces- previously approved by the Planning Board. Adam Tracey - from the public. resident on midland ave. enough parking and painted lines? yes/*

Motion by Klose to close the public hearing and adopt the Negative Declaration for 245 North Midland Avenue after review of the EAF and with the recommendation of the Village Planner - seconded by Voletsky --passed 5-0

**Negative Declaration (Part 3 of EAF signed by Chairman Klose) - finding of no significant adverse environmental impacts**

*Village Planner Recommendation Neg Dec— The proposed action is an application for the renovation of an existing mixed-use building currently housing a workshop, offices and 2 second floor apartments. The applicant is planning to renovate the first floor by adding 3 new apartments and removing the office and workshop uses. The second-floor entry near the parking area will be relocated to meet a code requirement and the existing entry off North Midland Avenue to the second-floor apartment will remain. The proposed action is located at the intersection of Sixth Avenue and North Midland Avenue. It is located on a 6,595 square feet corner property in the TRF zone. The 2-story building has been used as an office and workshop on the first floor with two apartments upstairs. The proposal is to renovate the first floor by adding three new apartments and maintain the second floor with its two apartments. The site has seven (7) parking spaces which will be maintained. ZBA determined that the Code does not contain parking requirements for multi-family use in the TFR zone, and that the Applicant has demonstrated that it complied with the more restrictive parking requirements of the RMU zone.*

*The property is adjacent to the 3-story Rose Gardens along Francis Avenue. It is across Sixth Avenue from the Nyack Ambulance Corps and the residential building to the south. The request is for a change from one nonconforming use to a less intensive nonconforming use based on §360-19 D. The building on the property needs to be upgraded and made visually appealing. The present property is not aesthetically pleasing and represents a blighting influence on properties along North Midland Avenue. The applicant is planning to change the exterior of the building and add new trim and roofing as well as new windows. All exterior stone work will be repointed and cleaned up. The proposal is an opportunity to upgrade the property and provide a more updated, visually aesthetic building. It will result in upgrading the property and building and provide a more aesthetic appearance to this very visible corner. It would result in a less intensive use and would provide the necessary parking on-site. It would also remove a potential blighting influence on properties along North Midland Avenue. The Applicant will also be developing a streetscape along the North Midland frontage by planting two American Hornbeam Street trees.*

*Based on the Board's review of Pt. 2 of the EAF, letter from Rockland County Planning, and other information provided to the Board at their public hearing, the proposed action is not expected to result in any significant adverse environmental impacts that would rise to the*

*level of significance required for a Positive Declaration.*

*CAF Consistency Determination - A Coastal Assessment Form has been provided for the Board's review and consistency determination. The Village Planner reviewed the Coastal Assessment Form and the Village's LWRP policies. Since this is an upland site, very few of the policies apply. Based on this review, I believe that the Board can make a finding that the Application is consistent, to the maximum extent practicable, with the policies of the LWRP and that the Application will not substantially hinder the achievement of any of the policies set forth in the LWRP.*

**BOARD-** *Motion by Peter Klose to close the public hearing relative to this renewed ZBA application for a referral to the ZBA as to the special permit. Seconded by Voltetsky - Motion to close the public hearing passed. Vote 5-0 to close.*

**BOARD -** *Chairman made a positive recommendation to the ZBA citing all of the other homes in the neighborhood (notes above) the fact that this is a TFR zone and that there will be no change in the footprint of the building-- to encourage housing affordability, racial equality and reduce climate change. - Seconded by Voletsky -- Vote 5-0 for positive recommendation.*

**BOARD-** *Motion by Peter Klose to close the public hearing relative to the renewed site plan application most recently revised July 2022 and agreed that the conditions remain the same and would move to recommend the Site Plan as previously approved. Seconded by Voletsky - Motion to close the public hearing passed. Vote 5-0 to close.*

**3. 48 S Franklin Street. Schenley Vital. Seeking amendment to site plan approval.**

**Planner--***Applicant is seeking final Certificate of Occupancy and has provided information satisfying the conditions of the Planning Board resolution amended January 7, 2019. The conditions included the following with submissions provided by the Applicant:*

*The Building shall include additional energy efficiency elements to enable the building to exceed the requirements of the NYS Energy code by 10%. This increase shall be verified to the Building Department by a certified third party prior to the issuance of a Certificate of Occupancy.*

*Applicant has provided Narrative dated 9/30/22 from Lucidity Group LLC (Schenley Vital) that the additional energy efficiency elements enable the Building to exceed the NYS Energy*

*Code by 10 percent and that the Energy Efficiency Report certified by third party is on file with the Building Department. (See COMcheck Compliance Report dated 4/8/22 stamped as received by Building Department 4/11/22)*

*Letter from Bart Rodi, PE dated April 28, 2022 that he performed site visit and that the HVAC units installed are adequate substitutes for equipment specified on approved plans and are in compliance with the NYS Energy Code*

*The solar energy collectors to be installed on the roof shall not exceed 1,000 sf in area to remain compliant with the Village of Nyack Zoning Code, Narrative indicates that solar panels are installed on rear wall of the Building as listed on the submitted As Built Site plan Total square footage does not exceed 1,000 sf per the resolution. Two As Built Site plans with the proposed solar panels and other sustainable features have been submitted per the resolution.*

*Letter from Jenny Zuniga-Casal, architect received by Building Department 11/17/18 describing details of the sustainable elements for the Building including green infrastructure with infiltration gardens for stormwater management, 40% of pervious surface including 30% open space and 20% patio with pavers, gardens and planters. And energy efficiency including high efficient windows, HVAC system, LED lighting and insulation. Energy solar panels on the Court Yard Area pervious surface total 40% of open space and pervious surface.*

- *In accordance with the requirements of Chapter 120 ("Affordable Housing"), the Project will provide one affordable/workforce unit; Narrative describes the one affordable unit in the Building managed by Rockland County Housing Action Coalition (RHAC).*

*Other elements: ARB approved amended plans by applicant on September 21, 2022. Various building elements and inspections requested by the Building Department.*

*Documentation submitted:*

*Shenley Vital, Final for Certificate of Occupancy May 28, 2022 – Written Responses to issues raised in Certificate of Occupancy Misc section*

*Bart Rodi, PE HVAC/SEER units April 28, 2022*

*Shenley Vital, Narrative Statement and Affidavit September 30, 2022*

*Jenny Zuniga-Casal, Architect Development Standards, Sustainability received by Building Department November 17, 2018.*

*Jenny Zuniga-Casal, Architect - Sealed by Architect "As Built Drawing based on Survey by Stephen F. Hoppe, July 2, 2014*

**BOARD-** Klose moves to endorse that the final site plan conditions for final Certificate of Occupancy and to confirm that the conditions of the Planning Board resolution amended January 7, 2019 have been complied with. Seconded by Voletsky and approved by a vote of 5-0.

**OTHER BUSINESS--** Motion to adjourn by Klose, seconded by Voletsky - passed by a vote of 5-0. Meeting was adjourned at 7:45 pm.