

**Village of Nyack Planning Board
November 6, 2017**

Members Present:

Peter Klose - Chair
Daniel Jean-Gilles
Peter Voletsky
Seth Kestenbaum
Alan Englander
Don Wilen - Alternate sitting

Also Present:

Walter Sevastian - Village Attorney
Don Yacopino - Building Inspector
Bob Galvin—Village Planner

Absent:

Other Business: Motion to approve the October 2, 2017 Minutes-- made by Peter Klose and seconded by Voletsky. Approved by a Vote of 5-0.

- 1. 249-259 Main Street. Bob Silarski for Jed Realty.** Site Plan application to demolish existing buildings and construct a multifamily building, subdivision and special permit for the merger of two lots. Request for recommendation to ZBA for required area variances. **Property is in DMU-2 zoning district.**

ZBA Area variances will be required from Article IV, VON§360-5.4G(3) for a driveway providing “access to a lot in another district, which lot is used for any use prohibited in the district in which such driveway is located”, and from Article IV, VON§360-4.3, Dimensional Standards Table 4-1 for a four story building where 3 stories are permitted.

Application has been sent for review under GML requirements.

SEQRA – Unlisted action. Board should state that this is an unlisted action and authorize staff to circulate the Notice of Intent to be Lead Agency to involved agencies. Board will need to wait 30 days and if no objections received would assume lead agency for the project’s SEQRA review. LWRP – the Planning Board as lead agency would be responsible for a consistency determination with the policies of the LWRP.

Planning Board would like to establish an escrow account for the purposes of hiring an outside planner to opine as to the planning and zoning issues related to the requested variances --and in particular, the impact on the neighborhood and intersection caused by this proposed project.

Village Planning Recommendation – Board should require applicant to provide renderings of the building from at least Depew Avenue and a significant landscaping plan both on Main Street and at the rear for Depew.

The Planning Board has established escrow account to cover reviews by FP Clark for traffic. VHB for planning review and Eve Mancuso for engineering review.

Mike Galante is reviewing the applicant's traffic study and should have a preliminary review for the Board's December meeting.

Valerie Monastra of VHB has received all of the current applicant materials and plans and is preparing her comments and review for December. She will also need to have Mike's review in her preparation of her findings.

Recommendation – Board should require applicant to provide renderings of the building from at least Depew Avenue and a significant landscaping plan both on Main Street and at the rear for Depew.

From: Walter R. Sevastian, Village Attorney

Re: Potential Conflict of Interest – Marcy Denker, Sustainability Coordinator

Date: November 6, 2017

A member of the public has raised the issue of a potential conflict of interest arising from a consultant employed by the Village granting an easement to an applicant before the Planning Board, and/or by submitting landscape design plans in connection with the same application before the Planning Board.

Article 18 of the New York State General Municipal Law (“GML”) contains provisions of law that relate to conflicts of interest of municipal officers and employees. Additionally, the Village of Nyack must, under GML§806, adopt and maintain its own Code of Ethics. Chapter 33 of the Code of the Village of Nyack is the Village's Code of Ethics.

In my opinion, a provision of the Village's Ethics Code prohibits the Village Sustainability Coordinator from entering into a contract to provide landscape design services for an applicant seeking approval of a project from the Planning Board.

Initially, although Ms. Denker draws no salary from the Village of Nyack, she does receive payment from certain grants or program funding she secures for the Village in her capacity as the Village's Sustainability Coordinator. As such, and since Ms. Denker was appointed to her position, operates out of Village Hall, and submits applications for grants and funding on behalf of the Village, in my opinion, Ms. Denker is an “officer or employee” of the Village for purpose of considering whether a conflict of interest arises from her actions with respect to the application pending before the Planning Board.

Specifically, the following Village Code provisions are relevant to the inquiry:

(i) Village Code 33-3 (G) “Private employment. He shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.”

(ii) Village Code 33-3 (C) "Representation before boards and agencies.

(1) Representation before one's own agency. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered on behalf of any person or entity other than the Village of Nyack in relation to any matter before any Village of Nyack board or agency of which he is an officer, member or employee, or of any Village agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee."

In my opinion, a clear conflict arose when Ms. Denker submitted landscape design drawings and appeared at the Planning Board meeting in support of an application pending before the Board. Whether or not specific payment was made for the design services (or whether payment was part of whatever consideration was paid for the easement Ms. Denker may have negotiated with the applicant), the provision of design services to a private individual seeking approval from the Village land use boards raises a conflict, or at least the appearance of a conflict, particularly when, as is the case here, Ms. Denker sometimes provides comment and recommendations on applications to the Planning Board in her role with the Village.

Further, notwithstanding the provisions of the GML, or the Village of Nyack Code of Ethics, the courts of New York have held public officials to a high standard of conduct even where certain actions do not violate the literal provisions of the GML or a municipality's code of ethics, but may suggest self-interest, partiality or economic impropriety. See 1996 N.Y. St. Comp. 13, 1996 N.Y. Comp. LEXIS 8.

On the facts presented to me, it is my opinion that the contract vendee relationship between Ms. Denker and the applicant comprises a prohibited statutory conflict of interest under both state and local law; however, even if the contract vendee relationship constituted a non-statutory "interest", the appearance of impropriety and potential for self-interest render the proposed contract violative of public policy. Id.

Ms. Denker should immediately withdraw from the contract she has with the applicant to provide design services, and refrain from appearing before the Planning Board in support of the application. However, the fact that Ms. Denker is an abutting neighbor of the applicant, and has (or will) be granting the applicant an easement to permit traffic access to the project, does not, in my opinion, raise a conflict of interest under the state or local code; provided that she has no contract with the applicant to provide landscape design or other services, and refrains from future appearances before the Planning Board in support of the applicant.

NOTE:

The Rockland County Board of Ethics does not review requests for opinions from local municipalities in Rockland County. This opinion is the result of my considered review of the applicable provisions of law relative to a specific set of facts. The Planning Board, if it so desires, may seek an opinion from the Office of the New York State Comptroller and/or New

York State Attorney General.

Applicant NONE

Public Comment - NONE

BOARD-- The board is going to study-- finish the SEQRA-- before referring to the ZBA for consideration of the variances.

**APPLICATION APPEARS ON TONIGHT'S AGENDA FOR ADJOURNMENT
PURPOSES ONLY**

2. **25 Route 59. Dominick Pilla for Dunkin Donuts. Site Plan application to redirect interior property traffic flow. Property is in CC zoning district. Proposal complies with zoning requirements.**

***Building Inspector** Application sent out for review under GML requirements. Mike Galante has received the plan and has been requested by the Building Inspector to review the site's interior circulation including the parking area and driveways. Building Inspector will arrange a follow up meeting between the applicant and Mike Galante, the Village's traffic consultant.*

***SEQRA** – Type II action based on 617.5 (c) (7) "construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities. **LWRP** – As a Type II action, the Village Code considers this to be consistent with the policies of the Village's LWRP.*

Applicant -- NONE.

Public Comment - none

BOARD-- No action, awaiting further reports. **APPLICATION APPEARS ON TONIGHT'S
AGENDA FOR ADJOURNMENT PURPOSES ONLY**

3. **62 Third Avenue. Kier Levesque for Oliviera. Application is to remove front yard tree. Property is in TFR zoning district. Recent replacement of existing front yard retaining wall required wall location to be removed from the Village Right-of-Way on to the neighbors' property. Root system of tree in question was compromised to accommodate new wall. Applicant proposes to remove tree and replace with another.**

SEQRA – this is a Type II action under SEQRA NYS DEC 617.5 (c) (10) "construction, expansion

or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;"LWRP – As a Type II action, the Village Code considers this to be consistent with the policies of the Village's LWRP.

Applicant— Presentation

Public Comment - NONE

BOARD-- Motion by Peter Klose to close the public hearing. Seconded by Member Kestenbaum - Motion to close the public hearing passed. Vote 5-0 to close.

BOARD -- Chairman Klose - makes a motion to accept and designate this as a Type II action based on: 617.5 (c)(10) and to approve Tree Removal Application dated 9-14-2017 applicant with a seiryu japanese maple, second by Englander; Vote 5-0- application approved.

4. **149 Burd Street. Coppola Associates for The Vue at Nyack. Site Plan application to demolish existing building and construct a multi story, multi family building with proposed surface parking on Jackson Avenue. Project has been reduced in size from 64 DU's to 51 DU's.**

Building Inspector --*Property is in DMU-2 zoning district. Project is proposed as a three story, 38'4 7/8" high (plus permitted 4 feet high parapet wall) from grade plane building with parking provided below the residential portion of the building, partially below grade. Although it appears that the below grade parking area should not be considered a story for height measurement purposes, additional calculations are required to determine compliance with the definition of a BASEMENT.*

Review of this application takes into account the following definitions:

Lot, Lot Area, Grade Plane, Height, Basement, Story, Floor Area and Floor Area Ratio (FAR):

LOT *Any parcel of land, not necessarily coincident with a lot or lots shown on a map of record, which is occupied or which is to be occupied by a building and its accessory buildings, if any, or by a group of buildings having any land in common and the buildings accessory thereto, if any, together with the required open spaces appurtenant to such building or group of buildings.*

LOT, AREA *The total horizontal area included within property lines of a lot, exclusive of land within the public way.*

GRADE PLANE *A reference plane representing the **average of pre-construction ground level adjoining the building at all exterior walls.** When the finished ground level*

slopes away from the exterior walls, this reference plane shall be established by the lowest point within the area between the building and the lot line or, when the lot line is more than six feet from the building, between the building and a point six feet from the building.

HEIGHT *The vertical distance measured, in the case of flat roofs, from the grade plane to the highest point of the roof beams adjacent to the wall closest to the street, and, in the case of pitched roofs, from the grade plane to the average height of the gable. Where no roof beams exist or there are structures wholly or partly above the roof, the height shall be measured from the grade plane to the highest point of the building.*

BASEMENT *That portion of a building that is partly below grade. A basement shall be considered as a story for purposes of height measurement where the finished floor above the basement is:*

- A. More than six feet above the grade plane;*
- B. More than six feet above the finished ground level for 50% or more of the total building perimeter; or*
- C. More than 12 feet above the finished ground level at any point.*

STORY *That portion of a building between the surface of any floor and the surface of the floor above it or, if there is no floor above it, then the space between the floor and ceiling next above it. A basement shall be counted as a story for purposes of height measurement if the floor-to-ceiling height is more than six feet above the grade plane, more than six feet above the finished ground level for 50% or more of the total building perimeter, or more than 12 feet above finished ground level at any point.*

FLOOR AREA *The sum of gross horizontal areas of the several floors of the building or buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two attached buildings. The following are excluded from FAR calculation:[Amended 7-16-2015 by L.L. No. 3-2015*

- A. Any attic space with a floor-to-ceiling height of less than seven feet.*
- B. Cellar and basement areas as defined in the Village Code, including and storage areas with the exception of habitable space.*
- C. Any areas or structures devoted to accessory off-street parking or loading.*
- D. Mechanical and utility rooms such as trash rooms, electrical rooms, boiler rooms, emergency generator rooms and similar spaces for the operation of the building, but in-dwelling unit mechanical spaces are not excluded.*

E. Unenclosed porches, terraces and balconies.

F. Elevator and stair rooftop bulkheads.

FLOOR AREA RATIO *The total floor area of all buildings or structures, whether finished or unfinished on a lot divided by the net lot area of said lot. The "net area" of a lot shall mean the area of a lot after deduction for any portion of the lot containing steep slopes as in § 360-4.4D, lands under-water, and floodplains or wetlands as defined by the New York State Department of Environmental Conservation.*

The applicant has provided a Narrative describing the Project. At 50 DU/Acre, 33 DU's are permitted. An additional density increase capped at 40% for proposed sustainable resources is permitted, resulting in an additional 13 DU's. By providing the required 10% Affordable Workforce Housing Units, an additional 10% increase in density (5 DU's) is permitted, bringing the total number to 51 permitted Dwelling Units.

Accessory Surface Parking is permitted with Special Use Permit in DMU.

The Plan appears to conform with the DMU-2 setback requirements, namely at least the 10' setback from the curb line including a 5' sidewalk and a 5' setback from the sidewalk to the building. The applicant appeared before the ARB for a preliminary review. The applicant will be going back to the ARB to address their comments.

Application has been sent for review under GML requirements.

SEQRA – *Unlisted action. Board should state that this is an unlisted action and authorize staff to circulate the Notice of Intent to be Lead Agency to involved agencies. Board will need to wait 30 days and if no objections received would assume lead agency for the project's SEQRA review. LWRP – the Planning Board as lead agency would be responsible for a consistency determination with the policies of the LWRP.*

Planning Board should also establish an escrow account to include traffic review by F P Clark Associates (Mike Galante) and engineering and landscaping.

Applicant Bill Johnson from sparaco and youngblood -- no variances required

Public Comment - none

BOARD-- Motion to declare PB as lead agent-- second by Voletsky. Vote 5-0 to undertake the SEQRA review.

Member Klose concerned about elevations and whether there would be any interference with upland views. Member Klose concerned about the flow of traffic and around the one way streets of this neighborhood

Traffic Escrow of \$7K and Engineering Escrow of \$7K approved
Board to work on the scope of traffic review with Galante and the applicant.

OTHER BUSINESS-- Motion to adjourn by Klose, seconded by member Englander - passed by a vote of 5-0. Meeting adjourned at 7:27 PM