

**VILLAGE OF SOUTH NYACK**  
**Zoning Board of Appeals Minutes**  
**February 7, 2017**

**PRESENT:** Roger Seiler – Chairman  
Frank Richards – Member  
Charles Cross - Member  
DeWitt Rulon - Alternate Member

**ALSO PRESENT:** Sokuna Mam – ZBA Secretary  
Roy Wanamaker – Building Inspector  
Robert Knoebel – Attorney for Zoning Board

**ABSENT:** Richard Holt – Member  
Bruce Forrest – Member

**Mr. Seiler** called the meeting to order at 7:47 pm. This meeting was noticed to the public on January 24, 2016. There were three items on the agenda.

**An appeal by Julie McDonald from Article VII, Section 110-7.4A, Bulk Requirements Applicable and Table of Use and Bulk Requirements, Schedule 1, Page 3 of the Zoning Law of the Village of South Nyack for an area variance for distance of accessory structure to principle building.** The premises is a one family dwelling, is located 7 Elizabeth Pl., South Nyack, NY 10960 and identified on the Tax Map as Section Block and Lot 66.77-1-7, located in an R-G4 Zoning District.

**An appeal by Salisbury Point Cooperative for a variance from Article XI, Section 110-11.1, Nonconforming Building and Uses and Table of Use and Bulk Requirements, Schedule 1, Page 4 of the Zoning Law of the Village of South Nyack to for extension of granted variances to modify lower parking entrance and provide two control gates.** The premises is a multi-family dwelling located at 2 Salisbury Point, South Nyack, NY 10960 and is identified on the Tax Map as Section 66.78-1-27, and is located in a HRA Zoning District.

**An appeal by Salisbury Point Cooperative from Article XI, Section 110-11.1, Nonconforming Building and Uses and Table of Use and Bulk Requirements, Schedule 1, Page 3 of the Zoning Law of the Village of South Nyack for an area variance to change existing area and bulk utilization, to proposed reconfiguration of the north entrance which includes wall/fence height.** The premises is a multi-family dwelling located at 2 Salisbury Point, South Nyack, NY 10960 and is identified on the Tax Map as Section 66.78-1-27, and is located in a HRA Zoning District.

**Case # 1 – 7 Elizabeth Pl**

**Appearing:** Julie McDonald, Owner

**Mr. Seiler** commented that at the previous meeting there was a problem with Julie McDonald's application regarding the distance between the garage and her house. The Zoning Board of Appeals received Julie McDonald's manufacturer spec sheet.

**Building Inspector** suggested that Julie McDonald use **Firecode C Core** Type C Gypsum Panels, because they will provide better fire resistance.

**Mr. Seiler** commented that the site plan that Julie McDonald submitted to the Zoning Board is not signed by a NYS Licensed Surveyor. He commented that by the zoning local law, a Site Plan needs to be signed by a licensed surveyor. The Site plan must accurately show the scale used and dimensions. Setbacks are not a problem on her drawing. He asked Mr. Knoebel if the drawing can be accepted.

**Mr. Knoebel** suggested that the Building Inspector inspect the property. He will verify the Fire separation distance of shed/garage and principal use. He will also inspect the existing concrete slab. Therefore the Building Inspector will make the determination if the project is satisfactory as completed.

**Mr. Richards** asked the board if the distance of 5ft. between the shed and applicant's house should be a concern.

**Mr. Knoebel** answered in theory it is a concern.

**There was a discussion about the board of appeals approval of specific area variances.**

**There was a discussion about Julie McDonald reconstructing the garage on the existing slab without the exact footage.**

**Mr. Seiler** stated that one of the requirements for an area variance is that the applicant benefit cannot be achieved by another method that is feasible for the applicant to pursue, other than an area variance. The requirement is the shed needs to be located 10ft away from the principal dwelling.

**Julie McDonald** is proposing to reconstruct and replace her garage because the existing garage is damaged,

**Mr. Cross** commented that the proposed changes factor in the balancing of benefit to the applicant if the variance is granted as weighed against the community.

**There was a discussion about the distance separation between the dwelling and an accessory structure to allow firefighters' enough space to put out a fire.**

**Mr. Seiler** asked can the Zoning Board allow the applicant to use the sheetrock gypsum panels to satisfy the board's request.

**There was a discussion about the accessory structure and what it is used for.**

**Mr. Rulon** commented that the fire-resistance rated walls used with a fire separation distance of 5ft should be rated for exposure to fire from the inside and outside of the garage/shed.

**Mr. Seiler** commented that the main purpose for the board to require Julie McDonald to use a fire-resistant rated wall is to protect the neighbors from the spread of fire within the garage and the spread of fire to or from nearby buildings.

**Building Inspector** explained that the Residential NYS code states that it establishes that fire separation distance is 3 feet, and between the house and an accessory structure, such as a detached garage or shed. The fire-resistance rating of 3ft should be rated for exposure to fire from the inside. Therefore it does not state that the ratings do not have to be inside and outside.

**Mr. Knoebel** commented that the NYS code states that there needs to be separation distance of 3 feet between the house and an accessory structure, such as a detached garage or shed, but the zoning local law states no accessory use structure be located less than 10 feet. Therefore Julie McDonald is in compliance with the NYS Residential Code.

**It was suggested that Julie McDonald stay in contact with the Zoning Board secretary for follow-ups.**

**No public comments**

**Mr. Cross** made a motion to close the public hearing

**Mr. Richards** seconded

**Board Vote:**

**Mr. Seiler**                    **Aye**

**Mr. Cross**                    **Aye**

**Mr. Richards**                **Aye**

**Mr. Rulon**                    **Aye**

**Motion approved**        **4-0**

**Public hearing closed**

**FINDINGS OF FACTS**

**Mr. Cross** made a motion to conditionally grant variances requested area variances for construction to replace garage and distance of accessory structure to principle building to Julie McDonald for 7 Elizabeth Place; based on Firecode C Core submittal sheet which describes the sheetrock gypsum panels; subject to the following conditions:

- The distance of the principal use and the accessory structure is 5ft; a pre-existing condition.

- The fire retardant material will accomplish the same purpose as a minimum fire separation distance of 10ft. between the house and accessory structure to protect the neighbors from the spread of fire within the garage and the spread of fire to or from buildings.
- The applicant is not in compliance with the South Nyack’s zoning local law §110-7.4 “No accessory use structure shall be located closer than 10 feet to any principal use structure.”
- The applicant is in compliance with the Residential NYS Section R302 code states that it establishes fire separation distance to be a minimum distance of 3 feet between the house and an accessory structure, such as a detached garage or shed.
- Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance;
  - Only feasible for the applicant to construct the replacement garage with using the slab of the existing garage along with fire resistant fire code core c core gypsum panels.
- 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 an area variance.
  - Requiring the applicant to apply for the 10ft. setback will create significant hardship to have to remove the existing concrete slab and add new foundation.
  - The benefit to the applicant if the variance is granted will not weigh against the detriment to the Village.
- The Building Inspector will inspect the fire separation distance to be sure that there is 5ft. between the house and the accessory structure, such as a detached garage or shed.
- For simple projects, any site plan requirements that the Building Inspector deems to be unnecessary for accurate consideration of the case by the Zoning Board of Appeals, may be waived at the Building Inspector's discretion.

The premises is a one family dwelling, is located 7 Elizabeth Pl., South Nyack, NY 10960 and identified on the Tax Map as Section Block and Lot 66.77-1-7, located in an R-G4 Zoning District. This is a Type 2 SEQRA action with no potential for negative environmental impact.

**Mr. Rulon Seconded**

**Case #2 – 2 Salisbury Pt.**

**Appearing:** Peter McMannon, Board Member of Salisbury Pt. Coop.

**Mr. Seiler** commented that the area variances that were previously granted are expired. If the work authorized has not commenced within twelve (12) months after the date of issuance, the granting of the variance is voided. Therefore the applicant is seeking for an extension in writing.

**Mr. Knoebel** stated Catherine McCue, President Salisbury Pt. Coop. request for an extension of granted variances needed to modify the lower parking entrance and install two control gates. He read a part of her request, “the project cannot be initiated until the South Nyack Village drainage

project, yet to commence, which crosses Piermont Ave. and onto Salisbury Pt. parking lot 3 is completed.” Salisbury Pt. plans to start their work after the Village completes their project so that the street does not have to be opened multiple times.

**Mr. Seiler** commented that Salisbury Pt. Coop. delayed their project because they are accommodating the Village’s project.

**Mr. Knoebel** stated that The Village of South Nyack should file for the necessary easement because the Piermont Drainage project extends into the Salisbury Pt. Coop. lower parking lot. An easement was never filed. The Village should prepare the easement. He commented that he will prepare the preparation of the easement and he will need descriptions from the Village Engineer.

**Mr. Knoebel** requested that the condition of having an easement for the current project be removed once the easement is signed, before a building permit is issued and will apply only to the previous application.

**Mr. Richards** a motion to close the public hearing

**Mr. Cross** seconded

**Board Vote:**

<b>Mr. Seiler</b>	<b>Aye</b>
<b>Mr. Cross</b>	<b>Aye</b>
<b>Mr. Richards</b>	<b>Aye</b>
<b>Mr. Rulon</b>	<b>Aye</b>
<b>Motion approved</b>	<b>4-0</b>

**No public comments**

**Public hearing closed**

**Mr. Knoebel** commented that there’s no need to do the balancing test for an extension of area variance.

**FINDINGS OF FACTS**

**Mr. Richards** made a motion to grant an extension of the granted area variances for one year from date it expired to modify lower parking entrance and provide two control gates to Salisbury Pt. Coop.

- No changes in the law
- No changes in the request
- Circumstances are the same
- Delayed commencement of the construction is not applicant’s fault due to the Village’s drainage project being delayed.
- Salisbury Pt. Coop. is accommodating the Village whose Piermont drainage project has not begun yet.
- Conditional approval will still apply

The premises is a multi-family dwelling located at 2 Salisbury Point, South Nyack, NY 10960 and is identified on the Tax Map as Section 66.78-1-27, and is located in a HRA Zoning District.

**Mr. Cross Seconded**

**Board Vote:**

<b>Mr. Seiler</b>	<b>Aye</b>
<b>Mr. Cross</b>	<b>Aye</b>
<b>Mr. Richards</b>	<b>Aye</b>
<b>Mr. Rulon</b>	<b>Aye</b>
<b>Motion approved</b>	<b>4-0</b>

**Case #3– 2 Salisbury Pt.**

**Appearing:** Peter McMannon, Board Member of Salisbury Pt. Coop

**Mr. McMannon** explained the modifications to the plan:

- Height of fence is reduced from 48in to 42in along Salisbury Pl
- The granite block apron has been pulled away from the Salisbury Place street edge by 3ft. so a snow plows clear snow.

**Mr. Dewitt** asked for clarification about the fences. The fence is 42in along Salisbury Pl. The stone pillars are 4ft 4in and the entrance sign wall reaches 7ft 4in at the top of its arch.

**Mr. McMannon** commented that the overall sign height at the center of the arch is 5ft 6in.

**Mr. Dewitt** asked about the proposed size of sign being 9sq. ft.

**Building Inspector** has no comments.

**Mr. Cross** made a motion to close the public hearing

**Mr. Richards** seconded

**Board Vote:**

<b>Mr. Seiler</b>	<b>Aye</b>
<b>Mr. Cross</b>	<b>Aye</b>
<b>Mr. Richards</b>	<b>Aye</b>
<b>Mr. Rulon</b>	<b>Aye</b>
<b>Motion approved</b>	<b>4-0</b>

**Public hearing closed**

**FINDINGS OF FACTS**

**Mr. Cross made** a motion to grant for an area variance, for proposed reconfiguration of the north entrance which includes wall height and nonconforming bulk use.

ZBA determined and considered:

- Project is a minor change to the property
- Received the County Dept. of Highway's letter
- Received the Fire Dept. letter
- Reduced fence height - no need for variance
- Sign is appropriate and it is not detriment to the community
- Signed easement to be in place prior issue to Building Permit
- Benefits the applicant by improving the aesthetic, of the north end of the parking lot
- Area variance granted
  - 5ft 6in height of the wall
  - Nonconforming change in bulk

The premises is a multi-family dwelling located at 2 Salisbury Point, South Nyack, NY 10960 and is identified on the Tax Map as Section 66.78-1-27, and is located in a HRA Zoning District. This is a Type 2 SEQRA action with no potential for negative environmental impact.

**Mr. Richard Seconded**

**Old Business:**

**Mr. Cross** moved to approve November 1, 2016 Zoning Board of Appeals minutes.

**Mr. Forrest** seconded

**Board Vote:**

<b>Mr. Seiler</b>	<b>Aye</b>
<b>Mr. Cross</b>	<b>Aye</b>
<b>Mr. Richards</b>	<b>Aye</b>
<b>Mr. Rulon</b>	<b>Aye</b>
<b>Motion approved</b>	<b>4-0</b>

**Other Business:**

Michele Whalen is a potential buyer of the property located on 119 Cedar Hill Ave.

**There was a discussion about nonconforming use permit:**

- The purpose of this permit is to factually establish and document each nonconforming use that predates the zoning law and that is therefore authorized to continue until abandoned or phased out by legislative action.
- Change of ownership. In order to eventually phase out nonconforming uses, nonconforming use permits shall cease to be in effect upon the change of ownership of the use.
- To continue the nonconforming use, new owners shall apply for a new nonconforming use permit within 90 days of the real estate closing in order to continue the nonconforming use.

- Upon timely application, the new permit shall be granted if the Board of Trustees has not enacted legislation to phase out the use applied for, and if abandonment of the use for more than one year has not occurred during the two years prior to the application.
- If the application to renew a nonconforming use permit is made by a new owner after the 90-day deadline, then upon appeal to the Board of Appeals the burden of proof is on the landowner to demonstrate that there has been no abandonment of the nonconforming use since gaining ownership of the land. Upon submission of proof satisfactory to the Board, the Building Inspector may grant renewal of the prior owner's Nonconforming Use Permit.
- Nonconforming uses that became nonconforming by the adoption of the 1988 Local Zoning Law, and which did not receive a Nonconforming Use Permit during the time specified in that law, may not be granted a Nonconforming Use Permit under this law.
- The issuance of each Nonconforming Use Permit shall be subject to renewal requirements that may be enacted at a later date by the Board of Trustees or in the case of a change to a less-dense/less-intense use as determined by the Building Inspector; a revised Nonconforming Use Permit may be issued by the Building Inspector.

**New Business:**

- The Board welcomed the village’s new, Building Inspector, Roy Wanamaker
- Mr. Seiler reminded Mr. Wanamaker about zoning law §110-12.10 DUTIES OF THE BUILDING INSPECTOR AND CODE INSPECTOR A. The Building Inspector and the Code Inspector are authorized to enforce the provisions of this local law and of all rules, conditions and requirements adopted or specified pursuant thereto. Either the Building Inspector or Code Inspector shall be present at all hearings before the Board of Appeals.

Upon motion made by **Mr. Richards and Mr. Cross** seconded, and unanimously approved, the meeting adjourned at 9:05pm.

**Board Vote:**

<b>Mr. Seiler</b>	<b>Aye</b>
<b>Mr. Cross</b>	<b>Aye</b>
<b>Mr. Richards</b>	<b>Aye</b>
<b>Mr. Rulon</b>	<b>Aye</b>
<b>Motion approved</b>	<b>4-0</b>

**The next meeting is April 4, 2017.**

Respectfully submitted,

Sokuna Mam  
Zoning Board Secretary

Approved: \_\_\_\_\_