

**Village of South Nyack
Planning Board Minutes
February 15, 2017**

Present:

Jerry Ilowite, Chairman
Bill Whitehurst, Member
Timothy Kenna, Member
Myra Starr, Member

Also present:

Robert Knoebel, Board Attorney
Roy Wanamaker, Building Inspector
Sokuna Mam, Board Secretary

Mr. Ilowite called the meeting to order at 7:36pm. This meeting was noticed to the public on February 1, 2017. There were two items on the agenda.

- 1. An application by Karim Mikhail for amended site plan approval to remove three trees.** The premise is a one family dwelling, is located at 12 Clinton Avenue, South Nyack, NY 10960 and identified on the Tax Map as Section 66.62-2-13, located in an R12 Zoning District

- 2. Continuation of an application by Salisbury Point Cooperative for site plan approval for the proposed installation of entrance, masonry wall, fencing and landscaping.** The premises is a multi-family dwelling, is 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 – 12 Clinton Ave.

Appearing: Kier Levesque, Architect & Karim Mikhail, owner

The applicant proposes to remove three significant trees as shown on the site plan.

- Two trees are located on the North side of the house. The third tree is located in front of the house.
- One of the trees that is located on the north side near the neighbor's property looks almost dead based on barren branches. The tree can possibly fall on the neighbor's property and not the applicant's property. The applicant plans to landscape and planned to remove this tree because it's not included in the landscaping plan.
- A 30 in. problem tree is located near the house. The tree is losing its bark and Mr. Levesque believes that a North Eastern wind could possibly cause it to fall on the house. The applicant planned to remove this tree when they first came to the Planning Board, but other trees were first removed because they were affected by the construction. Now that the addition is finished, the branches of the 30 in. tree are falling on the house, leaves are clogging the gutters and are causing problems with the storm water drainage system.

Mr. Levesque described the infiltration trenches and storm water drainage system that allows runoff water to percolate into the ground and said the 30 in. tree is obstructing the storm water drainage system.

- A tree that is located in front of the house is leaning and will be removed and replaced with a tree along the circular driveway.
- Landscaping plan is not completed and was not provided to the Planning Board.

Mr. Ilowite reviewed **Mr. Collazuol, the Village Engineer's** letter dated February 14, 2017 which included:

PLAN REVIEW

- 1) The applicant should indicate if the 5 arborvitae have been planted.
- 2) The applicant should indicate what landscape or tree plantings will be replaced as a result of the 3 trees to be removed.
- 3) It is suggested that the fence intended to be installed be shown as part of the plan.

SUMMARY

No objection to removal of the three (3) trees. Will review revised plan should the Board decide that the comments above need to be addressed.

Mr. Ilowite noted the response dated February 6, 2017 from the Rockland County Dept. of Planning:

- The proposed site plan will have no adverse impacts on any county-wide interests; this matter is remanded for local determination.

Public Comments

Lee Prisament, 36 Clinton Ave, commented that South Nyack needs tall and mature trees due to our proximity to the Thruway.. Trees are a cost effective and effective buffer to small particle pollutants from the highway.

He cited the Village Zoning law, which says that site plans should preserve existing trees to the greatest extent possible.

Mr. Prisament stated that the narrative is misinforming. It referenced that a tree that fell down on his property was healthy. He said it was unhealthy and was removed because it was hazardous tree to the community. He said that falling branches is a rationale that does not meet the spirit of the law, which talks about undue hardship and preserving trees to the greatest extent possible. He disagreed that the wind blows predominantly from the North East. He said trees were leaning due to the road surface and how the roots search for water. The statement that the wind blew the tree to the South is misinformed.

As to the applicant's claim that the neighborhood is dangerous and that he had to call 911 five to six times regarding trespasses, Mr. Prisament suggested screening the property with fencing instead of taking down a tree. He said that the rationale in the narrative would justify taking down every tree on the property and all of South Nyack.

Mr. Prisament showed a photo of the tree on his property taken in 2014 noting that the top half was missing. He showed photos of the trees on the applicant's property, saying they were all tall, mature, and magnificent. Mr. Prisament said that small replacement trees would take a lifetime to grow.

Vicki Reznik expressed concern was that the rationale provided for taking down the trees is inaccurate. She questioned if the Village Engineer's had actually looked at the trees on the site to determine their health. She commented that Mr. Levesque mentioned the applicant's plan to take down the trees because of their trees, but questioned the evidence of ill health. She suggested that a landscaping plan should be required. She commented that people are most likely to trespass the property as stated by the applicant rationale because it looks abandoned and the landscape is not completed. She believed that the Board should require better rationale for taking down healthy trees. She suggested that the applicant can maintain the trees by trimming or other methods.

Mara Cohen agreed with Mr. Prisament and Mrs. Reznik comments, saying that the trees in question are important to the Clinton Avenue neighborhood.

Joel Newton commented that he moved to Clinton Ave. because of the look of the neighborhood including trees.

Elizabeth Gaeta asked the Planning Board Members similar questions. She suggested that the applicant maintain the trees by hiring landscapers to trim them.

Andrew Goodwillie identified himself as a Village Trustee, but he is speaking as an individual and does not represent the Board of Trustees. He commented on the applicant's rationale for removing the trees and expressed his concerned about the direction of damaging winds. He presented weather history graphs from Lamont Dottery Earth Observatory that show the wind direction coming mostly from the West-Northwest. He expressed concern about the last paragraph of the rationale regarding trespassers and 911 calls. Mr. Goodwillie said the Police Department told him they had only one call from the resident and that Clinton Ave. is not as dangerous as stated in the letter.

He asked for clarification of the procedure of noticing to the public and he claimed the notices were not posted on the property.

He quoted a number of statements from the South Nyack Zoning Local Law including:

"It is a village where people can take root and grow amidst the quiet and pleasant beauties of its unique setting alongside the Hudson River"- §110-1.1 PREAMBLE.

"The provision of an environmental setting conducive to the private, quiet and safe nurturing and enjoyment of residential life" - §110-1.2(B).

"The maximum protection of residential areas, including the protection of property values" - §110-1.2(C).

"The Planning Board shall give specific consideration to the design of the following: Preservation of existing trees over 8 inches in diameter measured 3' above the root system will be attained to the maximum extent possible" - §110-14.3(E)(1)(C). "Character and appearance:

That the character and appearance of the proposed use, buildings and/or outdoor signs will be in general harmony with the character and appearance of the surrounding neighborhood and the Village of South Nyack and will not be adversely affected.” - **§110-14.3(E) (1) (D)**.

Mr. Goodwillie commented that the applicant plan on erecting a fence on the property. He said the security fence will out of character of the surrounding neighborhood.

He quoted a number of statements from the South Nyack Zoning Local Law including:

“When the Zoning Board of Appeals make their determination whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.” - **§110-13.2 (2) (b) (i)**.

“CEA 1 possesses specific environmental characteristics which are exceptional and unique and it is the specific goal of this designation to identify and protect those characteristics which are set forth below:

- a. this area includes unusual proximity to the Hudson River and the protection, preservation and enhancement of the important aesthetic and scenic qualities associated with such proximity is a primary goal
- b. the historic significance of this area, including its architecture should be protected for future generations
- c. the Hudson River’s ecological, geological and hydrological sensitivity may be adversely affected by any change, development or disturbance in the area and must be scrutinized carefully and thoroughly so as to protect and preserve not only the environmental integrity of the riverfront area, but the appearance of the shoreline from the river itself.” - **§110-4.5 (A) (2) CRITICAL ENVIRONMENTAL AREAS - CEA 1 - Hudson River Area**

The argument is taking down three trees will adversely impact the view from the river to the shoreline.

Mr. Knoebel commented that there are different notices requirements of posting on properties because it’s not an area variance application. Notices were sent out. This is a public meeting and the public could make comments and the board would take it to consideration for the record.

Lisa Greene commented to the Board that they were notified, since they are all here.

Board Comments

Ms. Starr commented the trees are important to the community. She referred to the NEW YORK STATE HISTORIC PRESERVATION report for the New York NY Bridge Project that describes the ambience of the community. Included were shade on roadways, and the trees contribution that the trees make to an historical setting and feelings.

She felt the rationale is unreasonable, because leaves fall into the gutters, branches fall and there are professional landscapes that can clean it up. She did not see an arborist’s report the conditions of the trees. She agreed with Mr. Prisant that if they take down the trees and plant

new ones, it can take a life time for them to mature. She supports South Nyack's tree preservation ordinance.

Mr. Kenna commented that if there were good reasons to take down the trees, such as their being dangerous/hazardous, he would not oppose. He said he does not think wind directions and leaves in the gutters are reasons to take down trees.

Mr. Whitehurst noted his appreciation that residents were present at the meeting and had presented their research to the boards. He noted that this application lacks an arborist report with evidence that the trees are dangerous and can affect other properties. That there's a reasonable reason to remove them now. He said the evidence is anecdotal and he doesn't see anything to compel the Board to action. There's the option of putting a fence around the trees. He stated that taking down trees could weaken the windbreak for the other trees, perhaps causing them to come down as well. He would reject the application without an arborist saying there is a definite danger now.

Building Inspector had no comments.

There was a discussion about Village Engineer's report in regards to the plantings and fence. **Mr. Levesque** commented that the arborvitaes were previously approved and are not planted yet.

Mr. Ilowite asked Mr. Levesque if the fence was on the previous and current site plan application. Mr. Levesque answered that it is not part of the proposed application. Mr. Levesque clarified the narrative that the fence is not a security fence.

Mr. Ilowite asked Mr. Levesque if he was qualified as a professional to make a determination in regards to the trees. Mr. Levesque answered he is not qualified.

Mr. Ilowite commented that the Board of Trustees is charged to preserving trees as stated in the Village of South Nyack's Zoning Code and South Nyack's tree ordinance in Article IV, § 98-12. The Board of Trustees referred tree application to the Planning Board to determine whether a tree is removed or preserved based on the site plan. **Mr. Ilowite** asked if there was anything about the site plan that would require removal of the trees. **Mr. Ilowite** asked if there is evidence that the trees are in decline.

Mr. Knoebel quoted "The cutting, destruction, or removal of significant trees which are diseased or dead or which endanger public safety and pose imminent peril based upon a determination made by the Building Inspector or designee of the Village Board of Trustees" - **§98-14(B) (2)**.

Mr. Levesque requested a continuation in order to get an arborist report and have the Building Inspector look at the trees.

Mr. Ilowite questioned if the front yard tree is on the applicant's property. He suggested that the tree be noted on a formal survey of the property.

Mr. Levesque commented that the tree is partly on the property.

Mr. Ilowite commented that there may be shared responsibility for the tree with the Village and its location should be clarified.

There was a discussion regarding about the rationale for removal of trees included in the site plan. **Mr. Ilowite** commented that the board looks for remediation in order to preserve and protect the character of the Village.

Mr. Knoebel stated that the Planning Board may require the planting of multiple significant trees instead, based on the sole determination of the Planning Board on the number, species, and the size of the significant trees.

Mr. Ilowite suggested that Mr. Levesque and the applicant to provide an arborist report including the following:

- identification of species
- size
- evaluation of health
- rational of removing the trees
- mitigation proposed for removed trees

At the applicant's request, review of this application is continued to the next Planning Board meeting.

Case #2 – 2 Salisbury Pt.

Appearing: Pete McMannon

Mr. McMannon proposes alterations at the north entrance to Salisbury Pt. including fencing along Salisbury Pl. and an electric exit gate. He commented that the ZBA has granted the area variance for 5ft 6in high wall. The proposed fence meets village code for 3ft 6in. Salisbury Pt. Board has agreed to move the granite block apron 3ft. away from the Salisbury Pl street edge so plows can clear snow, per DPW Jim Johnson's request. The Fire Department has provided a letter, per Planning Board request.

Mr. Ilowite reviewed **Mr. Collazuol, the Village Engineer's** email dated February 14, 2017.

- The modifications to the plans and described in the February 15, 2017 narrative are minor in nature.
- The fence height is shown to be 3'-6" in height. Sight distances appear to be satisfactory.
- There are no Engineering objections.

Mr. Ilowite noted that in a response dated February 7, 2017 from The Nyack Fire Department:

- The Nyack Fire reviewed the application and drawings dated January 23, 2017.
- Based on the information provided, the proposed reconfiguration of the north entrance satisfies with the Nyack Fire Dept.
- The Nyack Fire Department has demonstrated sufficient emergency access with the Salisbury Pt. Coop. Therefore applicant is in compliance.

Mr. Ilowite noted the response dated February 6, 2017 from the Rockland County Drainage Agency Division of the Hwy. Dept.:

- The RCDA reviewed the referenced proposal as described.
- It has determined that the referenced parcel is located within the tidal influence area of the Hudson River.
- The RCDA does not exercise jurisdiction over this area pursuant to chapter 846, Rockland County Stream Control Act.
- The review and approval of proposals for this site, including stormwater management and erosion control designs are appear to be within the jurisdiction of the appropriate municipal land use boards and departments.
- A permit from the RCDA is not required.
- The site is draining directly into the Hudson River.
Stormwater runoffs do not appear to have any impact to any other properties.

Mr. Ilowite clarified that the applicant had gone Zoning Board of Appeals with a negative recommendation from the Planning Board.

There was a discussion clarifying the portions of the plan that the ZBA approved.

Mr. Knoebel commented that fence height needs to be corrected on the site plan from 4ft to 3ft 6in.

Mr. McMannon explained the modifications to the plan:

- The granite block apron has been moved 3ft. from the Salisbury Place street edge so snow plows can clear snow.
- The pedestrian sidewalk has been modified to align to the curb cut across from Salisbury Place and is shown with an ADA compliant curb cut.
- No lighting proposed
- Parking remains the same
- A contractor will apply and obtain work permit from Rockland County Dept.. of Highways.
- Signs are shown on pg. L-2.
- The Center wall portion with the sign
 - Flanked by two round stone pillars are 5ft in height.
 - The fence and wall combined is 3ft 6in. which will surround the sign on the left and right with the stone pillars will be 4ft in height.

Public Comment:

Andrew Goodwillie expressed concern about lighting of the remaining sign on Piermont Ave. according to the photos. **Mr. McMannon** said the light is for the parking lot, not the sign. They are working with neighbors to address the issue.

Board Comments:

Mr. Whitehurst commented that he was disappointed that the ZBA disregarded the Planning Board suggestions.

Mr. Kenna commented correction of scale needs to be made.

Mr. Ilowite commented that and Unlisted Action must be reviewed further under SEQR to determine the potential for significant adverse environmental impacts.

The Planning Board completed the Environmental Assessment Form.

Mr. Ilowite made a motion to conditionally approve the amended site plan application by Salisbury Point Cooperative for the proposed installation entrance, masonry wall, fencing and landscaping, prepared by Daniel Sherman Landscape Architect, dated January 23, 2017, subject to the following conditions:

- Correct Detail G, the entrance Signs & Piers Elevation drawings, the height of fence needs to be changed from 4' to 3'6".
- Applicant needs to obtain a work permit from the Rockland County Dept. of Highways.
- Applicant needs to obtain a road opening permit from the Village of South Nyack DPW to extend the Belgium Block past the property lines.
- The sewage drainage easement for the lower parking lot from the applicant's previously approved plan from February of 2106 must be recorded by the County Clerk's office before a Building Permit is issued.

The Planning Board, as lead agency under SEQRA, has determined that this is an unlisted action. The Planning Board hereby makes a negative declaration in that the proposed action will not result in any significant adverse environmental impacts.

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

Mr. Kenna Seconded

Board Vote:

Mr. Ilowite	Aye
Mr. Whitehurst	Aye
Mr. Kenna	Aye
Ms. Starr	Aye

Motion approved 4-0

OLD BUSINESS:

The Board postponed approval of minutes of the October 19, 2016 until the March 15, 2017 meeting.

The Board postponed approval of minutes of the December 21, 2016 until the March 15, 2017 meeting.

The Board needs the Zoning Board of Appeals minutes for the March 15, 2017 meeting.

Mr. Whitehurst made a motion to adjourn the meeting at 9:01pm, seconded by **Mr. Starr**, and unanimously approved.

Board Vote:

Mr. Ilowite	Aye
Mr. Whitehurst	Aye
Mr. Kenna	Aye
Ms. Starr	Aye

Motion approved 4-0

The next meeting is on March 15, 2017

Respectfully submitted:

Sokuna Mam
Deputy Village Clerk

Date Approved: _____