

VILLAGE OF SOUTH NYACK
Zoning Board of Appeals Minutes
April 4, 2017

PRESENT: Roger Seiler – Chairman
Frank Richards – Member
Charles Cross - Member

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

ABSENT: DeWitt Rulon - Alternate Member
Bruce Forrest – Member

Mr. Seiler called the meeting to order at 7:31 pm. This meeting was noticed to the public on March 21, 2017. There was one item on the agenda.

An appeal by Wells Fargo Bank from Article XI, Section 110-11.2, Non-Conforming Use Permit and Bulk Requirements Applicable and Table of Use and Bulk Requirements, Schedule 1, Page 3 of the Zoning Law of the Village of South Nyack and in the alternative for a variance from the requirements of said law to continue the nonconforming use upon the change of ownership of a preexisting non-conforming use. The premises is a listed on the tax roles as a three family dwelling, and is located at 119 Cedar Hill Ave., South Nyack, NY 10960 and is identified on the Tax Map as Section Block and Lot 66.45-2-8, in an R-G4 Zoning District.

Case # 1 – 119 Cedar Hill Ave

Jeffrey Yanowitz, Esq. represents the buyers of 119 Cedar Hill Ave. His client is requesting that the property continue to be used as a three-family dwelling. It has been listed as a three family since the 1960s. The previous owner lost the house to a bank foreclosure. Continuing as a three-family dwelling will not affect the character of South Nyack. The property will remain as is.

Mr. Seiler commented that the main issue is that house had a nonconforming use permit. New owners need to renew nonconforming use permit within 90 days of the closing in order to continue the nonconforming use. If the application to renew a nonconforming use permit is made by a new owner after the 90-day deadline, then the burden of proof is on the landowner to demonstrate to the Zoning Board that there has been no abandonment of the nonconforming use for more than a year. He asked Mr. Yanowitz to demonstrate such proof.

Mr. Yanowitz stated that Wells Fargo Bank currently owns the property. The bank is not providing signatures on the required smoke and carbon monoxide affidavits to be submitted for the title search. The prior owner used the property within the last year as a three-family use.

Mr. Knoebel noted that the foreclosure records show that Wells Fargo Bank acquired the property in May 2016.

Mr. Seiler commented that when the occupants were evicted the home had three (3) family units. He explained that he observed three meters.

Mr. Knoebel observed that it would be useful for the board needs to know the physical layout of the property.

Mr. Wanamaker explained the annual Multiple Residence re-inspections procedure, although he hasn't been to this property yet.

Mr. Seiler commented that he's familiar with the house and neighborhood. The house is set up for three family. The property has parking spaces. There are other multi-family residences in that area neighborhood.

Mr. Cross commented that ownership changed from the bank less than a year ago. He asked Mr. Knoebel about whether or not the nonconforming use permit stays with the owner.

Mr. Knoebel said that in order to continue the nonconforming use the new owner must apply for a renewal of the nonconforming use permit within 90 days of their closing. If a nonconforming use permit is made by a new owner after the 90-day deadline, then they must appeal to the Zoning Board of Appeals and the burden of proof is on the applicant to demonstrate that the use has not been abandoned.

Mr. Seiler commented that if the abandonment of the property is less than a year there must be a submission of proof as to its continuing use.

Mr. Knoebel commented that foreclosures are not like ordinary closings in that they are involuntary.

Mr. Seiler commented that there's a physical building. There's no evidence the property was abandon. There are still meters.

Mr. Knoebel explained other court cases in regards to the definition of abandonment.

Mr. Wanamaker commented that he will need to do an inspection of the property.

Mr. Seiler commented that his testimony is proof that the building is made for a three-family dwelling.

Mr. Yanowitz asked Mr. Knoebel, if the Building Inspector could inspect the property before his clients' takes ownership.

Mr. Wanamaker commented that once the appeal is accepted by the Zoning Board of Appeals, he will sign the nonconforming use permit.

Mr. Knoebel commented that Mr. Seiler's testimony is part of the record. He recommended that the Board make re-inspection and confirmation to the building inspector's satisfaction be a condition of approval.

Mr. Knoebel commented that executive law mandates that affidavit of compliance of smoke and carbon monoxide alarm installations need to be provided when ownership is transfers. He noted that affidavits of compliance are for only a one or two family dwelling.

There was a discussion about the deadline for the closing.

Mr. Knoebel suggested that the Building Inspector inspect the property regardless of whether or not the sale goes through. The Building Inspector will determine the physical status of the building.

Mr. Seiler commented that the property should remain listed as a three family if the hookups are existing.

Mr. Wanamaker asked Mr. Yanowitz to schedule inspection with Zoning Board Secretary for Thursday's afternoon appointment.

There were no members of the public present.

Mr. Cross made a motion to close the public hearing

Mr. Richards seconded

Board Vote:

Mr. Seiler	Aye
Mr. Cross	Aye
Mr. Richards	Aye
Motion approved	3-0

Public hearing closed

FINDINGS OF FACTS

- That the house was abandon more than a year.
- The chairperson has observed the house and based on the building, including meters hook ups and parking spaces, it remains as a three family dwelling.
- There was no renewal of nonconforming permit within the 90days because the house was in foreclosure and it's inquires by the bank to judicial process.

Mr. Cross made a motion to conditionally grant a variance to Wells Fargo Bank for continuing the nonconforming use upon the change of ownership of a pre-existing non-conforming use, as a three-family dwelling, subject to the following conditions:

- That the Building Inspector determine, by internal inspection, the physical configuration of the dwelling as a three-family dwelling.
- That the Building Inspector determine during his inspection that there are separate bathroom and kitchen facilities or hookups for same or inspect the premises of the use and make a determination of its use.
- That the new owner must submit the proper application for registration and pay the required fees within 90 days of the transfer of ownership

That the premises is a three-family dwelling, located at 119 Cedar Hill Ave., South Nyack, NY 10960 and is identified on the Tax Map as Section Block and Lot 66.45-2-8, located in an R-G4 Zoning District. This is a Type 2 SEQRA action with no potential for negative environmental impact.

Mr. Richards commented that Pincus are not the owners yet.

Mr. Knoebel commented that the Pincus' received Wells Fargo permission to come in their place.

Mr. Richards expressed concerned about the comments from Rockland County Dept. of Planning, and the Village of Nyack.

Mr. Knoebel noted the comments received:

- Rockland County Dept. of Planning noted that there was no site plan submitted and they could not evaluate.
- Upon review, the Village of Nyack considers this to be a matter of local determination with no adverse impacts on the Village of Nyack and has no comments on the application.

Mr. Seiler commented that there are no variances to be granted.

Mr. Knoebel commented that the request of the variances under §110-11.2 (c) was an alternate option of the board denied the initial application.

Mr. Seiler commented there is no balancing test.

Mr. Knoebel commented the burden of proof is on the landowner.

Mr. Richards Seconded

Board Vote:

Mr. Seiler **Aye**
Mr. Cross **Aye**
Mr. Richards **Aye**

Motion approved **3-0**

Old Business:

Mr. Richards moved to approve January 3, 2017 Zoning Board of Appeals as amended minutes.

Mr. Cross seconded

Board Vote:

Mr. Seiler **Aye**
Mr. Cross **Aye**
Mr. Richards **Aye**

Motion approved **3-0**

Mr. Cross moved to approve February 7, 2017 Zoning Board of Appeals as amended minutes.

Mr. Richards seconded

Board Vote:

Mr. Seiler **Aye**
Mr. Cross **Aye**
Mr. Richards **Aye**

Motion approved **3-0**

New Business:

Videotaping of Zoning Board of Appeals meetings:

Mr. Seiler commented that a member of the Board of Trustees has proposed mandating that the Zoning Board of Appeals video record meetings and posted them on the internet for the public to view. He explained that the Zoning Board of Appeals is different from the Planning Board because per New York State law all zoning boards of appeals are quasi-judicial bodies. He explained the concept of separation of power of judicial body is independent from the legislative and administrative bodies. Any decision about the procedures that's followed by Zoning Board

of Appeals decisions are only made by Zoning Board. The only control powers that Village Board over the Zoning Board of Appeals are appointing its members and enacting laws.

Mr. Knoebel commented that the Board of Trustees considers practical matters such as funding a place for the Zoning Board to meet. Rules of procedures are adopted by each board. An applicant may request to record a meeting. According to Office of Comptroller, boards may not ban video recording, or require permission or advance notice to record the meeting or public hearing. However, the applicant cannot obstruct or disrupt the deliberative process. For example, the board could require that cameras be only at the side of the room. Mr. Knoebel commented that the members should express their opinion on whether to have meetings video recorded or not.

Mr. Seiler commented the applicants that come before the Zoning Board of Appeals on legal issues. Video recording of a public meeting can make the applicant or other residents feel uncomfortable being recorded. A member from the Village Board claims other municipalities record their ZBA meetings and library committees meetings. However, Mr. Seiler is on the board for the Nyack Library which does not video tape their meetings. Therefore, he questioned the Board of Trustee member's opinion about video recording.

Mr. Knoebel commented that if other municipalities' video records the meetings, the rules of procedure may change for Zoning Board meetings.

Mr. Seiler said that of the Board of Trustees member believes that video recording the meetings will benefit the Zoning Board secretary in writing the minutes. However, the ZBA meetings are already using audio recording.

Mr. Knoebel asked the Zoning Board secretary for her feeling about the video recording.

Ms. Mam preferred audio recording over video recording.

Mr. Knoebel commented that if the board allows video recording, the video recording does not substitute for participation for a meeting. The neighboring residence will not be able to make comments via skype or other communication devices. Currently, South Nyack Zoning Local Law requires the applicant to notify neighbors.

Mr. Cross commented that there are no significant differences between video and audio recording of meetings. However, the general public may object being recorded. It's unfair to the applicant and public to be expected to be videotaped. There's a difference between residents being observed in person and being video broadcasted to the public.

Mr. Knoebel commented if the Village Board adopts a rule to video meetings; a notice needs to be posted at the door advising that the meeting is being recorded.

Mr. Seiler commented that the approve minutes are legal records and the Zoning Board of Appeals needs to be in control of the records. He spoke of possible Article 78's against the ZBA.

Mr. Richards stated that he is against video recording, because it might be used against the board. He gave the example of a viewer seen the video and saying that the board is stupid and does not know what they're talking about.

No action was taken.

Upon motion made by **Mr. Richards** and **Mr. Cross** seconded, and unanimously approved, the meeting adjourned at 8:20pm.

Board Vote:

Mr. Seiler **Aye**

Mr. Cross **Aye**

Mr. Richards **Aye**

Motion approved **3-0**

The next meeting is May 2, 2017.

Respectfully submitted,

Sokuna Mam
Zoning Board Secretary

Approved: _____