

**VILLAGE OF SOUTH NYACK**  
**Zoning Board of Appeals Minutes**  
**May 15, 2017**

**PRESENT:** Roger Seiler – Chairman  
Bruce Forrest – Member  
Richard Holt -- Alternate Member  
Frank Richards – Member **via telephone**  
Charles Cross - Member **via telephone**

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

**ABSENT:** DeWitt Rulon - Alternate Member

**Mr. Seiler** called the meeting to order at 7:33 pm. This meeting was rescheduled from May 2, 2017. This meeting was noticed to the public on May 5, 2017. There were two items on the agenda.

**An appeal by Reba Monisoff from Article XI, Section 110-11.1 (A)(1), Nonconforming Building and Uses of the Zoning Law of the Village of South Nyack for an existing building to extend a nonconforming as to bulk to construct a swimming pool.** The premise, a one family dwelling, is located at 2 Gesner Ave., South Nyack, NY 10960 and identified on the Tax Map as Section Block and Lot 66.62-2-28 located in an R-12 Zoning District.

**An appeal by Jeffrey Pomerantz & Helen King 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 existing building to extend a nonconforming as to bulk and area variances to construct an addition to a deck, for the construction of second deck, and enclosure of southerly deck with a greenhouse enclosure.** The premise, a one family dwelling, is located at 26 Terrace Dr., South Nyack, NY 10960 and identified on the Tax Map as Section Block and Lot 65.60-1-15 located in an RG-8H/R-12 Zoning District.

**Case # 1 – 2 Gesner Ave**

**Appearing:** Kier Levesque, Architect

**Mr. Levesque on behalf of Monisoff residence** was seeking variances for an existing building to extend a nonconforming as to bulk to construct a swimming pool. The Planning Board gave a positive recommendation to the Zoning Board of Appeals. The applicant requested adding new bulk to an existing nonconforming building. “Neither a nonconforming use nor a building that is nonconforming as to bulk shall be enlarged, extended, reconstructed or placed on a different portion of the lot or parcel of land occupied (**§110-11.1 (A) (1) NONCONFORMING BUILDINGS AND USES RECONSTRUCTION OR EXTENSION**). The applicant received

a variance a year ago for an addition on the property. The applicant is requesting to construct an in ground swimming pool. It is not detrimental to the community. The applicant meets the suggestions from the County of Rockland Dept. of Planning and the Village Engineer's report.

**Mr. Seiler** was concerned about flooding on the property. He asked Mr. Levesque about seawall and protection against floods.

**Mr. Levesque** commented that the height of seawalls has increased over the years. The Based Flood Elevation is 7ft. for the entire area. The basement based on elevation 3.9ft, but the first floor is based on an elevation of 9ft. The money received from FEMA was for damages from five major storms which included Hurricane Floyd and Hurricane Sandy. FEMA required putting in a drainage system that will allow water that goes over the wall, water hits the yard drains then water goes back to the river.

There was a discussion about the seawall and Hurricane Sandy.

**Mr. Levesque** noted that FEMA required elevating the home. Mr. Levesque mentioned the owner cannot elevate the home, but abandon the lower level the house. The house is under reconstruction and is recovering lost space in the lower level. The lower level must be abandoned and left as an opening so that water can go in and out.

**Mr. Seiler** asked Mr. Levesque about flooding and the proposed pool.

**Mr. Levesque** commented a pool adjacent to an elevated Zone V building may be constructed at grade or elevated so that the lowest horizontal structural member supporting the pool is at or above Base Flood Elevation. However the property is in Zone AE which requires the pool to be flush with adjacent grade and not be subject to floating out of the ground.

**Mr. Seiler** asked Mr. Levesque about the pool potentially have structural damage.

**Mr. Levesque** noted that FEMA concerns are the following:

- Floating out of the ground.
- Potential damage to any building from the water.

There was a discussion about sump pump and pool equipment.

**Building Inspector** commented that he is aware about the construction and is doing inspections on the property.

There was a discussion about the impact of floods.

**Mr. Levesque** explained that this property is the only property in South Nyack that has the lowest Base Flood Elevation below 7.

There was a discussion about residents directing questions about floodplain construction requirements to the floodplain administrator which is the Building Inspector.

**There were no comments from the public.**

**Mr. Forrest** made a motion to close the public hearing  
**Mr. Holt** seconded

**Board Vote:**

<b>Mr. Seiler</b>	<b>Aye</b>
<b>Mr. Holt</b>	<b>Aye</b>
<b>Mr. Forrest</b>	<b>Aye</b>

**Motion approved 3-0**

**Public hearing closed**

**FINDINGS OF FACTS**

**Mr. Forrest noted:**

- There will be no undesirable change.
- The swimming pool is facing the river and therefore the change won't change the character of the neighborhood.
- The requested area variance is not substantial.
- There will be no impact on the environmental conditions in the neighborhood or district.
- The floodplain Administrator for the Village of South Nyack shall certify that the proposed construction is in compliance with the floodplain regulations of the Village and FEMA.
- The alleged difficulty was self-created to abandon the lower level, leaving an opening so that water can go in and out.
- In the balancing of the benefits, there is a greater benefit to the applicant if the variances are granted than to the village if they are denied.

**Mr. Holt** made a motion to grant a variance to extend a nonconforming as to bulk to construct a swimming pool. The premise, a one family dwelling, is located at 2 Gesner Ave., South Nyack, NY 10960 and identified on the Tax Map as Section Block and Lot 66.62-2-28 located in an R-12 Zoning District. This is a Type 2 SEQRA action with no potential for negative environmental impact.

**Mr. Forrest Seconded**

**Board Vote:**

<b>Mr. Seiler</b>	<b>Aye</b>
<b>Mr. Holt</b>	<b>Aye</b>
<b>Mr. Forrest</b>	<b>Aye</b>

**Motion approved 3-0**

**Case # 2 – 26 Terrace Dr.**

**Appearing:** Jan Degenshein, Architect

**Mr. Degenshein on behalf of the King & Pomerantz residence** is seeking to extend a nonconforming and for area variances to construct an addition to a deck, for the construction of second deck, and enclosure of a southerly deck including greenhouse enclosure. The house is on the Hillside area and the lot is steep. There's an encroachment unto the Village because there's an existing footing for one column and an existing addition. The ground and drainage will not be adversely affected. The garage is in the front yard and is in the right-of-way. The deed stated the license agreement for there is a right-of-way.

**Public Comments:**

**Mrs. Remini** explained her property is above the King & Pomerantz residence. She commented that she's afraid the height of the greenhouse will obstruct her view.

**Mr. Degenshein** addressed Mrs. Remini concern about the greenhouse. He explained to her that the greenhouse is glass and transparent. The greenhouse will place on the lower existing roof of the house.

**There was a discussion about the height of the roof and roof grade.**

**Mr. Remini** asked **Mr. Degenshein** if the addition going to block the view of the Hudson River.

**Mr. Seiler** gave his observation about the property. He explained that the house is built below Terrace Drive. This project will not block the view. The request is within the maximum height required and it is allowed to be added to the house.

There was a discussion about the lack of legal protection of views and the proposed project.

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

**Mr. Holt** seconded

**Board Vote:**

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

**Mr. Holt**                        **Aye**

**Mr. Forrest**                    **Aye**

**Motion approved**      **3-0**

**Public hearing closed**

## **FINDINGS OF FACTS**

**Mr. Holt** noted:

- The property is on a steep lot.
- The applicant requested minor changes and additions.
- The house cannot be seen from the road.
- The house above can see changes made to the house.
- The greenhouse is visible, but glass is transparent.
- Received license agreement from previous owner.
- The greenhouse will be placed on the lower existing roof of the house.
- In the balancing of the benefits, there is a greater benefit to the applicant if the variances are granted than to the village if they are denied.
  - Applicant has a better view of the river.
  - There will be plants for winter season.
  - No detriment to the community.

**Mr. Holt** made a motion to grant a variance to extend a nonconforming as to bulk and area variances to construct an addition to an existing deck, for the construction of a second deck, and the enclosure of a southerly deck with a greenhouse enclosure. The premise, a one family dwelling, is located at 26 Terrace Dr., South Nyack, NY 10960 and identified on the Tax Map as Section Block and Lot 65.60-1-15 located in an RG-8H/R-12 Zoning District. This is a Type 2 SEQRA action with no potential for negative environmental impact.

**Mr. Forrest Seconded**

**Board Vote:**

<b>Mr. Seiler</b>	<b>Aye</b>
<b>Mr. Holt</b>	<b>Aye</b>
<b>Mr. Forrest</b>	<b>Aye</b>

**Motion approved 3-0**

**Old Business: Videotaping of Zoning Board of Appeals meetings:**

**Mr. Knoebel** commented that a member from the Board of Trustees proposed mandating the land use boards to video record meetings and have the recording available to the public on the Village website. His initial reaction was that rules of procedures are adopted by each board. An applicant may request to video record a meeting. The board could require that cameras be on stands at the side of the room. The applicant cannot obstruct or disrupt the deliberative process. **Mr. Knoebel** explained his conversation with NYCOM, that the Board of Trustees establishes the Planning and Zoning Board of Appeals. He reminded the board that the Board of Trustees provided a place for the land use members to meet. He also reminded the Board that the Board of Trustees may mandate video recording at meetings as a requirement.

**Mr. Seiler** commented that New York has rules on this subject from Courts of Appeals that the judge may or may not give permission to record court sessions.

**Mr. Forrest** commented that the Board of Trustees is required to have Zoning Board Members.

**Mr. Knoebel** agreed with Mr. Forrest. However, Mr. Knoebel needs to report to the Board of Trustees the decisions of the Planning and Zoning Board of Appeals in regard to video recording meetings.

**Mr. Forrest** asked Mr. Knoebel what was the reason that led to a discussion about video recording meetings.

**Mr. Knoebel** stated residents were looking for transparency and they wish to access information about the decisions from the Village.

**Mr. Forrest** replied to Mr. Knoebel that the Zoning Board of Appeals is transparent because they are public meetings. The notices are properly posted and the neighbors are notified. People are allowed to public speak during meetings.

**Mr. Knoebel** commented that the Zoning Board discussed video recording at the last meeting and felt that it is detrimental. Watching video recording does not substitute participation. If neighbor(s) object to the application, they cannot email their opinion during the meeting. They are required to appear in person to voice their opinions.

**Mr. Seiler** was concerned that if the public knows the videos are available they may choose to watch it online rather than appear at the meetings. People that watch it online may obtain important information pertaining to the Zoning Board of Appeals. Residents may withhold facts and/or their opinions knowing that they would be recorded. Also, there might be a misunderstanding on the finding of the facts. The Zoning Board of Appeals members that are present may be affected, because they may perform differently than without being recorded.

**Mr. Knoebel** explained that the Zoning Board of Appeals members' job is to look at the facts. He rephrased Mr. Cross's opinion that the neighbors' are notified by mail and choose to come to meetings to hear about a neighboring property case. It's unfair to the applicant and public to be expected to be videotaped and video broadcasted to the public. Also, when the public notices posting at the door advising that the meeting is being recorded, they may choose to leave without attending the meeting. Other people may want to come to the meeting to make comments that may not pertain on the agenda to show off their intelligence. Video Recording may negatively affect getting members to sit on the boards. If the Board of Trustees forced the land use boards to video record, a notice needs to be posted at the door advising that the meeting is being recorded. He suggested that the ZBA could make a motion to vote recommending the Zoning Board meeting not to be recorded and adopt with reasons that were stated.

**Mr. Seiler** made a motion to disapprove videotaping of Zoning Board meetings subject to the following conditions:

- The Public may withhold from sharing important information with the Zoning Board members during a Public Hearing.
- Video Recording the meetings may cause other people not to show up and participate in meetings. Public participation by the public may add important information for ZBA cases.

**Mr. Forrest** seconded

**Board Vote:**

**Mr. Seiler**            **Aye**  
**Mr. Forrest**        **Aye**  
**Mr. Holt**            **Aye**

**Motion approved**    **3-0**

**Old Business:**

**Mr. Cross** moved to conditionally approve amended 4/4/17 Zoning Board of Appeals minutes.

**Mr. Forrest** seconded

**Board Vote:**

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

**Motion approved**    **3-0**

Upon motion made by **Mr. Forrest** and **Mr. Holt** seconded, and unanimously approved, the meeting adjourned at 8:30pm.

**Board Vote:**

**Mr. Seiler**            **Aye**  
**Mr. Forrest**        **Aye**  
**Mr. Holt**            **Aye**

**Motion approved**    **3-0**

**The next meeting is June 6, 2017.**

Respectfully submitted,

Sokuna Mam  
Zoning Board Secretary

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