

CITY OF NEWBURGH
PLANNING BOARD

123 Grand Street, Newburgh, New York 12550

Lisa Daily, Chairperson
Eliana Diaz, Secretary

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PLANNING BOARD MEETING

The City of Newburgh Planning Board meeting was held on Tuesday, September 20, 2016 in the Activities Center, 401 Washington Street, Newburgh, New York.

Members Present: Lisa Daily
Peter Smith
Ramona Monteverde
Argelia Morales
Lillian Burgarelli

Members Absent: Elsworth Banks
Victor Bramble

Also Present: Alexandra Church, City Planner
Jason Morris, City Engineer
Michelle Kelson, Corporation Counsel
Eliana Diaz, Land Use Board Secretary

The meeting was called at 7:50 p.m. after a quorum was confirmed.

NEW BUSINESS

INDEX NO. 2016-07 **SITE PLAN** to establish a Gas main Regulator Site
Location: 182 Fullerton Ave
Applicant: Justin Dates

The comment letters of the City Engineer and the City Planner are to be made a matter of record.

DISCUSSION BY THE BOARD

- Justin Dates from Maser Consulting appeared.
- Mr. Dates stated that the existing residential site is on the corner of Fullerton Avenue and South Street. The residential site is a two story single family residence and one car detached garage. Central Hudson has purchased this lot, there is a gas main that runs within South Street and Central Hudson is looking to demo the building and the garage and install a regulator apparatus that would attach to the gas main. Upon the demolition of the house and garage there are three different scenarios that can be implemented. The first scenario is essentially having the regulator installed on the site fully enclosed by an eight foot decorative aluminum fence with two access points. The first access point would have a sixteen foot vehicle gate access and the second access point would have a pedestrian access gate

- to get to the facility used only by Central Hudson for maintenance and upkeep of the regulator. The majority of the regulator is underground and there are some areas where it comes above grade. These areas would be somewhat screened by the stencil of the fence. The existing sidewalks would be sought to be redone to tie in to the relatively new crosswalk access. Landscaping would also be done, introducing a couple of street trees providing some additional aesthetic and screening of the site. The second scenario would be shifting the regulator improvements to the east side of the side and possibly donating half a parcel to the City as potential for green space or community garden, enclosed by the same type of fencing and adding the streetscaping in kind with the first scenario. The third scenario would enclose the regulator. Different modular style buildings were reviewed to see which could potentially be placed on top of the regulator. The building would be about a one story 16X40 to make the lot more residential. Mr. Dates stated that Central Hudson would like to go with scenario number one. They feel that it can be made to look more aesthetic to address the concerns of the board.
- Lillian Burgarelli asked if the regulator generated any kind of loud noise that would disturb the residents in the area. It was stated that the pipe is modeled to minimize the amount of noise and there is insulation that can be placed around the piping to absorb the noise. There are also engineering methods that can be implemented to control the noise from the regulator. Peter Smith asked what the noise of the regulator was like. The noise of the regulator was stated to be close to that of a hum. This station because of its size and location is pretty significant and serves 4,200 customers of the 7,600 customers this gas line serves. By New York State Code the station has to be visited once a month and a checkup is conducted during non-heating season, during heating season the site is visited once a week. The Central Hudson vehicles visiting the site would not be parking on the street. The vehicles would park inside the premises hence the sixteen foot vehicle access gate mentioned in the first scenario. At this time there is no lighting proposed, the street lighting should be sufficient for the crews, this is in an effort to not disturb the neighborhood.
 - The City Engineer stated that an owner's consent note would be needed on the plans, a signature block for the planning board chairwoman and an empty block for City Engineer approval. The plan needs to be updated with construction details for the sidewalk reconstruction and erosion control details. The board should consider along the west side there is an access gate for pedestrian access and if the gate could be moved to the South so the landscaping could run continuously along the western side of the Site. The same thing applies for the connection to the regulator along South Street if that could be shifted to the East along the access road to provide the same condition to extend the landscaping.
 - The City Planner stated that this is a residential zone and industrial use is not permitted by right, however, according to zoning code 300-57 there are allowances for public utilities. It was requested for the applicants to obtain an informational session with the Zoning Enforcement Officer to have his ruling on what the action is regarding this project. Corporation Counsel stated that the proposed use is not permitted in the current zone, the zone provision 300-57 allows public utility use in any zone subject to site plan or special permit from the Planning Board.

Therefore in addition to the Site Plan application a Special Permit for the use may be necessary and a determination from the Building Official in order for the board to consider that and Special Use Permit is subject to a public hearing. The City Planner reinstated her concern of losing a building in that location and how it could affect the structure of the neighborhood.

- Argelia Morales asked if the regulator imposed any dangers to the neighbors. It was stated that there would be no danger imposed and that it is actually safer to have the regulator above ground. Lillian Burgarelli asked what the residents nearby should expect during the transitional period. It was stated that having the project finalized as soon and quick as possible with minimal impact to the residents. Ramona Monteverde asked if the applicant would be working with the CAC for the proposed landscaping. The applicant stated that landscaping would be submitted to the Engineering department for review.
- The members of the board discussed which of the three proposals they preferred. Lisa Daily, Lillian Burgarelli and Argelia Morales preferred option number three. Peter Smith and Ramona Monteverde sided with the third option.

INDEX NO. 2016-13 SITE PLAN to renovate existing structure to change occupancy from a 3 family dwelling unit to a 4 family dwelling unit.

Location: 183 Liberty Street

Applicant: Beth Sigler

The comment letters of the City Engineer and the City Planner are to be made a matter of record.

DISCUSSION BY THE BOARD

- Beth Sigler, applicant appeared.
- Ms. Sigler stated that the building is sought to be renovated historically accurate on the exterior and make it to a four family building instead of a three family.
- The City Planner stated that the reason the applicant is before the board is because of the four family dwelling proposal which requires Site Plan approval but it does not trigger off street parking.
- The City Engineer stated that the required signature blocks need to be provided on the plans. In addition the City Engineer does not see a need to require a Site Plan from the applicant.
- Corporation Counsel stated that this application will be appearing before the ARC and the Planning Board needs to make SEQRA determination.

Peter Smith moved and Argelia Morales seconded the motion to waive Site Plan approval. The motion was carried 5-0

Peter Smith moved and Argelia Morales seconded the motion to declare Lead Agency. The motion was carried 5-0

Peter Smith moved and Argelia Morales seconded the motion for SEQRA Negative Declaration.

The motion was carried 5-0

INDEX NO. 2016-14 **SITE PLAN** to establish a restaurant in the existing building
Location: 69 Liberty Street
Applicant: Rudolph and Deborah Duffus

The comment letters of the City Engineer and the City Planner are to be made a matter of record.

DISCUSSION BY THE BOARD

- Jonathan Cella, P.E., Rudolph and Deborah Duffus applicants appeared.
- Mr. Cella stated that the project consisted in establishing a restaurant. The previous use on the property in 2009 was also a restaurant. As per discussions of the September Work session the sidewalks are to be repaired along Spring Street on the northern side of the building.
- The City Engineer stated the standard signatures blocks need to be provided on the plans. The updated City sidewalk standards will be forwarded to the engineer so that they can be incorporated to the plans. In addition a note must be included on the Site Plan that grease traps be installed throughout the restaurant.
- The City Planner stated that off street parking determination, number of parking spaces and location, was contingent on the Planning Boards decision.
- Mr. Cella stated that because of the location of the restaurant there would be no room for parking. It was stated that the parameters to the hours of operation needed to be established and memorialized on the plans because the business will be on a residential area.
- Corporation Counsel stated that the application is a Type I action. The details of what encompasses a Type I action were stated.

Peter Smith moved and Argelia Morales seconded the motion to declare Lead Agency.

The motion was carried 5-0

Peter Smith moved and Ramona Monteverde seconded the motion to waive Parking.
The motion was carried 5-0

Peter Smith moved and Ramona Monteverde seconded the motion for SEQRA Negative Declaration.
The motion was carried 5-0

Ramona Monteverde moved and Lillian Burgarelli seconded the motion to approve the application.
The motion was carried 5-0

INDEX NO. 2016-11 **SITE PLAN** to establish a Dunkin Donuts
Location: 445 Robinson Avenue
Applicant: Scott Shearing

The comment letters of the City Engineer and the City Planner are to be made a matter of record.

DISCUSSION BY THE BOARD

- Scott Shearing from Bohler Engineering, applicant representative appeared.
- Mr. Shearing stated that significant improvements on the site want to be made while keeping the existing building. The goal is to establish a Dunkin Donuts in the Lot. On August 2nd the Planning Board Workshop was attended. Since then DOT has been contacted and a fire truck plan has been incorporated. The five neighbors bordering the property have also been contacted but no feedback has been received. At this moment Mr. Shearing is looking for a Planning Board referral to the Zoning Board of Appeals for parking. Mr. Shearing stated that DOT has favorable comments regarding the project.
- Peter Smith asked if there would be other tenants on the building, Mr. Shearing stated that there will be other tenants. The Dunkin Donuts will be oversized because there will be a meeting area.
- The City Engineer asked how the landscaping buffer will be provided to the west of the property. Mr. Shearing stated that repairs and restoration on the fence for aesthetic fixings will allow to comply with the required landscaping buffer. The City Engineer asked if the existing concrete stairs leading to an access area would remain. Mr. Shearing stated that it would remain because it was an access area to a vestibule in the front. Pedestrian access was brought up for discussion, it was stated that there would be pedestrian access through the front and the back of the building. The City Engineer requested a traffic study from the Light on North Street. Mr. Shearing stated that 70% of the traffic generated is accumulated from 7am-11am.
- Lillian Burgarelli asked if there was a way to have enter & exit through Robinson Avenue. Mr. Shearing stated that there was no way to make that feasible. It was stated that Robinson Avenue was a one way out and Robinson Avenue is the way to enter, it was also stated that DOT had no objections to making left turns to enter the premises. The City Engineer requested that the letters from DOT affirming the statement be presented. At the moment the applicant is proposing 18 parking spaces, the City requires for this project a total of 46 parking spaces, Mr. Shearing stated that 46 parking spaces is a number that is not really applicable.
- The City Planner referred to her comment number 8 on her letter which referred to the number of parking spaces required, 32 for the restaurant and 14 additional parking spaces.
- Corporation Counsel stated that this application is an unlisted action under SEQRA therefore the applicant can go before the Zoning Board without having the Planning Board take any actions.
- A referral is needed for the applicant by the Building Inspector in order for the applicant to appear before the Zoning Board of Appeals. The applicant can return before the Planning Board in November after the October Zoning Board of Appeals meeting.

Argelia Morales moved and Peter Smith seconded the motion to declare Lead Agency for Site Plan.

The motion was carried 5-0

INDEX NO. 2016-12 **SITE PLAN** to utilize shipyard parcel for the temporary storage of steel pipes

Location: 401 South Water Street

Applicant: David Plotkin

The comment letters of the City Engineer and the City Planner are to be made a matter of record.

DISCUSSION BY THE BOARD

- Mike Siemers, applicant representative and David Plotkin applicant appeared.
- Mr. Siemers gave an overview of the project. The zoning of the property was changed in 2015 by the City of Newburgh to an Open Space zone, in addition the property is also encompassed by the Water Protection Overlay District. Due to the historic use of the property as an accessory use to the shipyard a Special Use Permit is requested by the board. The proposal is to use six acres of the property to store 230 steel pipes which will be utilized to construct the Delaware aqueduct. Each pipes measures 40x6 feet in diameter. The access to the site will be made possible by a proposed gravel access drive that runs through the center of the property. The pipes will be located on each side of the gravel access drive. The gravel access drive and the pipe storage will be placed on existing grade so there is no proposed earth work. A tree line and tree clearing limit line is shown on the erosion control plan which shows the number of trees which is about three acres. The trees will be cut at ground level and there will be no stump removal, they will be chipped on site and spread throughout the site to provide erosion control. The pipes will arrive by barge and will be temporarily stored for three and half years. At the request of the town of Newburgh the work will be done at night. Once the three and a half years expires the pipes will be sent to the actual aqueduct site, the full duration of the project is estimated to be five years. A site visit was conducted to get a feel of the project and observe the location.
- The City Planner stated that on her letter it is detailed why a special use permit is required and other requirements that are needed from the applicant.
- The City Engineer requested an easement description for review, Mr. Siemers stated that there may already be a variable deed easement that can potentially be provided. The easements are to be provided on the Site Plans submitted. The CAC's request for trail access was brought up, Mr. Plotkin stated that he is considering where the trail would start and end. The City Planner stated that one of the conditions on the WPO is to provide the public access to water bodies. It was stated that a trail would be accessible after five years.
- It was stated that the application is an action subject to SEQRA and the thirty day wait period for responses from interested agencies should be exhausted. A public hearing can be scheduled at this time. Pending on responses from other interested agencies the application can be submitted for votes during the October Planning Board meeting.

Peter Smith moved and Lillian Burgarelli seconded the motion to for intent to assume SEQRA Lead Agency.

The motion was carried 5-0.

Ramona Monteverde moved and Argelia Morales seconded the motion to schedule a Public Hearing for the month of October.

The motion was carried 5-0.

OLD BUSINESS

INDEX NO. 2016-10 **SPECIAL USE PERMIT** to establish an Automotive Repair at the facility

Location: 110 Mill Street

Applicant: Michael Maers & Brad Sherman

The comment letters of the City Engineer and the City Planner are to be made a matter of record.

DISCUSSION BY THE BOARD

- Michel Maers & Brad Sherman, applicants appeared.
- The applicants expressed their intentions to obtain a Special Use Permit to establish an automotive repair on site.
- The City Engineer had no further comments on the application.
- The City Planner had no further comments on the application.

Argelia Morales moved and Peter Smith seconded the motion to open the Public Hearing. The motion was carried 4-1 (Lillian Burgarelli abstained).

Joel, City of Newburgh resident welcomed this business in the City of Newburgh, saying it will help the City improve.

Drew Kartiganer, City of Newburgh resident supported the applicants and their request for a Special Use permit.

Peter Smith moved and Argelia Morales seconded the motion to close the Public Hearing. The motion was carried 4-1 (Lillian Burgarelli abstained).

- The representative from Corporation Counsel reviewed the items submitted for this application. This application is an unlisted action under SEQRA, the Planning Board will be the only Lead Agency and a declaration for Lead Agency is needed. Part I submitted by the applicant has been provided to the board members. Part II has been completed by City Staff and a narrative indicating that there is no impact and that there has been no physical alterations to the Site. The business has been operating and existing for some time in the City of Newburgh and there is no long term or short term significant impact on the environment.

Ramona Monteverde moved and Argelia Morales seconded the motion to declare Lead Agency.

The motion was carried 4-1 (Lillian Burgarelli abstained).

Peter Smith moved and Ramona Monteverde seconded the motion for SEQRA Negative Declaration.

The motion was carried 4-1 (Lillian Burgarelli abstained).

Argelia Morales moved and Peter Smith seconded the motion to approve the application. The motion was carried 4-1 (Lillian Burgarelli abstained).

INDEX NO. 2016-09 **SPECIAL USE PERMIT** to establish a cidery for tasting & production of hard cider to be packaged for sale and distribution
Location: 218 Ann Street
Applicant: Kyle Sherrer

The comment letters of the City Engineer and the City Planner are to be made a matter of record.

DISCUSSION BY THE BOARD

- Kyle Sherrer, applicant appeared.
- Mr. Sherrer stated that he is waiting for the IPP study to be finalized. He has complied with all other requests set forth. The only outstanding item for him is food service on site. Since there are no facilities to do any food service he is requesting food trucks and or food catering services within their licenses be allowed to provide food services on site in accordance with whatever licenses they have. It was stated that there has not been time to review if any additional approvals are required for food service in the zone. The City Planner stated that this is the first time food services has been brought up. She believes that food trucks differ from catering services. An analysis would have to be done of what uses are permitted in the zone. Because the project is located in Low Density Residential, Commercial Overlay and Broadway Corridor there is no way to determine on the spot if the request of the applicant is permitted and/or a Special Use Permit is required.
- The City Engineer requested from the board to make a conditional approval based upon the applicant obtaining his Industrial Discharge Permit.

Peter Smith moved and Ramona Monteverde seconded the motion for SEQRA Negative Declaration.

The motion was carried 4-1 (Lillian Burgarelli abstained).

Argelia Morales moved and Peter Smith seconded the motion to grant Special Use Permit.

The motion was carried 4-1 (Lillian Burgarelli abstained).

Ramona Monteverde moved and Peter Smith seconded the motion to approve the Site Plan conditioned upon obtaining the Industrial Discharge Permit.

The motion was carried 4-1 (Lillian Burgarelli abstained).

- Mr. Sherrer, gave a brief overview of the project, his past experience in Cider production and his future visions of having a cider garden on the site once fully established.
- Stuart Sachs, resident of 28 Lander Street stated that he thinks that the plans to establish the cidery is great and he supports the plans.
- Michelle Basch, owner of the Warehouse Restaurant supported the establishment of the cidery, she asked the members of the board if there were any plans for the collection of garbage from the location.

INDEX NO. 2016-02 **SITE PLAN** to redevelop with a mix-use building consisting of 13,800 sq. ft. of retail space and 91 residential apartment units.
Location: 140 Broadway between Lander Street and Johnston Street.
Applicant: Mill Street Partners LLC

The comment letters of the City Engineer and the City Planner are to be made a matter of record.

DISCUSSION BY THE BOARD

- David Cooper, attorney at Zarin-Steinmetz law firm, Patrick Normoyle of Excelsior Housing Group, Magnus Magnusson of Magnusson Architecture and Planning and Mark Lukasik from Tectonic Engineering appeared.
- Mr. Cooper stated that the process has been before the Planning Board since the month of January. Mr. Cooper stated that none of the applicants that have come and gone during the same period of time this project has been reviewed have received the same level of scrutiny that this application has received since it began its review. Mr. Cooper does not consider the scrutiny to not be warranted, but it does mean that what is before the board is a very thorough and substantial record of analysis of environmental impact, potential impacts, information requested and questions asked relating to traffic, storm water, parking, fire safety, etc. Consultants have provided a technical memorandum providing all of the information for the members of the board. At the last meeting the board was asked to make a determination of significance and issue a Negative Declaration to complete the SEQRA process, at that moment there were not enough members present. A Part II and Part III have been prepared to review and move forward in contemplation to issuing a Negative Declaration during this meeting. There are two board members currently absent at the meeting, but the applicant needs to know where the board stands. The applicant is subject to a development agreement and there is a mutual agreement of cooperation and succeed through this development. The applicant would like to know if the board is ready to act. Typically what the applicant asks for is a straw vote before the actual vote. The applicant would first like to go through the determination of significance and negative declaration, then move to the Site Plan application.
- The City Engineer stated that the Planning Board should discuss if photocell activated lighting is acceptable and review the letter from the City of Newburgh Fire Department relating to their conversation with the State Codes Department (for

the record all parties received the letter on September 20, 2016). From the contents of the letter there are two options available to the applicant to either widen the interior drive aisle to accommodate fire apparatus within the site along with providing the parking restriction on Lander & Johnston for the apparatus to set up or apply for a variance to the State which is more viable. Regarding to the lighting, for security purposes the lighting is required overnight. The Chairwoman is fine with the lighting proposed, there are no other comments.

- The City Planner stated that her one outstanding comment was clarified by the letter issued by the Fire Department.
- Mark Lucasik explained how the applicant plans to address the letter issued by the Fire Department. As a result of the reviews there are now three fire areas instead of two
- The representative from Corporation Counsel stated that the Environmental review has been extensive and significant. Part I was submitted since the application was submitted, Part II was received during the month of August identifying whether there are any impacts set forth in the form, Part III is the determination of significance, the Part III form has two places for elaboration, one is the analysis of the impact and the other is the additional information the board relied on in making its determination of significance. It is considered that the board is in a position to making a determination of significance during this meeting. With respect to the location of the entrances on the lander street side of the project, there is one entrance on Lander Street within two hundred feet of another building at 24 Lander Street which is currently being used as a church. Section 300-68 (87) requires a minimum of 200 feet from the entrance to the property line of not just the church but other uses such as schools, playgrounds, libraries, hospitals and similar institutions. The Zoning Official gave an opinion that Section 300-68 (87) does apply in the Form Based Code. There is another subsection (f) that speaks of non-conforming parking lots in the area, the history of the parking lot parcel on this project is that it has historically been used on this area. Therefore, more time is needed to evaluate the subsections. The following questions arised whether any future project could conform to the two hundred foot restriction and subsection F would seem to indicate that if it is not practical it may not be required.
- Mr. Cooper stated his request to obtain a copy of Mr. Hunter's opinion on the Form Base Code. Mr. Cooper also objects to Mr. Hunter's opinion of Section 300-68. Mr. Cooper states that the church currently located within the two hundred feet of the entrance makes the driveway non-conforming not illegal and whether the proximity of the driveway conforms or not conforms should not affect the determination on SEQRA and a determination of Significance.

Peter Smith moved and Argelia Morales seconded the motion for SEQRA Negative Declaration.

- David Cooper requested for a straw vote before a formal vote is issued.
- For the record Peter Smith, Argelia Morales and Lisa Daily would issue a favorable vote

- Ramona Monteverde abstained from voting, the reason given is that she is not fully clear on this project.
- Lillian Burgarelli stated that this meeting is her first Planning Board meeting therefore she will be abstaining from voting on items that have undergone review by the board before her incorporation. The record reflects that Ms. Burgarelli voted on the items presented for the first time tonight before the board, however she abstains from any items carried over from prior applications.
- For the record Mr. Cooper requests a special meeting be held by the Planning Board as soon as possible.
- Mr. Cooper stated that this is the second time there has not been enough board members to emit a vote and that this is an issue with the language of the development agreement.

Argelia Morales moved and Lisa Daily seconded the motion to table the application. The motion was carried 4-1 (Lillian Burgarelli abstained)

APPROVAL OF MINUTES

Peter Smith moved and Argelia Morales seconded the motion to approve the minutes of the March Planning Board meeting.

The motion was carried unanimously.

Meeting adjourned at 9:57 p.m.

Respectfully submitted,

Eliana Diaz
Secretary