

ZONING BOARD OF APPEALS MEETING

Summary of record of actions taken at the regular meeting of the Newburgh Zoning Board of Appeals (“ZBA”) held on July 23, 2024 at 7:00 p.m. at the Activity Center, 401 Washington Street, Newburgh, New York.

Members Present: Joanne Lugo, Chairperson
Corey Allen
Dianne Dixon
Tiffany Buxton
Melvin Hales (alternate)
Julie Lindell
Michael Papaleo (departed 9:24 p.m.)

Absent: Ben Brandt

Also Present: Jeremy Kaufman, Assistant Corporation Counsel
J.K. Gentile, Secretary

The Chairperson called the meeting to order at 7:06 p.m. after confirming a quorum.

OLD BUSINESS

APPEAL NO. 2024-17

Applicant: Chris Berg, RA/Berg + Moss Architects, PC
Owner: John Schmidt
Location: 506 Liberty Street

Requesting an **AREA Variance** 5.5 feet on the minimum south side yard setback, 20 feet on the minimum rear setback and 4 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low Density Residential Zone.

GML §239 response was made a matter of record.

Chris Berg appeared before the Board and gave a brief overview of the proposed project. He said the Building Inspector did not approve the existing garage for the two proposed parking spaces as there are deficiencies in the structure and it does not appear large enough to accommodate two standard parking spaces. He confirmed the off-street parking request is 4 spaces.

Ms. Dixon asked if the garage would be demolished.

Mr. Berg said the owner proposes fixing and maintaining the structure for storage space.

Ms. Lindell asked to confirm that the owner can provide two on-site parking spaces independent of the garage space.

Mr. Berg confirmed.

Mr. Papaleo asked to confirm that the property's proposed use is a three-family dwelling.

Mr. Berg confirmed.

Dianne Dixon moved to approve the application as submitted.

Julie Lindell seconded the motion.

The motion passed unanimously via roll-call vote.

APPEAL NO. 2024-18

Applicant: Chris Berg/Berg + Moss Architects, PC

Owner: Nineteen Sixty-Nine LLC

Location: 176 South Street

Requesting an **AREA Variance** for 3 feet on the minimum lot width, 10 feet on the minimum front yard setback, 5 feet on the minimum east side yard setback, 5 feet on the minimum west side yard setback, 17.6 feet on the minimum rear setback, ½ story on the maximum building height, 15% on the maximum lot coverage and 3 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Chris Berg and Marlin Reyes appeared before the Board.

Mr. Berg gave a brief overview of the proposed project. He said a vote could not be rendered at the June meeting as the GML §239 response was pending.

The Assistant Corporation Counsel said the GML §239 request was sent 6/7/24 and there has been no receipt of response to date. With no response after 30 days, the Board is free to vote or to wait on the response.

Dianne Dixon moved to approve the application as submitted.

Julie Lindell seconded the motion.

The motion passed unanimously via roll-call vote.

APPEAL NO. 2024-05

Applicant: Andrew Schrijver
Owner: Mid Hudson Film LLC
Location: 50, 50 ½, 52, 54 Liberty Street

Requesting an **AREA Variance** for 35.5 feet on the maximum side yard setback and 112 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Downtown Neighborhood Zone.

Andrew Schrijver, Chris Berg, R.A., John Furst, Esq., and Frank Filiciotto, P.C. appeared before the Board.

The Assistant Corporation Counsel said that a ZBA member, Tiffany Buxton, was contacted by a member of the applicant's team by telephone at some point prior to the meeting. He said Ms. Buxton discussed the issue, and Ms. Buxton expressed that she could not be fair and partial due to the nature of the contact. He asked Ms. Buxton whether that information was accurate, and whether she would recuse from consideration on the application.

Ms. Buxton confirmed.

The Assistant Corporation Counsel asked Mr. Furst if there was any objection if Ms. Buxton remained seated with the Board during the presentation, even though she would not participate in any discussion or vote.

Mr. Furst said there was no objection.

Mr. Schrijver said the last time the application was before the Zoning Board was February 2024. He gave an overview of the proposed project and updates using visual aids.

Mr. Filiciotto gave an overview of the parking study using visual aids. He said the information provided at the February meeting is still accurate even though he is no longer with the Creighton Manning firm. His parking review noted 355 available parking spaces within a quarter of a mile on a weekday and a weekend day, during both morning and evening hours. He noted the Ann Street parking lot for available parking spaces. He said there are five additional approved projects within close proximity and noted their collective total off-street parking request was 241 off-street parking spaces. He said that even combining that total with this application's proposed request still falls short of the studied 355 available parking spaces. He said when the parking study was conducted, South Colden Street was closed, leaving out 115 available off-street parking spaces which were not even considered in the study.

Mr. Schrijver asked the Assistant Corporation Counsel to confirm that the City Council's consideration of proposed changes to the street directionals is contingent upon Planning and Zoning Board approvals.

The Assistant Corporation Counsel confirmed. He said the Zoning Board could issue an unconditional vote or a conditional vote upon the mitigation that what the applicant proposed is only sufficient if it incorporates the proposed street directional changes approved by the City Council.

Ms. Dixon asked of the 46 on site parking spaces, how many are available to individuals with disabilities.

Mr. Filiciotto said they are required by the Americans with Disabilities Act (ADA) to designate two on-site parking spaces. He said in the letter to the City Council regarding the proposed changes to the street directionals, they also requested three on-street designated ADA spaces, in three different locations, though they would be for public use and could not be specifically reserved for the site.

Ms. Dixon asked if there is designated retail parking.

Mr. Filiciotto said no.

Mr. Allen asked if community outreach was conducted to inform the surrounding community about the project.

Mr. Filiciotto said no, nothing beyond the required public hearing notices.

Mr. Papaleo asked the location of the on-site parking spaces.

Mr. Berg said the proposed on-site parking spaces will be underground with access from Johnes Street.

Mr. Papaleo asked how the on-site, underground parking spaces will be allocated to the tenants.

Mr. Schrijver said it will be allocated on a first come, first served basis.

Ms. Dixon asked if there is an additional charge to the tenant for the on-site parking.

Mr. Schrijver said yes.

The Chairperson opened the public hearing.

Chris Hajek spoke in favor of the application.

Antoni Meade spoke in favor of the application.

Albert Mizrahi spoke in favor of the application.

Omari Shakur spoke against the application.

Carson Carter spoke in favor of the application.

Ramona Monteverde spoke in favor of the application.

Lisa Silverstone spoke in favor of the application.

Austin Dubois spoke in favor of the application.

Michele Basch spoke in favor of the application.

Bob Szeli spoke in favor of the application.
Sam Satanovsky spoke in favor of the application.
Dan Gilbert spoke in favor of the application.
Andres Santiago spoke in favor of the application.
Charles Bivona spoke in favor of the application.
John Clark spoke in favor of the application.
Doria Paci spoke in favor of the application.
Ryan Padgett spoke in favor of the application.
Erik Cooney spoke in favor of the application.
Anoushae Eirabie spoke in favor of the application.
Kelly Boling spoke in favor of the application.
Wendy Smith submitted comment via email in favor of the application.
Naomi Heresson-Ringskog submitted comment via email in favor of the application.

Dianne Dixon moved to close the public hearing.
Julie Lindell seconded the motion.
The motion passed unanimously via roll-call vote.

The Assistant Corporation Counsel cautioned that both Mr. Shakur's and Ms. Monteverde's comments should be viewed solely in their capacities as members of the public and not in their capacities as members of the City Council.

The Assistant Corporation Counsel cautioned that both Mr. Carter's and Ms. Basch's comments should be viewed solely in their capacities as members of the public and not in their capacities as members of the Architectural Review Commission.

Ms. Dixon said she would consider a conditional vote based on the other large projects approved within the area. She said any additional parking spaces would be beneficial. She said she would like to see additional ADA spaces.

Ms. Lugo said she would consider an unconditional vote as there is no guarantee the City Council would approve the street directional changes.

Ms. Lindell said she would consider an unconditional vote as the applicant provided a sufficient parking and traffic study

Ms. Hales said he would consider an unconditional vote as the applicant provided a sufficient presentation and parking and traffic study, especially addressing the impact of the previously approved five projects within the area.

Mr. Allen said he would consider a conditional vote.

Mr. Papaleo said he would consider an unconditional vote.

Michael Papaleo moved to approve the application as submitted.
Julie Lindell seconded the motion.
The motion was approved 4-2 via roll-call vote.

NEW BUSINESS

APPEAL NO. 2024-25

Applicant: Erik Cooney/Scobie Industrial Partners, LLC
Owner: City of Newburgh Industrial Development Agency
Location: 5 Scobie Drive

Requesting an **AREA Variance** for 10 feet on the maximum height which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Industrial District/Waterfront Protection Overlay Zone.

Erik Cooney and Jason Anderson, R.A. appeared before the Board.

Mr. Cooney gave an overview of the proposed project.

Mr. Anderson gave an overview of the proposed design incorporating the requirements for building a modern warehouse.

The Assistant Corporation Counsel said the Planning Board declared its intent to be lead agency for a coordinated SEQRA review. He said a vote could not be rendered on the application until the SEQRA process has been completed and a negative declaration issued.

The Chairperson opened the public hearing.

No one was present for or against the application.

Dianne Dixon moved to close the public hearing.
Julie Lindell seconded the motion.
The motion passed unanimously via roll-call vote.

The application was tabled until the next meeting.

APPEAL NO. 2024-22

Applicant: Kelly Libolt/KARC Planning Consultants, Inc.
Owner: West Shore Hudson LLC
Location: 27 South Water Street

Requesting an **AREA Variance** for 67.5 feet on the maximum south side setback, 15% on the minimum landscaped area, and 2 stories on the minimum building height which does not meet the

requirements of the Schedule of Use and Bulk Regulations in the Planned Waterfront Development District in the Waterfront Protection Overlay.

Kelly Libolt and Amy Argyrakis appeared before the Board

Ms. Libolt gave an overview of the proposed project.

The Assistant Corporation Counsel said the Planning Board declared its intent to be lead agency for a coordinated SEQRA review. He said a vote could not be rendered on the application until the SEQRA process has been completed and a negative declaration has been determined.

The Chairperson opened the public hearing.

Alberto Gilman inquired about a timeline for project development.

Dianne Dixon moved to close the public hearing.

Corey Allen seconded the motion.

The motion passed unanimously via roll-call vote.

Ms. Libolt said the timeline is currently dependent on Land Use Board approvals.

The application was tabled until the next meeting.

APPEAL NO. 2024-23

Applicant: Chris Berg/Berg + Moss Architects, PC

Owner: 75 Grove LLC

Location: 191 North Miller Street

Requesting an **AREA Variance** for 10 feet on the minimum front yard setback, 2 feet on the minimum north side yard setback, 5 feet on the minimum south side yard setback, 26.32% on the maximum lot coverage and 3 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Chris Berg appeared before the Board and gave an overview of the proposed project. He said the subdivision for 191 North Miller Street was approved by the Planning Board in July 2022 and the Zoning Board in August 2022 with respect to the land size. He said he returns to the Board with additional variance requests for the newly created lot as it relates to the proposed building on the newly-subdivided lot.

The Assistant Corporation Counsel asked the Board to review paragraph 4 of the Informational/Building Inspector's ruling in connection with the additional variance requests. He said the additional variances refer to the relationship to the building on the newly created lot.

The Chairperson opened the public hearing.

No one was present for or against the application.

Corey Allen moved to close the public hearing.
Julie Lindell seconded the motion.
The motion passed unanimously via roll-call vote.

Corey Allen moved to declare the action Type II for SEQRA.
Julie Lindell seconded the motion.
The motion passed unanimously via roll-call vote.

Corey Allen moved to approve the application as submitted.
Julie Lindell seconded the motion.
The motion passed unanimously via roll-call vote.

APPEAL NO. 2024-24

Applicant: Chris Berg/Berg + Moss Architects, PC
Owner: 75 Grove LLC
Location: 190 Dubois Street

Requesting an **AREA Variance** for 2.5 feet on the minimum front yard setback, 0 feet on the minimum north side yard setback, 1.5 feet on the minimum south side yard setback, 22% on the maximum lot coverage and 6 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Chris Berg appeared before the Board and gave an overview of the proposed project. He said much like the last application, the subdivision for 191 North Miller Street was approved by the Planning Board in July 2022 and the Zoning Board in August 2022. He said he is before the Board with variance requests for new construction on the newly created lot.

The Assistant Corporation Counsel asked the Board to review paragraph 4 of the Informational/Building Inspector's ruling in connection with the variance requests.

The Chairperson opened the public hearing.

No one was present for or against the application.

Corey Allen moved to close the public hearing.
Julie Lindell seconded the motion.
The motion passed unanimously via roll-call vote.

Dianne Dixon moved to declare the action Type II for SEQRA.
Julie Lindell seconded the motion.
The motion passed unanimously via roll-call vote.

Dianne Dixon moved to approve the application as submitted.
Julie Lindell seconded the motion.
The motion passed unanimously via roll-call vote.

APPEAL NO. 2023-40

Applicant: Angelo Balbo
Owner: Angelo Balbo Management LLC
Location: 825 Broadway, 829 Broadway

Requesting clarification on the March 26, 2024 decision letter of the Zoning Board of Appeals.

Kelly Libolt, Amy Argyrakis, and John Furst, Esq. appeared before the Board.

The Assistant Corporation Counsel said the applicant received ZBA approval in March 2024. He said the Board held Executive Sessions in May and June for advice of counsel regarding a possible Article 78 proceeding. He said the Board's prerogative for tonight would be to direct all inquiries to the Chairperson, and the Chairperson would answer questions from the applicant.

Ms. Libolt said she is before the Board to request the option to return with alternative variance considerations. She explained the use variance challenges the applicant faced with the changes made to the zoning code, and the conditional March approval that limited the building height to three stories and density to 58 dwelling units. She said the applicant would like the opportunity to return to the Board with an application for an additional story and additional density.

The Chairperson said, speaking on behalf of the Board, the Board will maintain the decision made at the March 2024 meeting in consideration of the discussions held at the meetings. She said the applicant can return with a new application for consideration.

Mr. Furst asked to clarify if a new application would modify the conditioned approval or would it be a whole new use variance application.

The Assistant Corporation Counsel said if the use variance conditioned approval is disagreeable, the applicant can apply to change the use request and submit a new use variance application.

Ms. Libolt asked if an amendment to the existing use variance conditions can be made.

Mr. Furst added to the request saying that an amended submission of a formal application showing that the conditions as proposed constrain a workable design.

The Assistant Corporation Counsel said that the applicant is free to submit an application for review by the Board, but the Board stands behind the decision made at the March 2024 meeting.

Ms. Lindell asked if the visuals presented for the Boards review were not intended to be an actual representation of what was going to be built.

Ms. Libolt said those renderings were contextual in nature, to show massing.

Mr. Furst said to modify the condition, the applicant will need to provide a more concrete design. He said the applicants wanted to confirm if the use variance would be approved before incurring design expenses.

The applicants concluded the discussion.

With no further business to discuss, the meeting was adjourned at 9:53 p.m.

Respectfully submitted,

J.K. Gentile
Secretary to the Land Use Boards