

**PLANNING BOARD MEETING**

The City of Newburgh Planning Board meeting was held on Tuesday, December 18, 2018  
at the Activity Center, 401 Washington Street, Newburgh, NY 12550

Members Present: Lisa Daily, Chairperson  
Argelia Morales  
Alicia Ware  
Duane Ware  
Heather Moore  
Sarah Hooff

Also Present: Alexandra Church, Interim Director of Planning and Development / City  
Planner  
Jason Morris, City Engineer  
Jeremy Kaufman, Assistant Corporation Counsel  
Omar Balbuena-Palma, Secretary

The meeting was called at 7:30 p.m. after a quorum was confirmed.

**APPROVAL OF MINUTES**

Ms. Ware moved to approve the minutes of the November board meeting.  
Ms. Morales seconded the motion.

The motion carried unanimously.

**OLD BUSINESS**

**Index No. 2018-07**

**Applicant:** BOM Newburgh, LLC  
**Owner:** BOM Newburgh, LLC  
**Location:** 109 S. William Street

**SITE PLAN** to redevelop a vacant warehouse for Mixed Use, with ground floor use as a Restaurant; first floor use as Professional Office, and the second floor use as up to eight residential units (Apartment House).

The Informational Inspection Report of the Building Inspector and the comment letters of the City Engineer and City Planner were made a matter of record.

## DISCUSSION BY THE BOARD

Neil Wilson, attorney from Mackey, Butts, & Wise, appeared before the Board on behalf of the Property Owner, along with Dan Koehler, from Hudson Land Design Professional Engineering, P.C., Project Architect.

Mr. Wilson gave a brief review of the project. He said an amendment request was submitted to the Architectural Review Commission (“ARC”) and the ARC approved installation of lighting, signage, six (6) foot tall fencing and concrete sidewalk and concrete curb at the street frontage of South William Street using standard broom finished concrete.

The City Planner said the Applicant received ARC approval and she has no new comments.

The City Engineer said the Applicant should include the City of Newburgh standard details for the proposed sidewalk and curbing as approved by the ARC on the site plan. He said a detailed planting plan related to the proposed storm water planters and other plantings should be signed and sealed by a New York State licensed Landscape Architect.

Mr. Wilson asked if a New York State licensed Landscape Architect must provide the planting schedule and if the Board is willing to consider conditional approval.

The City Engineer clarified that the plan must be signed and sealed by a New York State licensed Landscape Architect.

The Assistant Corporation Counsel said the Building Inspector is tasked with enforcing the site plan and to avoid any potential issues with the plantings, the Applicant should consider specifying the type of trees and shrubs on the site plan.

The City Planner said the Applicant should review the list of recommended street trees per § 300-155 (F).

Ms. Daily requested the ARC Decision letters for the project.

The Secretary to the Land Use Boards provided the November 13, 2018 ARC Decision letter and said the ARC approved concrete sidewalk and concrete curb at the street frontage of South William Street using standard broom finished concrete at the December 11, 2018 ARC meeting.

The Assistant Corporation Counsel confirmed the signed ARC Decision letter will be forwarded to the Board upon its filing with the City.

Ms. Daily read the November 13, 2018 ARC Decision letter for the benefit of the Board. She said the dumpster should be enclosed per City Code.

Ms. Hooff asked for a clarification on the City Code. She said that screening the fence may meet the requirements and the Applicant should install lights that give off a warmer feel.

The Assistant Corporation Counsel read § 183-16 (E) of the City Code regarding use of dumpsters. He said the Applicant should submit the applicable dumpster permits and revise the site plan accordingly.

Mr. Wilson agreed to review the City Code and enclose the dumpster.

The City Engineer acknowledged receipt of an e-mail from the Applicant regarding an old tank found on the site.

Mr. Wilson said Phase I of the environmental review uncovered a 2,000-gallon tank buried on-site. He said the estimates for removal and remediation are currently unknown and they will bring the matter before the City Council for discussion.

The City Engineer clarified the location of the tank is at the corner of the building off the drive aisle and asked if there will be any implication on the site plan.

Ms. Daily said she is concerned about possible soil contamination.

Mr. Wilson said the tank requires removal before any soil testing can be done. He said there is no immediate site plan implication and he expects the soil to be removed as needed. He said he will discuss the issue with City Council to move forward.

The City Engineer said the Full EAF should be amended to address the tank.

The application was tabled and the Applicant was informed to amend the Full EAF and revise the site plan in order to attend the January 15, 2019 Planning Board meeting.

### **SPECIAL USE PERMIT APPLICATION/HEARING**

The Chairperson said the Applicant at 82 Bridge Street will discuss two (2) Special Use Permits. She said the Board will review the existing Special Use Permit first and then consider the new Special Use Permit application afterward.

#### **Index No. 2009-08**

**Applicant:** Nemias Magana  
**Owner:** JSN Property Management  
**Location:** 82 Bridge Street

**SPECIAL USE PERMIT** to operate an Automobile Repair/Automobile Sales Facility.

### **NEW BUSINESS**

#### **Index No. 2018-20**

**Applicant:** Nemias Magana  
**Owner:** JSN Property Management  
**Location:** 82 Bridge Street

**SPECIAL USE PERMIT & SITE PLAN** to establish a base office for taxi service.

The Special Use Permit Extension Request Letter, comment letter of the Building Inspector, Complaint Summary Report from the Department of Code Compliance, Police Blotter Call Summary from the Newburgh Police Department, photograph taken by the Newburgh Police Department and photograph taken by the Building Inspector were made a matter of record.

## DISCUSSION BY THE BOARD

Nemias Magana, speaking on behalf of the Property Owner, and Jose Eusse, Mr. Magana's translator, appeared before the Board.

The Assistant Corporation Counsel gave a brief summary of the Special Use Permit for 82 Bridge Street. He said there were two (2) Special Use Permits in effect at 82 Bridge Street and at the August 21, 2018 Planning Board meeting – one for a taxi radio base and one for automotive sales/repair. The motion to extend the Special Use Permit to establish a radio base office for taxi service did not have enough votes for renewal and thus expired. He said the Board used the opportunity at the time to give notice to the Applicant that the Board, based on the violations and other information submitted relative to the property, intended to revoke the second Special Use Permit to operate an auto repair/auto sales business. He said the Applicant addressed some Board concerns at the September 18, 2018 meeting and the Board tabled the hearing for further compliance and a continuation of the revocation hearing at the December 18, 2018 Board meeting.

Mr. Eusse submitted pictures of the existing property (which were made part of the record).

Ms. Daily said the current Special Use Permit is not clear about the number of cars allowed on the property.

The Assistant Corporation Counsel said there was discussion of 11 cars per the June 16, 2009 Planning Board minutes. He said the record was not clear with respect to the number of cars allowed to be parked/stored on site and the number of cars did not carry into the decision. He said the Board should assume 11 cars are allowed on the lot, as the number of cars discussed in the 2009 meeting should be construed in favor of the owner in the event of ambiguity. In the current instance, the Board has the option to revoke, modify or do nothing to the existing Special Use Permit. He said a request for an update on the site from the Police Department was made but no response was given.

Ms. Daily said recent photos from the Building Inspector shows a taxi cab blocking the sidewalk.

The City Planner said the Board may amend the Special Use Permit to clarify the maximum number of cars allowed on the site. She said the Applicant should revise the answer to question 20 on the Short EAF. She said question 20 was triggered since 82 Bridge Street is adjacent to the former Provan Ford ERP remediation site. She said the site is fully remediated, and no contamination is known to have migrated to 82 Bridge Street.

Ms. Hooff said the neighbors attended the previous meeting where they were allowed to comment on the application and the Board should hear if they have any additional comments.

The Assistant Corporation Counsel said the City Code does not mention an opportunity for public comment for extensions of Special Use Permits. He said the Board could choose to have a public comment period if it wished.

The Board discussed the maximum number of cars allowed on the site and opted to hear public comment.

Gabe Capobianchi, 78 Bridge Street, said he owns Precision Propeller next door and that he owns the driveway that the Auto Repair Shop utilizes. He said he is allowing the Auto Repair Shop to use his driveway but the site is not designed to accommodate many parked cars or a Taxi Service Base. He said he is having difficulty refinancing his building because of the environmental impacts of 82 Bridge Street such as oil waste. He asked why the Applicant is allowed to apply for a Special Use Permit that was recently revoked. He said there are unregistered cars on the lot but parking is has improved in the neighborhood. He cautioned if the Taxi Service permit is issued without addressing the previous problems, everything will go back to how it was and the neighbors will begin to complain about the taxis. He said the Planning Board should review the application as a whole in combination with the proposed Special Use Permit for Taxi Service to see if a solution is possible.

The Assistant Corporation Counsel clarified that the Special Use Permit for a taxi service was not revoked; rather, it expired. The Applicant is afforded the opportunity to apply again. If the application is denied, the Applicant will not be able to re-apply for one year.

Ms. Daily asked the Applicant to clarify how the business handles oil waste.

Mr. Ware asked if the cars are parked on the lot for extended periods of time. He said if cars are left parked for an extended period of time, the undercarriage will begin to rot and that contributes to property contamination. He asked for the turn over time on cars.

Ms. Ware asked if oil changes are performed outside.

Mr. Eusse said the business collects the oil in a 275-gallon container and then contacts a separate business for disposal.

Mr. Magana said oil changes are done inside only and the oil is disposed every 1 to 2 months. He said the extent of time a car spends parked on the lot is dependent on the maintenance required. He said oil changes are quick, but other jobs, such as transmission repair/replacement, require the cars to sit up to a few weeks until the parts arrive.

Ms. Daily asked if Code Compliance can inspect the premises weekly.

Ms. Ware said weekly inspections of the property will further burden the Building Department. She said a few updates on the property will accomplish the same feat.

Ms. Hooff said she is sensitive to and understands the Applicant's situation but the Applicant is tasked with enforcing the conditions of the Special Use Permit on the automotive sales/repair business or risk losing the permit. She said the business needs to improve its turn-around time for repairs and prevent cars from being parked on the property for extended periods of time. She said the business should set up work areas on the lot.

Ms. Daily said the Board should determine the maximum amount of cars allowed on the premises.

Mr. Magana said the business can store a maximum of three (3), possibly four (4), cars on the inside.

Ms. Hooff suggested a maximum of six (6) cars parked on the rear yard.

Ms. Ware suggested a maximum of four (4) cars.

The City Engineer said a Site Plan can help decide the number of cars. He said an aerial view of the property from Google would suffice. He said the parking locations could be identified on the plan.

Ms. Daily said a maximum of six (6) cars parked on the rear yard with three (3) cars allowed inside the building should be sufficient. She informed the Applicant not to leave car parts/oil on the exterior of the building. She said no cars will be allowed to park in the front or sides of the building.

With respect to Index No. 2009-08

Ms. Hooff moved to amend the terms of the Special Use Permit for one (1) month, with the addition of the following restrictions:

- A maximum of six (6) vehicles may be parked/stored at the rear of the Premises at one time.
- No vehicles may be parked/stored at the front or side of the Premises.

Ms. Ware seconded the motion.

The motioned passed unanimously via roll-call vote.

With respect to Index No. 2018-20

Ms. Ware moved to schedule a public hearing at the January 15, 2019 Planning Board meeting.

Ms. Hooff seconded the motion.

The motion passed unanimously.

With no further business to discuss, the meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Omar E. Balbuena-Palma,  
Secretary to the Land Use Boards