

PLANNING BOARD MEETING

The City of Newburgh Planning Board meeting was held on Tuesday, January 15, 2019
at the Activity Center, 401 Washington Street, Newburgh, NY 12550

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

Members Absent: Argelia Morales

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

Mr. Ware moved to approve the minutes of the December board meeting.
Ms. Moore seconded the motion.

The motion carried unanimously.

PUBLIC HEARINGS

Index No. 2018-20

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

SPECIAL USE PERMIT & SITE PLAN Application to convert the existing north side use
(vacant) into a radio base office for taxi service dispatcher (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

The Applicant was not present upon first call of the application.

OLD BUSINESS

Index No. 2018-07

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

SITE PLAN Application 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., and Sisha Ortuzar from BOM Newburgh, LLC.

Ms. Daily said the Applicant submitted a revised site plan per the December meeting and asked for comments by the City Engineer and the City Planner.

The City Engineer said the Planning Board requested the proposed dumpster to be enclosed per City Code and street trees to be added on the site plan. He said the Applicant addressed those comments and addressed all of the Engineering Department's comments. He said he has no further comments on the application.

The City Planner said she has no new comments on the application.

The Assistant Corporation Counsel said the Board may ask additional questions on the application or take a vote on the application. He said the project was determined to be an Unlisted Action under SEQRA at the beginning of the project and the Board should vote to be Lead Agency and issue a Negative Declaration pursuant to SEQRA before approving the application subject to satisfaction of the comment letters by City staff.

Ms. Ware said she is ready to vote on the application.

Mr. Wilson said the application was submitted in the summer of 2018. He said since that time, the Department of Environmental Conservation ("DEC") adopted new SEQRA regulations that are in effect as of January 1, 2019. He said in the new regulations, the project would qualify as a Type II Action.

The City Planner said the Planning Board is aware of the changes in SEQRA but said it may be in the best interest of the Applicant to obtain a Negative Declaration from the Planning Board in terms of Housing Community and Renewal program applications for future funding..

The Assistant Corporation Counsel agreed. He said the project falls well under the threshold examples of what would qualify as a Type I Action.

Ms. Ware moved to declare the Planning Board Lead Agency pursuant to SEQRA.

Ms. Moore seconded the motion.

The motion passed unanimously.

Ms. Ware moved to issue a Negative Declaration pursuant to SEQRA.

Ms. Moore seconded the motion.

The motion passed unanimously.

Ms. Moore move to approve the Site Plan application subject to satisfaction of the comment letters by City staff.

Ms. Ware seconded the motion.

The motion passed unanimously via roll-call vote.

NEW BUSINESS

Index No. 2019-01

Applicant: J. Isaac & Associates, LLC

Owner: J. Isaac & Associates, LLC

Location: 43 Beacon Street

SITE PLAN Application to convert a two-family dwelling into a three-family dwelling.

Juwel Isaac from J. Isaac & Associates, LLC appeared before the Board on behalf of the Property Owner, along with Junior Thomas.

Ms. Isaac said the intent is to convert the use of the building into a three-family dwelling.

The City Planner clarified that the Owner of the property is J. Isaac & Associates, LLC. She said the Proposed Action is subject to review by the Conservation Advisory Council (“CAC”) due to its location within the Local Waterfront Revitalization Program (“LWRP”). She said the project is designated as a Type II Action under SEQRA and is not subject to General Municipal Law §239 (“GML §239”) review by Orange County. She said the project is within 2,000 feet of projects in the DEC Environmental Site Remediation (“ESR”) database but there are no know sites within proximity of 43 Beacon Street. She said because the application is generally only a change in use, no further clarification is needed. She said if any site work is proposed, it will require a clarification from DEC. She said question E.2 (O) was answered as yes on the Full Environmental Assessment Form. She said the answer is generally triggered by habitats in the Hudson River that are within the buffer area of this project. She said because the application is generally only a change in use, no further clarification is needed. She said if any site work is proposed, it will require a clarification from DEC.

The City Engineer said a few minor comments are outstanding. He said the City has developed a standardized Owner/Applicant consent note and City Approval signature block. He said the consent note and signature block should be added to the site plan. He said the plan should be revised to show the location of existing/proposed water and sewer services and the block foundation remains should be clarified.

Mr. Thomas said the intent is to remove the block foundation remains.

The City Engineer said the intent should be shown on the site plan.

Ms. Hooff clarified that one (1) dwelling unit is proposed on the Liberty Street side and two (2) dwelling units are proposed on the Beacon Street side.

Ms. Isaac said there will be a total of three (3) dwelling units.

Ms. Hooff confirmed there are no proposed changes to the basement. She said the neighbors will be pleased that the building is returning back to its original use.

The Assistant Corporation Counsel said the site plan may not be waived because of the property's location within the LWRP. He said the Planning Board may not vote on the site plan until the CAC has commented on the application. He said the Board may discuss scheduling/waiving a public hearing.

Ms. Ware said no public hearing should be required because the application is generally only a change in use.

Ms. Hooff moved to waive the public hearing.

Ms. Moore seconded the motion.

The motion passed unanimously.

The application was adjourned and the Applicant was informed to submit a revised site plan per the comment letters of City staff in order to attend the next Planning Board meeting on February 19, 2019.

PUBLIC HEARINGS

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

Index No. 2018-20

Applicant: Nemias Magana

Owner: JSN Property Management

Location: 82 Bridge Street

SPECIAL USE PERMIT & SITE PLAN Application to convert the existing north side use (vacant) into a radio base office for taxi service dispatcher (Taxi Service).

SPECIAL USE PERMIT REVOCATION HEARING

Index No. 2009-08

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

SPECIAL USE PERMIT permitting operation of an Automobile Repair/Automobile Sales Facility.

The Special Use Permit Extension Request Letter, comment letters of the Building Inspector, CAC and City Planner, 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, Applicant speaking on behalf of the Property Owner, and Jorge Hernandez appeared before the Board.

The Chairperson opened the public hearing.

Gabe Capobianchi, 78 Bridge Street, said the Applicant has improved the Automobile Repair/Automobile Sales facility. He said the street is not designed for a taxi service dispatcher. He said experience has shown that the Applicant lacks control of the employees and it will be difficult to maintain the area without parameters on the Special Use Permit. He said there may be a viable way forward with guidance.

Paul Belcito, 64 Bridge Street, said he is grateful to the Applicant for the improvements to the Automobile Repair/Automobile Sales Facility. He said his comments are the same as Mr. Capobianchi.

Ms. Ware moved to close the public hearing.

Ms. Hoof seconded the motion.

The motion was passed unanimously.

The City Planner said the property is adjacent to the former Provan Ford remediation site. She said the site is fully remediated and no contamination is known to have migrated to the site.

The City Engineer said he has no comments on the application.

The Assistant Corporation Counsel said the CAC submitted a comment letter for consideration. He said comment 2 should be disregarded as it relates to the Bridge, which is not under the purview of the CAC. He said the Building Department has not provided any updates regarding complaints since December 2018. He said the police department reported a civil dispute at the Automobile Repair/Automobile Sales Facility at 82 Bridge Street but it should not be considered in any way with respect to the application before the Planning Board. He said the Office of Corporation Counsel deals with and prosecutes local code taxicab violations. He said Express USA Taxi has

had 12 taxicab-related convictions in the past 18-month period. He said the Board members may ask additional questions regarding registration in general. He said if there is additional site work other than general striping of the parking lot, then it may trigger substantial review by the Engineering Department because of the property's location within the LWRP.

Ms. Daily said that at the December Planning Board workshop, the Applicant said he was operating a taxi dispatch for approximately 25-30 taxicabs operating in the City.

The Applicant said the total number of taxicabs operating in the City includes independent taxicabs that work through his taxi service. He said there are approximately 12 drivers working for Express USA Taxi.

Ms. Daily asked how many taxicabs are registered with the Applicant.

The Applicant said the taxicabs are not registered under his personal name.

Ms. Daily confirmed that there are no taxicabs registered under Express USA Taxi or JSN Property Management.

The Applicant said there are nine (9) taxicabs registered under JJR Transportation.

Ms. Daily asked how many taxicabs are registered with the City.

The Applicant said six (6) of the nine (9) taxicabs are registered with the City. He said he is working to register the remaining three (3) taxicabs but it is an expensive and time-consuming process. He said registration must be renewed yearly and each registration costs approximately \$400.00.

The Assistant Corporation Counsel clarified that in order to operate a taxicab in the City of Newburgh, the operator must comply with the following:

- Operator must have a valid driver's license to drive a taxi or livery vehicle from New York State;
- Operator must have a valid driver's license to drive a taxi or livery vehicle from the City of Newburgh;
- Vehicle must be registered with New York State;
- Vehicle must be registered with the City of Newburgh.

The Assistant Corporation Counsel said the operator is not required to own the registered vehicle in order to operate.

Mr. Ware asked for a clarification regarding the total number of registered operators and vehicles for Express USA Taxi in New York State and in the City of Newburgh. He asked for the status of the three (3) unregistered vehicles.

Mr. Hernandez said the remaining three (3) vehicles are livery vehicles for medical transportation.

The Applicant clarified that the three (3) vehicles do not operate in the City of Newburgh.

Ms. Moore asked for the hours of operation of the business. She asked if there are standard work hours for employees. She asked if a radio is provided to each taxicab in the business.

The Applicant said the business operates 24 hours a day seven (7) days a week and the employees have flexible hours to avoid stress and fatigue. He said each driver is given a radio for work. He said the issue with the previous Special Use Permit was that no regulations were in place. He said the drivers were allowed to use the office bathroom and park in front of the radio base office waiting for calls to come in. He said with the proposed regulations, the concerns will no longer be an issue.

The Assistant Corporation Counsel clarified that the Applicant has two corporations under his name. One is JSN Property Management, which owns the property at 82 Bridge Street, and the second is JJR Transportation, which purportedly operates Express USA Taxi as a trade name or a DBA.

The Applicant said JJR Transportation owns Express USA Taxi.

The Assistant Corporation Counsel said the Police Department looked into the number of vehicles registered in New York State for JJR Transportation. Per the Police Department, he said there are 15 minivans registered under JJR Transportation in New York State. He said eight (8) vehicles have taxi license plates and the remaining seven (7) vehicles have livery license plates, all given by the Department of Motor Vehicles. He said only three (3) vehicles are registered with the City to operate as taxis from the eight (8) vehicles that have taxi license plates,. He said there are six (6) vehicles authorized by Express USA Taxi to operate as taxis. Three (3) vehicles are from JJR Transportation and the remaining three (3) vehicles are independent contractors who registered vehicles but identified working with Express USA Taxi. He said the Police Department records show a total of 11 taxi drivers who operate for Express USA Taxi who have taxi driver licenses.

Ms. Ware said there are 15 total vehicles registered with JJR Transportation. She asked for the status of the remaining vehicles not registered with the City.

The Applicant said he does not believe that 15 vehicles are registered under JJR Transportation.

The Assistant Corporation Counsel said the information was obtained from New York State by the Police Department.

The Applicant said he does not have that many vehicles.

Ms. Hooff said she does not understand how the difference is possible.

The Applicant said he will verify the amount of vehicles.

Mr. Ware said the Applicant should already know the number of vehicles registered and be able to provide the status of each vehicle to the Board. He said there is no reason why the information the Applicant provided does not match the records.

Ms. Ware said the Applicant seems to be out of touch with the business.

Ms. Daily said she is uncomfortable approving the application because the Applicant has not demonstrated that the taxicabs are registered and meet State and City regulations. She said the Board has been dealing with the Applicant since August 2018 and he was informed at the Planning Board Workshop in December to ensure the taxicabs are registered. She said the conflicting information regarding registration, the uncertainty and lack of documentation of the Applicant is not becoming of a business in the City of Newburgh. She said taxicab registration should not be an issue to a business that has been operating for more than two (2) years.

Ms. Hooff said the Applicant has made progress and addressed the concerns of the Board regarding the Automobile Repair/Automobile Sales Facility. She said perhaps with additional time, the Applicant may do the same for the radio base office for taxi service dispatcher. She said the issues lay with the taxicabs parked outside the radio base office. She said by denying the Special Use Permit application at 82 Bridge Street, the taxicabs will not be deterred. She said it will only send a message that the Planning Board is against small businesses. She said the Applicant should be afforded a maximum of three (3) months to address the concerns of the Board. She said by the next Planning Board meeting, the taxi registration issue should not be a concern.

Ms. Ware said the neighbors seem open to a compromise for the Special Use Permit. She said it is up to the Applicant to ensure the outstanding concerns are addressed. She said the Applicant should be afforded a maximum of 30 days.

Ms. Moore asked if the regulations provided by the Applicant may be incorporated as a condition on the Special Use Permit,

The Assistant Corporation Counsel said the Planning Board may place conditions on the Special Use Permit if it's related to the property. He clarified that the condition must have a reasonable relationship to regulation on the property and the neighborhood but not a pure regulation of the business.

Ms. Daily said a motion should be made for a vote.

The Board discussed the length of time to provide the Applicant and took a straw poll vote. The majority of the members favored adjourning the meeting until March.

The Assistant Corporation Counsel said the Applicant should be provided with specific concerns he should address.

Ms. Hooff said the Applicant should provide the Board with a list of the total number of registered drivers for Express USA Taxi.

Mr. Ware said the Applicant should also provide a list of the following:

- Registered operators with a valid driver's license to drive a taxi or livery vehicle from New York State;
- Registered operators with a valid driver's license to drive a taxi or livery vehicle from the City of Newburgh;
- Registered vehicles in New York State;
- Registered vehicles in the City of Newburgh.

The Assistant Corporation Counsel asked if the Applicant required the assistance of an interpreter at the Planning Board meeting.

The Applicant said he understands English and does not request an interpreter.

With respect to Index No. 2018-20

The meeting was adjourned and the Applicant was informed to attend the next Planning Board meeting on March 19, 2019.

With respect to Index No. 2009-08

The Assistant Corporation Counsel said the Special Use Permit is still in affect and will expire on October 2019. He said the Board may adjourn the revocation hearing or conclude the hearing.

Mr. Ware moved to conclude the hearing without revoking the Special Use Permit.

Ms. Hooff seconded the motion.

The motioned passed unanimously via roll-call vote.

With no further business to discuss, the meeting was adjourned at 8:40 p.m.

Respectfully submitted,

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