

PLANNING BOARD MEETING

The City of Newburgh Planning Board meeting was held on Tuesday, June 18, 2019
at the Activity Center, 401 Washington Street, Newburgh, NY 12550

Members Present: Lisa Daily, Chairperson
Alicia Ware
Duane Ware
Sarah Hooff
Lauren A. Capul
Michael Kelly

Members Absent: Heather Moore

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

The minutes of the May board meeting were unavailable. The Board tabled the vote to approve the May minutes until the July meeting.

OLD BUSINESS

Index No. 2017-10

Applicant: FD Water Street Holdings
Owner: City of Newburgh (for 35-37 Broad Street)
FD Water Street Holdings (for 272 and 302 Water Street)
Location: 35-37 Broad Street & 272 and 302 Water Street

SPECIAL USE PERMIT & SITE PLAN Application (for 35-37 Broad Street) to develop a parking area in connection with a **SITE PLAN** Application (for 272 and 302 Water Street) to convert the existing 1st floor (subgrade) into a storage/utility room; floors 2-5 into artist studios (20 per floor) and the 6th floor into event space (Cottage Industry; Assembly Hall).

The Informational Inspection Report of the Building Inspector and the comment letters of the City Engineer, the City Planner and the Conservation Advisory Council ("CAC") were made a matter of record.

DISCUSSION BY THE BOARD

Justin Dates, Project Engineer from Maser Consulting, appeared on behalf of the property owner before the Board.

The Project Engineer said he previously appeared before the Board on April 18, 2019 and has since submitted a traffic report for consideration. He gave an overview of the project and highlighted the following:

- The project consists of three tax lots on the east and west side of Water Street, approximately 5.2 acres in total;
 - 35-37 Broad Street, approximately 118,372 sq. ft., is on the west side of Water Street and within the Low Density Residential (“RL”) zone;
 - 272 Water Street, approximately 20,396 sq. ft., is on the east side of Water Street and within the Planned Waterfront District (“PWD”) zone. The existing structure connects to the Regal Bag building at 302 Water Street;
 - 302 Water Street, approximately 88,331 sq. ft., is on the east side of Water Street and within the PWD zone;
- The intent for the parcels are:
 - Construct a parking lot with 113 spaces at 35-37 Broad Street, with the parking designed to service the uses at the Regal Bag building;
 - Redevelop the Regal Bag building at 302 Water Street;
 - 1st floor (subgrade) into a storage/utility room (no change in use proposed);
 - 2nd – 5th floors into artist studios with 20 studios per floor (Cottage Industry);
 - 6th floor into an event space (Assembly Hall);
 - Two-story addition on the north end, approximately 4,800 sq. ft., will be used for office space (Professional Office);
- Traffic study prepared to identify current and future traffic operating conditions on the surrounding roads/intersections and to assess the potential traffic impacts of the project;
 - Traffic evaluation analyzes potential conditions for 2022 and compared them to the existing conditions in 2019;
 - Study shows the proposed traffic generated by the completed project is not expected to cause any significant impact in overall levels of service.

The City Engineer clarified that when a consultant evaluates traffic, they look at the existing traffic and try to project the traffic that will be generated in the future.. He said the consultant reviews the levels of service at each intersection. The levels of service are classified as A through F, with F being the worst and A being the best. He confirmed the traffic study was prepared using Synchro, a traffic analysis application. He said the consultant analyzed the pre- vs post- levels of service at each intersection in the pre-construction model vs the post-construction model.

The Project Engineer said the study revealed the primary sources of noise in the area are due to traffic and the railway. He said approximately 12,000 vehicles pass Water Street every day and the potential noise impacts generated in the proposed parking lot, such as vehicles starting, would be below current noise levels along Water Street. He said the lighting fixtures were reviewed and were replaced with warmer 3K Kelvin lights.

The City Engineer said site plan missed a number of technical details. He said the Applicant should submit a comprehensive update for review before the next Board meeting. He said the Board should give a clear direction on the lighting plan and if the proposed screening is sufficient. He said he does not have many comments on the traffic study but clarified that he is not a traffic engineer. He also added that the City does not have the Synchro software program. He said the Board has the ability to require the Applicant to submit escrow for the City to hire a third party consultant to review the traffic study. He said the Applicant should be aware that permits from the New York State Department of Transportation (“NYSDOT”) for curb cuts and utility connections are required.

The Project Engineer said they are aware of the required permits and NYSDOT is requesting permit plans. He said preliminary plans will be forwarded to NYSDOT for consideration.

The City Engineer clarified that the Planning Board will need conceptual approval from NYSDOT regarding the curb cuts and utility connections.

The City Planner said the application was forwarded to the State Historic Preservation Office (“SHPO”) for consideration and they had no archaeological concerns regarding the portion of the project at 35-37 Broad Street. She said the Regal Bag building is eligible to be on the National Register but confirmed the Applicant has no intention to be placed on the National Register.

The Assistant Corporation Counsel said the proposed uses are permitted in the zones per §300-31 of the City Code. He said it is inappropriate for anyone on the Board to be in favor or against any application based on personal opinion alone, and if anyone on the Board feels they cannot be fair and impartial in reviewing this or any other application, they should recuse themselves from the project. He said there may be disagreement on the methods the Applicant proposes to satisfy the concerns of the Board, such as mitigation of traffic, noise, etc. and the Board should ask questions and speak with the Applicant during the meeting to address any concerns about the site plan.

The Assistant Corporation Counsel also said all documents submitted to the Planning Board are public record and are obtainable via a formal submission requesting information on the basis of New York's Freedom of Information Law (“FOIL”). He asked the Applicant if, based on the public interest in this application, it had any objection to the City posting the submitted site plan materials online. He said the Applicant is not required to respond at this time.

The Assistant Corporation Counsel said the Board has the option to review the traffic study as-is or request that the Applicant submit monies into escrow to fund a third-party review of the existing traffic study or fund a third-party traffic study. He said the Board may either delay scheduling a public hearing to allow additional time for review, but or elect to schedule the public hearing for the next meeting.

Ms. Hooff said the traffic study describes the conditions along the NYSDOT road as-is and after the project is completed. She asked if it creates a reason to justify the number of proposed parking spaces. She asked if the number of parking spaces is derived from the traffic count.

The City Planner said traffic counts are derived from the use of a property and may be found in the Institute of Transportation Engineers Trip Generation Manual. She was not aware of a different, more widely accepted standard.

The City Engineer said the parking requirements are listed on the Overall Layout Plan located on page three (3) of the submitted site plan dated April 5, 2019.

The Project Engineer said the Planned Waterfront District gives the Planning Board discretion to set the number of required parking spaces.

Ms. Hooff asked for the rationale for or against not having parking spaces on the riverside. She said there is space available along the waterfront that may be used for parking spaces.

The Project Engineer said 38 parking spaces exist on the Regal Bag site and they have been included as part of the overall project. He said the site conditions are intended to be used as-is.

Ms. Hooff confirmed the Regal Bag building is on the Planned Waterfront District. She said any modification within the zone appears to require public access to the waterfront. She asked if there are any proposed changes to the site to enable public access.

The Project Engineer said there are no proposed changes to the Regal Bag site and no proposed changes to enable public access to the waterfront.

The Assistant Corporation Counsel said Ms. Hooff is referencing §300-156 of the City Code.

Ms. Daily asked the Assistant Corporation Counsel to read that section of the City Code aloud for the benefit of the Board, Applicant and public.

The Assistant Corporation Counsel read aloud the requirements of §300-156 of the City Code.

Ms. Hooff said the Applicant should take into consideration the requirements of §300-156 of the City Code.

Ms. Daily confirmed the parking lot will be constructed out of asphalt and asked if permeable pavement was considered.

The Project Engineer said economics and the overall square footage of the parking lot are the reasons why permeable pavement was not proposed. He said they are implementing alternative methods that would essentially achieve the same goal.

Ms. Daily said the engineering behind the alternative methods seem to be more difficult than simply using permeable pavement.

The Project Engineer said that is not necessarily the case because water infiltration on the west end of the lot may compromise the retaining wall. He said this is not the case with the proposed subsurface storm water management system.

Ms. Daily asked if the Board is comfortable scheduling a public hearing.

Ms. Capul said a second opinion on the 99-page traffic study would be helpful to ensure there is no significant impact on the traffic due to the proposed parking spaces. She asked for the hours of operation of the Regal Bag Building.

Ms. Ware said the proposed development is a high profile item in the City and a second-opinion on the traffic study would give the Board a clearer view of the impact.

Ms. Capul asked for a timeline on the independent traffic study.

The City Engineer said it would take approximately two (2) months before the independent traffic study is completed.

The Project Engineer asked if the independent traffic study could be voted on in parallel with the public hearing.

Ms. Hooff said the public should have enough time to obtain and review the submitted application before the public hearing. She said submitting a FOIL request may not give the public enough time to review the application if they scheduled a public hearing in July.

The Applicant consulted the property owner and said they have no issue with making their most recent/up-to-date submission available online for the benefit of the public.

The City Planner said the application files will be made available online as soon as possible.

Ms. Ware moved to hire an independent consultant to conduct a traffic study.

Mr. Kelly seconded the motion.

The motion passed unanimously via roll-call vote.

Mr. Kelly moved to schedule a public hearing on July 16, 2019 beginning at 7:30 p.m. in the Activity Center, 401 Washington Street, Newburgh, NY 12550.

Ms. Capul seconded the motion.

The motion passed unanimously.

The Project Engineer said the June 10, 2019 Informational Report does not provide the bulk table found on a previous iteration of the report. He asked if an area variance was still required.

The Assistant Corporation Counsel said there is no reason as to why the area variances would not continue to be required. He said the Informational Report will be revised to include information that already appeared in previous versions of the Informational Report.

The Applicant was informed to submit a revised site plan and attend the July 16, 2019 Planning Board meeting.

NEW BUSINESS

Index No. 2019-03

Applicant: Nazaire Kebreau
Owner: B & J Singh Corp.
Location: 510 Broadway

SITE PLAN Application to convert a portion of the building into a restaurant.

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

DISCUSSION BY THE BOARD

Nazaire Kebreau, Applicant, appeared before the Board on behalf of the property owner.

The Applicant said he intends to open a small restaurant at 510 Broadway. He said there are no proposed changes to the buildings footprint and the only item missing is a fire suppression system.

Ms. Daily confirmed the restaurant is designed for take-out only.

The Applicant said there will be one (1) table in the waiting area.

The City Engineer said he recommends waiving the site plan requirements because the Applicant is not proposing any exterior modifications.

The City Planner said the proposed action is designated as a Type II Action under SEQRA and is not subject to review by the CAC or the Orange County Planning Department in accordance with GML §239. She said the project is within 2,000 feet of projects in the Department of Environmental Conservation (“DEC”) Environmental Site Remediation database but there are no know sites within proximity of 510 Broadway. 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 the DEC. She said the property owner previously received site plan approval for a gas station and the property needs to be brought back into compliance with the approved plan. She said the sidewalk ramp needs to be repaired, the handicapped parking spaces need to be restriped and the dumpster needs to be returned to its approved location. She said these comments were also made aware to the Applicant.

Ms. Daily said these concerns are all Building Department issues.

The City Planner clarified that the Applicant will not obtain a Certificate of Compliance to open unless these issues are resolved.

Mr. Kelly asked if a Type I fire suppression system will be installed.

The Applicant said he is unsure what type will be installed but he will follow the requirements of the City Code.

The Assistant Corporation Counsel said the Board has the option to schedule a public hearing, waive the site plan requirements and approve the application. He said the City of Newburgh has adopted the New York State Uniform Fire Prevention Code and the Building Department is charged with enforcing those provisions of that Code.

Ms. Moore moved to waive the public hearing.

Ms. Hooff seconded the motion.

The motion passed unanimously.

Ms. Hooff moved to declare the application a Type II action under SEQRA

Ms. Ware seconded the motion.

The motion passed unanimously.

Ms. Ware moved to waive the Site Plan requirements under the City Code.

Mr. Kelly seconded the motion.

The motion passed unanimously.

Ms. Hooff move to approve the Site Plan application as submitted.

Ms. Ware seconded the motion.

The motion passed unanimously via roll-call vote.

PERMIT EXTENSION REQUESTS

Index No. 2017-31

Applicant: Ertha Raymond

Owner: Ertha Raymond

Location: 10 City Terrace North

SPECIAL USE PERMIT to create a driving school on the first floor of the building.

Ertha Raymond, Property Owner, appeared before the Board.

Ms. Daily said the Board received a letter from the Applicant, who is requested an extension of the existing special use permit for five (5) years. She said the Building Inspector confirmed there are no existing violations on the property.

The Assistant Corporation Counsel said the original approval was granted on December 19, 2017 for six (6) months. He said the permit was then extended for one (1) year on June 19, 2018. He said the Applicant is now returning to request a five (5) year extension to the special use permit.

The Assistant Corporation Counsel said that two Board members asked whether it is a conflict of interest to vote if they live nearby the property in question. He said physical proximity to the Applicant by itself is not cause/reason to establish a conflict of interest. He said if anyone on the Board feels they cannot be fair and impartial in reviewing this or any other application on the merits of the application, they should recuse themselves from the project.

The Assistant Corporation Counsel said the current iteration of the Board has usually extended other special use permits for one (1) to two (2) years. He said there is no law dictating the maximum

length of time a special use permit may be in effect, although he would recommend against a permanent extension. As the Applicant requested a five (5) year extension, it is up to the Board to review and determine if this is appropriate.

Ms. Capul said she lives near 10 City Terrace North and she is concerned that there are students practicing how to drive on the street.

The Applicant said she gave her word to the Board that she will not allow her students to practice driving on City Terrace North. She said unfortunately, she cannot control the actions of other student drivers. She said the reason she is asking for a five (5) year extension is that she does not have any violations/complaints and that she was under the impression that she approved for a two (2) year extension at the last Board meeting and not one year.

Ms. Hooff confirmed the Applicant is not lending her car to other people to practice driving. She asked who is letting student drivers practice on the street.

Ms. Daily said that for the past 40 years, City Terrace North has been known to be the place to learn how to parallel park.

Ms. Ware said she is very happy that the Applicant does not have any existing violations.

Ms. Ware said she is comfortable approving a two (2) year extension and she does not want to set a precedent by approving a five (5) year extension.

Mr. Kelly asked if they could do a double extension.

Ms. Daily said a double extension is not allowed.

Ms. Ware moved to extend the Special Use Permit for two (2) years.

Mr. Ware seconded the motion.

The motion passed 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