

City of Newburgh Zoning Board of Appeals

Summary of record of actions taken at the Regular Meeting of the Newburgh Zoning Board of Appeals held on December 28, 2017 at 7:00 p.m. at the City of Newburgh Activity Center, 401 Washington Street, Newburgh, New York 12550.

Members Present: Joanne Lugo, Chairperson
David Schwartz
Barbara Smith
Michael Papaleo
Austin Dubois

Members Absent: Corey Allen
LaShawn Jasper

Also Present: Jeremy Kaufman, Assistant Corporation Counsel
Omar Balbuena-Palma, Secretary

Old Business

Appeal No. 2017-23

Applicant: Hector Gualpa
Owner: Hector Gualpa
Location: 167 Chambers Street

Requesting an **AREA Variance** for 4 feet on the front yard setback, 5 feet on the south side yard setback 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.

Charles Brown, from Talcott Engineering Design PLLC, appeared before the Board representing the Owner. Mr. Brown gave a brief overview of the project. He said the Owner intends to renovate the building and change the use to a three-family dwelling. He said there are no proposed footprint modifications or building changes and that there is sufficient parking available on the street.

The Assistant Corporation Counsel said at the November 28, 2017 meeting the Board opened and closed the public hearing and declared the application a Type II action under SEQRA. He said the application was referred for GML §239 review but the County was not able to return a response by the November meeting date; thus the application was tabled. He said the Board has now received the County response letter and may vote on the application after considering the comments by the County.

Mr. DuBois moved to approve the Area Variances requested as submitted by the applicant.
Mr. Schwartz seconded the motion.
The motion was carried 5-0 via roll call vote.

Appeal No. 2017-30

Applicant: Cesar Grados
Owner: Cesar Grados
Location: 13 Mill Street

Requesting a **USE Variance** to convert the existing first floor Garage into an Assembly Hall, an **AREA Variance** (for Assembly Hall) for 40% on lot coverage and 41 off-street parking spaces, and an **AREA Variance** (for Activity Facility) for 31 off-street parking spaces, which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low Density Residential Zone.

Jonathan Cella, project engineer, and Cesar Grados, Owner, appeared before the Board. Mr. Cella said the Owner is proposing to change the use of the building into an indoor soccer field (deemed an Activity Facility by the Building Inspector) on the weekdays and a family-oriented party space (deemed an Assembly Hall by the Building Inspector) on the weekends. He said timestamped photos of available parking spaces and a summary of the current operating costs were submitted to the Board. He said that 41 off-street parking spaces are required for the use of the building as an Assembly Hall, but as the proposed use is off peak hours from nearby businesses/churches, the request is not substantial considering the additional parking area available in the municipal parking lot. He said the use was permitted under the old zoning code via a Special Use Permit from the Planning Board when the Owner purchased the property. He said there is no use currently allowed that would not require a parking variance. He said the Owner is losing around \$16,000 per year, and if the proposed use is approved, the Owner would need to submit an application to the Planning Board for approval.

The Owner said the proposed use of the building as an Activity Facility will be in the afternoon and evening (4 p.m. to 10 p.m.) Monday through Friday, and an Assembly Hall (4 p.m. to 2 a.m.) Friday and Saturday only. He said the building will be owner-occupied and will be closed on Sunday. He said there is plenty of parking available on Broadway during proposed operating times and a sign will be added in front of 13 Mill Street to reserve a parking spot on the street for loading/unloading supplies.

The Board informed the Owner that he is not allowed to reserve a public parking spot in front of the building for personal use.

Mr. Papaleo said the variance requested seems substantial considering the nine vacant units in the neighborhood and a currently closed business with similar operating times (Taco Rico). He recalled personal knowledge of having a difficult time finding parking while Taco Rico was operating. He said there was double-parking on the street and traffic would be backed up for several blocks. He said preparation for the events on 13 Mill Street could begin as early as 4:00 p.m. and cause traffic delays with nearby business.

Ms. Smith said the property lies in the Low Density Zone and that the owner needs to provide additional information to demonstrate why a Use Variance should be granted.

Mr. Cella requested adjourning the application until the January 23, 2018 meeting.

The Assistant Corporation Counsel said the Applicant has every right to request adjournment of the application and advised the Board that there is no substantive reason at this time not to table the application. He said the Board may want to clarify the type of information they are requesting from the Applicant.

Mr. Dubois said he does not see the hardship in the application and requested additional information about why current available uses in the Commercial Overlay zone have not been explored and/or worked for the Owner.

Ms. Lugo said that time-stamped photos beginning at 4:00 p.m. should be submitted.

Mr. Dubois moved to table the application and keep open the public hearing for the January 23, 2018 meeting.

Ms. Lugo seconded the motion.

The motion was carried 5-0 via roll-call vote.

New Business

Appeal No. 2017-26

Applicant: Brandon Knight
Owner: George and Alice Knight
Location: 170 West Parmenter Street

Requesting a **USE Variance** to obtain a Special Use Permit for Automotive Sales for 6 vehicles, and a Special Use Permit for Automobile Repair/Service. Requesting an **AREA Variance** for 5 feet on the west side yard setback, 10 feet on the rear yard setback and 5 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low Density Residential Zone.

Brandon Knight, Applicant, and Michael Knight appeared before the Board representing the Owner. The Applicant said the property has remained unused and vacant since 2011 and lost its Special Use Permit for Automotive Repair. He said the intent is to re-apply for Special Use Permit that would permit Automotive Sales and Automotive Service/Repair. The Applicant said that six cars will be stationed for retail purposes and there will be no major repair work (e.g. engine or transmission work) on-site. He said the property has parking availability for up to 12 vehicles and several attempts have failed to utilize the current available uses for the Owner besides Automotive Repair.

Mr. Papaleo clarified that the Applicant does not currently have a dealer's license and the intent is to obtain one if the use is granted.

The Assistant Corporation Counsel clarified that the Building Inspector has not made a re-evaluation of the Informational Report with respect to the parking space issue. He said in light of the information provided by the Applicant, the Applicant can either request a reevaluation by the Building Inspector or he could request the variance to include the five parking spaces as determined in the current Informational Report.

The Applicant elected to proceed under the current Informational Report and not request a reevaluation.

The Chair opened the public hearing.

No one spoke for the Applicant.

Kathryn M. Zambito, 166 West Parmenter Street, spoke against the application. She said her building is a zero lot line building next to 170 West Parmenter Street and she is concerned about the proposed use for health and safety reasons. She said her first floor windows are relatively low on the building and susceptible to damage and that the repair shop will cause unwanted noise and air pollution. She said the neighborhood is a residential area and she is concerned for the safety of the children in the area.

Mr. Schwartz moved to close the public hearing.

Ms. Smith seconded the motion.

The motion carried unanimously.

Mr. Schwartz said that he would require further information regarding the environmental impacts of the application.

The Assistant Corporation Counsel said that an Environmental Assessment Form was submitted to the Board. The Board could request additional environmental information from the Applicant if they were not comfortable voting on the application. With respect to the use variance, he said the Board members needed to consider the four factors found in §300-115 of the City Code. He said if the use and area variances were granted, the Applicant will be required to submit an application to the Planning Board for a Special Use Permit and may need to submit a Site Plan.

Mr. Papaleo confirmed that the tenant operated the business for ten years before the property became vacant.

Mr. DuBois said he sympathizes with the Applicant because the use is not allowed in the Low Density Residential Zone under the current zoning code. However, he said the Applicant needed additional evidence to support the requirements of the law, including support that the current available uses have not yielded a return on the property Owner's investment. He said the Owner may find an alternative use for the property when submitting additional information.

Ms. Lugo said that businesses around the City of Newburgh are in similar situations and it would help the Board if the Applicant submitted additional information.

Ms. Smith said that reverting this property back to its original use may not be in the best interest of the neighborhood.

The Assistant Corporation Counsel said that the action is an unlisted action pursuant to SEQRA and the Board may vote to table the application at the Applicant's request.

The Applicant said that he is looking for a vote from the Board.

The Assistant Corporation Counsel said the Board should take individual votes for the 2 use variance applications, and potentially the area variance application. He said the Board could vote to approve one, both, or none of the uses.

Mr. DuBois moved to declare Lead Agency pursuant to SEQRA.

Ms. Lugo seconded the motion.

The motion carried unanimously.

Mr. Papaleo moved to issue a Negative Declaration pursuant to SEQRA.

Mr. Schwartz seconded the motion.

The motion carried unanimously.

Mr. Papaleo moved to approve the Automotive Sales Use Variance for six vehicles under the condition that the Applicant will obtain a Special Use Permit from the Planning Board.

Ms. Smith seconded the motion.

The motion was denied 3-2 via roll call vote, as the decision lacked an affirmative vote of a majority (4 votes) of all of the members of the Board (7 members total).

Ms. Lugo Voting for granting the variance

Mr. DuBois Voting against granting the variance

Mr. Papaleo Voting for granting the variance

Mr. Schwartz Voting for granting the variance

Ms. Smith Voting against granting the variance

Ms. Smith moved to approve the Automotive Service/Repair Use Variance under the condition that the Applicant will obtain a Special Use Permit from the Planning Board.

Mr. Schwartz seconded the motion

The motion was denied 2-3 via roll call vote.

Ms. Lugo Voting for granting the variance

Mr. DuBois Voting against granting the variance

Mr. Papaleo Voting for granting the variance

Mr. Schwartz Voting against granting the variance

Ms. Smith Voting against granting the variance

The Board did not make a determination with respect to the area variance application, as it was deemed moot after having denied the use variance applications according to the roll call votes indicated above.

Appeal No. 2017-31

Applicant: Warren Tom

Owner: JWC JEWLS, LLC

Location: 104 Renwick Street

Requesting an **AREA Variance** for 4 feet on the front yard setback, 5 feet of the west side yard setback, 3 feet on the east side yard setback 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.

Warren Tom, property Owner and applicant, appeared before the Board. The Applicant said the property was originally a three-family home and reverted to its most restrictive use as per the City Code during a period of vacancy. He said the intent is to change the use back to a three-family home. His plan is to rehabilitate the building and then rent the apartments.

Ms. Lugo said that she is familiar with the building and commended the Applicant for his work.

Mr. DuBois confirmed that there are no proposed changes to the building's footprint.

The Chairperson opened the public hearing.

There was no one present to speak for or against the applicant.

Mr. Schwartz moves to close the public hearing.

Mr. Dubois seconded the motion.

The motion carried unanimously.

Mr. Dubois moved to declare the application a Type II action under SEQRA.

Mr. Papaleo seconded the motion.

The motion carried unanimously.

Mr. DuBois moved to approve the area variance requested as submitted by the applicant.

Mr. Schwartz seconded the motion.

The motion was carried 5-0 via roll call vote.

Appeal No. 2017-32

Applicant: Core States Architecture & Engineering PC (Alan Roscoe, P.E.)**Owner:**
Vincent Cracolici and Stefania Cracolici Irrevocable Living Trust (Salvatore
Cracolici, Trustee)

Location: 347 Broadway

Requesting an **AREA Variance** for 40.2 feet on the front yard setback, 65.6 feet of the west side yard setback, 60 feet on the east side yard setback, 10 feet on the building height and 50% on the frontage occupancy, which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Broadway Corridor Zone.

Alan Roscoe P.E., Applicant, from Core States Architecture & Engineering PC, appeared before the Board representing the Owner. The Applicant is the Northeast Civil Manager for McDonald's. He said the intent is to modernize the McDonald's brand. He gave a brief overview of the project and highlighted the following:

- Interior will be made Americans with Disabilities Act ("ADA") compliant
- Exterior will be repainted neutral colors
- Roof height will be reduced
- Existing Building will be extended (proposed setback will be ~10 feet closer to Broadway)
- Side yards setbacks will remain unchanged
- Signage will be reduced
- Additional drive thru lane will be added

He said that 70% of the business will be drive-through traffic and although ten parking spaces will be lost, the Building Inspector determined that the parking requirements were met.

Ms. Smith confirmed that reducing the building height brings the building closer to compliance with §300-136 of the City Code.

Mr. Schwartz is concerned the side by side drive-thru will create traffic accidents.

The Applicant said that the renovations will include recurbing, additional signage, and restriping of the lot to guide traffic. He said a clearance bar will also be added.

The Assistant Corporation Counsel said that the Applicant provided substantial information, some of which goes beyond the scope of the Board's jurisdiction and that the Board needs to consider only the information relevant to the requested area variances.

The Chairperson opened the public hearing.

There was no one present to speak for or against this application.

Ms. Smith moved to close the public hearing.

Mr. Papaleo seconded the motion.

The motion carried unanimously.

Mr. DuBois moved to declare the application a Type II action under SEQRA.

Mr. Schwartz seconded the motion.

The motion carried unanimously.

Mr. Schwartz moved to approve the area variance requested as submitted by the applicant.

Mr. DuBois seconded the motion.

The motion was carried 5-0 via roll call vote.

Appeal No. 2017-33

Applicant: Jeffrey McKean

Owner: 286 Grand Street, LLC

Location: 286 Grand Street

Requesting a **USE Variance** for "Apartment House" in the existing building at 286 Grand Street and an **AREA Variance** for 15 feet on the front yard setback, 10 feet of the north and south side yard setback, 1 story on the building height, and 20 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low Density Residential Zone.

The Assistant Corporation Counsel said that the Applicant submitted a letter requesting the application to be adjourned until the January 23, 2018 meeting and the public hearing may be opened and carried into the next meeting.

The Chairperson opened the public hearing.

There was no one present to speak for or against this application.

The application was tabled and the public hearing was kept open until the January 23, 2018 meeting.

Approval of Minutes

Mr. Schwartz moved to approve the November 28, 2017 minutes.

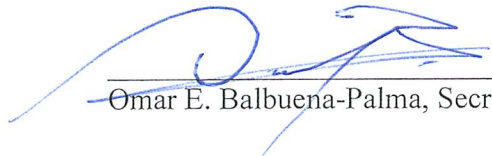
Mr. Papaleo seconded the motion.

The motion carried unanimously.

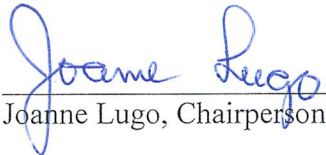
Meeting adjourned at 8:25 p.m.

Respectfully Submitted:

Approved:



Omar E. Balbuena-Palma, Secretary



Joanne Lugo, Chairperson