

ZONING BOARD OF APPEALS MEETING

Summary of record of actions taken at the Regular Meeting of the Newburgh Zoning Board of Appeals held on July 24, 2018 at 7:03 p.m. at the City of Newburgh Heritage Center, 123 Grand Street, Newburgh, New York 12550.

Members Present: Joanne Lugo, Chairperson
Barbara Smith
Michael Papaleo
Corey Allen
Ben Brandt

Members Absent: David Schwartz
Julie Lindell

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

Approval of Minutes

Ms. Smith and Mr. Brandt wished to abstain from voting to approve the May minutes, as they were not present for the May meeting. Ms. Lugo, Mr. Allen and Mr. Papaleo wished to abstain from voting to approve the June minutes, as they were not present for the June meeting. With only three votes, approval of the May and June minutes were carried over to the August meeting.

New Business

Appeal No. 2018-10

Applicant: Kazumi Tanaka
Owner: Kazumi Tanaka
Location: 233 Liberty Street

Requesting an **AREA Variance** for 22 feet on the front yard setback, which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Downtown Neighborhood Zone.

Kazumi Tanaka, Property Owner, and her husband, George Bestfield, appeared before the Board. The Owner said she recently purchased the building and her intent is to reside on the first floor and rent the units on the 2nd and 3rd floors.

Mr. Bestfield said the change of use requires an area variance from the Board as per the Informational Report.

Ms. Lugo said the April 2, 2018 Informational Report mentions an Activity Facility on the first floor. She clarified that the Activity Facility is no longer proposed and the use will be a three-family residential with the first floor as Live-Work.

The Assistant Corporation Counsel said the change of use is allowed by right in the Downtown Neighborhood Zone as per the amended Informational Report dated July 11, 2018. The Owner requires a variance to comply with the Bulk Area requirements.

Mr. Papaleo confirmed that the Owner will occupy the first floor and rent the remaining residential units.

The Chairperson opened the public hearing.

John Rossi, 231 Liberty Street, said he is in favor of the application.

No one spoke against the application.

Mr. Allen moved to close the public hearing.

Mr. Papaleo seconded the motion.

The motion carried unanimously.

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

Mr. Papaleo seconded the motion.

The motion carried unanimously.

Mr. Allen moved to approve the Area Variance as requested

Mr. Papaleo seconded the motion.

The motion was passed unanimously via roll call vote.

Appeal No. 2018-12

Applicant: Rebecca Devlin

Owner: Rebecca Devlin

Location: 54 Henry Street

Requesting an **AREA Variance** for 6 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low Density Residential Zone.

Rebecca Devlin, Property Owner, appeared before the Board. She said the intent is to convert the existing 2-family building into a 3-family building. She is not changing the building footprint.

Ms. Lugo confirmed that the third floor is currently vacant.

Mr. Papaleo confirmed that the use of the basement will not change.

The Owner said the third floor is equipped with the utilities of a residential unit but does not have a Certificate of Occupancy.

Ms. Smith said the property lies in the Low Density Residential zone and that the Board cannot rezone a property.

The Assistant Corporation Counsel clarified that the Owner intends to change the use from a two-family dwelling (third floor to remain vacant) into a three-family dwelling within a pre-existing building. He said the use is allowed pending Site Plan approval from the Planning Board and the Planning Board granted conditional approval on July 17, 2018. He said the Owner is now requesting a variance for six (6) off-street parking spaces to comply with the Bulk requirements of the City Code and the Planning Board resolution. He said the Orange County records show the building previously used as a three-family building. The Owner will require a building permit and inspection from the Building Department to change the Certificate of Occupancy.

Mr. Brandt said the change of use is allowed in the zone and the issue before the Board is whether to grant the parking variance. He asked whether the additional residential unit can be obtained without the parking variance.

Mr. Allen said parking is influenced by the use of the building and it is difficult to separate the two.

The Assistant Corporation Counsel said the current version of the City Code allows the proposed use subject to Site Plan approval by the Planning Board. He said the Zoning Board may not deny the requested variance based on the use of the building. The only issue before the Board is whether to grant a variance for off-street parking. He said the Board members must evaluate and take into consideration the same considerations when making a determination for any area variance:

- a) An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- b) The benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- c) The requested area variance is substantial;
- d) The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- e) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Mr. Allen moved to close the public hearing.

Ms. Smith seconded the motion.

The motion carried unanimously.

Mr. Papaleo moved to declare the application a Type II action under SEQRA.
Ms. Lugo seconded the motion.
The motion carried unanimously.

Mr. Papaleo moved to approve the Area Variance as requested
Mr. Allen seconded the motion.
The motion was passed 4-1 via roll call vote.
Ms. Smith voted against granting the variance

Appeal No. 2018-13

Applicant: Kamil Falkowski
Owner: 138 South Street LLC
Location: 138 South Street

Requesting an **AREA Variance** for 40% on lot coverage and 12 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Kamil Falkowski, Property Owner, appeared before the Board. He said the intent is open a pizza shop on the first floor with residential units on the second and third floor. He said the building was previously used as a pizza shop and has the required utilities already in place. He said there are no proposed changes to the building footprint. The pizza shop will primarily be take-out. He said the requested area variance is required in order to change the use of the building.

Mr. Papaleo clarified that the Owner will not live/work at 138 South Street.

The Owner said he will rent the building and hire someone to manage the daily operations of the pizza shop. He said granting the variance will help revitalize the neighborhood.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Mr. Allen moved to close the public hearing.
Mr. Papaleo seconded the motion.
The motion carried unanimously.

Mr. Allen moved to declare the application a Type II action under SEQRA.
Mr. Brandt seconded the motion.
The motion carried unanimously.

Mr. Papaleo moved to approve the Area Variance as requested
Mr. Allen seconded the motion.
The motion was passed unanimously via roll call vote.

Appeal No. 2018-14

Applicant: JOSCOS INC.
Owner: JOSCOS INC.
Location: 120 Front Street

Requesting an **AREA Variance** for 3 feet on the front yard setback, 10 feet and 140 feet on the side yard setbacks, 45% on the frontage occupancy, 28 feet on the Hudson River Setback, and 13.5% on the landscaped area, which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Planned Waterfront Development Zone.

John Fuller, Project Engineer, and the Property Owner principal, Joseph Bonura, appeared before the Board.

The Assistant Corporation Counsel said the application requires Site Plan approval from the Planning Board and area variances from the Zoning Board of Appeals. He said the project lies within the LWRP boundary and requires review by the Conservation Advisory Council and GML239 review. He said the purpose of this meeting is for the applicant to present the project and for the Board to provide feedback. There cannot be any vote on the application for the July meeting.

The principal said a project to expand the exterior use was previously approved by the Planning Board several years ago. In that project, the approval included a catering area. He never proceeded with that project because he was unable to find suitable employees. He said the project has now been modified to expand the existing use and include a new outdoor eating area.

The Project Engineer said a new structure will be added to store the tables and chairs, along with a kitchen and bathroom.

The Owner said the proposed eating area will be open seasonally and when weather permits. He said the hours of operation will follow the existing hours, and there will be approximately 60 to 70 seats available.

Mr. Papaleo confirmed the approximate size of the outdoor eating area is approximately 2,300 sq. ft.

Mr. Brandt confirmed the existing Hudson River setback is twelve (12) feet.

The Assistant Corporation Counsel said the setback is forty (40) feet. The applicant can only provide twelve (12) feet and is thus looking for a variance of twenty-eight (28) feet.

Mr. Brandt asked why the setback and building frontage requirements were not met in the project design

The principal said the frontage requirements would drastically reduce the parking availability. He said the current zoning code does not encourage parking areas. He also said the setback requirement is difficult to meet because people want to sit close to the water. He also said the pedestrian path wouldn't be disturbed.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Mr. Allen moved to close the public hearing.

Mr. Papaleo seconded the motion.

The motion carried unanimously.

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

Mr. Papaleo seconded the motion.

The motion carried unanimously.

The application was tabled and the Owner was advised to return to the following ZBA meeting and submit revised plans to the Planning Board by August 10, 2018.

Meeting adjourned at 8:10 p.m.

Respectfully Submitted:

Approved:

Omar E. Balbuena-Palma, Secretary

Joanne Lugo, Chairperson