

ZONING BOARD OF APPEALS MEETING

Summary of record of actions taken at the Regular Meeting of the Newburgh Zoning Board of Appeals (“ZBA”) held on August 28, 2018 at 7:00 p.m. at the City of Newburgh Activity Center, 401 Washington Street, Newburgh, New York 12550.

Members Present: Joanne Lugo, Chairperson
Barbara Smith
Michael Papaleo
Corey Allen (left at 8:58 p.m.)
Ben Brandt
Julie Lindell
Dianne Dixon (alternate, voting)
Melvin Hales (alternate, non-voting)

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

The Chairperson introduced Dianne Dixon and Melvin Hales as new alternate members to the ZBA and said David Schwartz has recently resigned. She said he was a valuable ZBA member and he will be missed. She thanked him for his service and wished him the best of luck.

Old Business

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 Project Engineer gave a brief history of the project. He 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. He said a new structure will be added to store the tables and chairs, along with a kitchen and bathroom.

The Principal said conditional approval was granted by the Planning Board on August 21, 2018 subject to the comment letters of the City Engineer and approval by the ZBA for the appropriate area variances.

The Project Engineer said minor changes to the site plan were made to address the City Engineer's comment letter. He said the scope of the site plan and the requested variances have not changed.

Mr. Brandt asked why the Owner is requesting a variance for 13.5% in landscaped area and asked for clarification on what "landscaped area" means in terms of the City Code.

The Assistant Corporation Counsel said the Planned Waterfront District per § 300-139 of the City Code requires a 15% minimum of landscaped area, such as grass, plantings, trees, shrubs, etc.. He said the Applicant currently has 1.5% of landscaped area and they are requesting relief on the remaining 13.5%.

The Project Engineer said a 13.5% increase in landscaped area is extensive and would require the additional removal of existing parking spaces that benefit nearby business. He said the proposed site plan actually adds some landscaping to the area at the cost of some parking spaces.

Mr. Papaleo confirmed the parking requirements are met even with the reduced parking spaces.

The Assistant Corporation Counsel said the ZBA opened and closed the public hearing at the July 24, 2018 meeting and also declared the action a Type II action pursuant to SEQRA. He said more than thirty days for comment have passed with respect to GML §239 requirements and the Board may now vote on the application.

Mr. Papaleo move to approve the application as submitted.

Mr. Allen seconded the motion.

The motion passed unanimously via roll-call vote.

The Chair moved Appeal No. 2018-23 and 2018-24 forward on the agenda.

New Business

Appeal No. 2018-23

Applicant: Martin Estrella
Owner: 31 Benkard Ave LLC
Location: 31 Benkard Avenue

Requesting an **AREA Variance** for 385 feet on lot area, 10 feet on lot depth, 5 feet on the side yard setback, 30% on lot coverage and 3 off-street parking spaces which does not meet the

requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

The Applicant was not present when the application was first called and the application was tabled.

Appeal No. 2018-24

Applicant: Pedro Montes
Owner: Marcelina Cortes
Location: 31 Carter Street

Requesting an **AREA Variance** for 5 feet on the side yard setback which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Pedro Montes, Applicant, and Marcelina Cortes, Property Owner, appeared before the Board. The Applicant said the intent is to build a deck on the rear of the property.

Ms. Lindell clarified that a fence separates the adjacent property.

The Applicant said the wooden deck will extend from the rear of the building.

Mr. Papaleo confirmed the east side of the building is not walkable.

Ms. Lindell asked if the neighbors are aware of the Applicant's project.

The Assistant Corporation Counsel said the Applicant is responsible for notifying every Property Owner within 500 ft. of the subject property per § 300-116(D)(2)(a) of the City Code. He said the neighbors may attend the application hearing and comment on the application after the Board opens the public hearing.

Ms. Dixon confirmed the fence is six (6) feet tall.

Mr. Brandt confirmed the height of the deck will be two (2) stories.

The Applicant said the building was constructed in 1899 and on the property line. He said the building has two exit doors on the rear.

Mr. Papaleo said the deck is approximately 12' x 20'.

Mr. Brandt and Ms. Lindell said the rear deck is consistent with the neighborhood.

Ms. Smith said asked the Applicant to explain his reasoning for requesting the variance.

The Applicant said he submitted plans to the Building Department based on existing decks in 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.

Ms. Lindell seconded the motion.

The motion passed unanimously.

Mr. Brandt asked if the stairs are required per the Building Code?

The Applicant said there is no existing fire escape and he believes the stairs are required,

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

Ms. Dixon seconded the motion.

The motion passed unanimously.

The Assistant Corporation Counsel said the Board must decide only whether to grant the side yard setback and leave the design/layout of the deck to the Building Department. He read the five (5) considerations found in §300-115(B)(2) of the City Code applicable to area variances and said the Board must consider and weigh each before rendering a decision. He said all of the considerations must be considered as a whole; if one factor was not met, it did not necessarily preclude a “no” vote on the application.

Mr. Papaleo moved to approve the application as submitted.

Ms. Dixon seconded the motion.

The vote pass 6-1 via roll call vote.

Ms. Smith voted against the application.

The Chair said appeal numbers 2018-15 through 2018-22 are parts of a larger project. She said the Applicant will present the applications together, but the Board will vote on each application individually. She said appeal numbers 2018-18, 2018-20, 2018-21 and 2018-22 did not meet the public hearing requirement deadline and are not eligible for a vote. She said those applications will be tabled until the following month, subject to the applicant meeting the appropriate deadlines.

Appeal No. 2018-15

Applicant: Coppola Associates

Owner: Newburgh Community Land Bank, Inc.

Location: 45 Johnston Street

Requesting an **AREA Variance** for 550 feet on lot area, 17 feet on lot depth, 10 feet on the front yard setback, 5 feet on side yard setbacks, 24 feet on the rear yard setback and 3 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Appeal No. 2018-16

Applicant: Coppola Associates
Owner: Newburgh Community Land Bank, Inc.
Location: 37 DuBois Street

Requesting an **AREA Variance** for 5 feet on the front yard setback, 5 feet and 2 feet on the side yard setbacks, and 3 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Appeal No. 2018-17

Applicant: Coppola Associates
Owner: Newburgh Community Land Bank, Inc.
Location: 39 DuBois Street

Requesting an **AREA Variance** for 5 feet on the front yard setback, 5 feet and 2 feet on the side yard setbacks, and 3 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Appeal No. 2018-18

Applicant: Coppola Associates
Owner: Newburgh Community Land Bank, Inc.
Location: 122 Lander Street

Requesting an **AREA Variance** for 18 feet on lot depth, 7 feet on the front yard setback, 2 feet and 5 feet on the side yard setbacks, 12 feet on the rear yard setback and 4 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Appeal No. 2018-19

Applicant: Coppola Associates
Owner: Newburgh Community Land Bank, Inc.
Location: 133 Lander Street

Requesting an **AREA Variance** for 5 feet on the front yard setback, 2 feet and 5 feet on the side yard setbacks and 3 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Appeal No. 2018-20

Applicant: Coppola Associates
Owner: Newburgh Community Land Bank, Inc.
Location: 135 Lander Street

Requesting an **AREA Variance** for 5 feet on the front yard setback, 2 feet and 5 feet on the side yard setbacks, 14% on lot coverage and 3 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Appeal No. 2018-21

Applicant: Coppola Associates
Owner: Newburgh Community Land Bank, Inc.
Location: 137 Lander Street

Requesting an **AREA Variance** for 4 feet on the front yard setback, 5 feet on the side yard setbacks and 2 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Appeal No. 2018-22

Applicant: Coppola Associates
Owner: Newburgh Community Land Bank, Inc.
Location: 139 Lander Street

Requesting an **AREA Variance** for 4 feet on the front yard setback, 5 feet on the side yard setbacks and 2 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Presentation

AJ Coppola, Project Architect, Emily Hamilton from RUPCO, Madeline Fletcher and Burke Blackman from the Newburgh Community Land Bank appeared before the Board.

The Project Architect said appeal numbers 2018-15 through 2018-22 are part of the RUPCO/Land Bank, Phase II project. He presented a layout of the project (which was made part of the record) and highlighted the following:

- Phase I of the project consisted of renovating 15 buildings to create 41 apartments for affordable housing.
- Buildings are certified Leadership in Energy and Environmental Design (“LEED”)
- Phase I costs were approximately 12 million dollars (~\$285,000 per dwelling)
- Funded by the low-income housing tax credit (LIHTC) program and the Historic Tax Credit (HTC) program
- Phase I will be completed by Fall 2018

- Phase II of the RUPCO project has begun for 23 buildings and approximately 63 apartments (11 buildings will be renovated and 12 buildings will be new construction)
- Phase II buildings all have been abandoned for years
- Buildings will be handicapped-accessible (existing buildings will be lowered for accessibility)

The Project Architect summarized the intent for each of the requested variances on the agenda:

- 45 Johnston Street
 - Renovation of existing building, 3-family
- 37 DuBois Street
 - Construction of new, 3-family building on vacant lot
- 39 DuBois Street
 - Demolition of existing building and construction of a 3-family building
- 122 Lander Street
 - Construction of new, 3-family building on vacant lot
- 133 Lander Street
 - Demolition of existing building and construction of a 3-family building
- 135 Lander Street
 - Demolition of existing building and construction of a 3-family building
- 137 Lander Street
- Renovation of existing building, 3-family
- 139 Lander Street
- Erected buildings will have three (3) foot alleys on the side for rear property access and installation of gas meters

Ms. Lugo said she is happy these properties in the East End Historic District are being renovated and commended the Applicant.

Mr. Papaleo confirmed all of the buildings will be affordable housing. He asked what will follow Phase II.

Ms. Fletcher said one of the Land Bank's goals is to get homeowners involved.

Ms. Lindell confirmed all of the buildings will be handicap accessible. She asked if parking spaces were considered as part of the project.

The Project Architect said some parking spaces were added in Phase I. He said Phase II focuses on renovating buildings and eliminating vacant lots. He said there isn't much benefit in making a parking lot out of a narrow lot. He said it would disrupt the character of the neighborhood and it would be difficult to police/maintain. He said he rarely has a difficult time finding a parking spot now.

Ms. Lindell said there is available parking now but once the buildings are occupied, parking issues may arise. She said a lack of parking spaces would hurt surrounding homeowners and there is more benefit to the buildings if parking spaces are incorporated on the property itself.

Ms. Lugo said most buildings in the neighborhood do not have off-street parking spaces.

Ms. Lindell asked if parks were considered instead of buildings.

The Project Architect said some small playgrounds were incorporated on different lots.

Ms. Smith asked for a summary of the requested variances.

The Assistant Corporation Counsel said eight (8) applications were submitted to the ZBA. He said four (4) of those applications did not meet the public hearing requirements and the Applicant must return for a vote on those applications at the following ZBA meeting, and assuming the applicant meets the public notice deadlines. He said all eight (8) applications are area variance applications for single, two or three-family residences, and are thus Type II actions pursuant to SEQRA. He said per the Schedule of Area, Bulk, and Parking Regulations found in § 300-32 of the City Code, all eight (8) properties under discussion now require certain setbacks and off-street parking. He said the Applicant is requesting relief to the required setbacks and parking spaces. He said granting an area variance for off-street parking does not mean that the Applicant will have reserved parking spaces on the street. He said the Board may consider the parking impact on the community and the environment and the Board may ask for additional information regarding parking-related issues.

The Project Architect said he understands parking is a consideration and asked the Board to look at the current state of the properties within the project.

Mr. Blackman said each vacant lot used to contain a building and they are proposing to restore the buildings which were lost.

Mr. Papaleo asked how the overall program works.

Ms. Hamilton said RUPCO is the developer and gathers the required funding from various sources.

Mr. Papaleo said he has difficulty understanding how RUPCO recuperates the funding it provides. He asked if the buildings are sold.

Ms. Hamilton said the Newburgh Community Land Bank is the property owner and the Land Bank has to follow strict guidelines and regulations with the State.

The Assistant Corporation Counsel said if there are additional questions regarding the Newburgh Community Land Bank or RUPCO or the way that the program and/or relationship works, but have nothing to do with the requested variance applications, the Board members are free to discuss them individually later on. They should not take that information into consideration when deciding on the application.

Ms. Lindell asked why the Board allows the Applicant to make a presentation about the cost of the project and goal of the project if they are not allowed to take those factors into consideration either?

The Assistant Corporation Counsel said the Applicant is afforded an opportunity to make a presentation about the application. It is up to the Board to take the relevant parts of the

presentation, the other information submitted, apply it to the factors contained in the City Code for a variance, and then decide on the relevant parts only.

Ms. Smith said the Board should be concerned with the area variance only. Issues like whether off-street parking should even be a zoning consideration should be reviewed as part of the next zoning update. She said the Board should proceed with the meeting based on the facts and the rules it has in front of it.

With respect to Appeal No. 2018-15

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. Lindell seconded the motion.

The motion passed unanimously.

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

Ms. Lugo seconded the motion.

The motion passed unanimously.

Ms. Lugo moved to approve the application as submitted.

Mr. Brandt seconded the motion.

The vote passed unanimously via roll call vote.

With respect to Appeal No. 2018-16

The Chairperson opened the public hearing.

O'Neill Charles, 14 Farrington Street, asked for a clarification on the requested area variance and said he has no issue.

Judy Thomas, 32 Benkard Avenue, said there should be a handicapped parking space available on the properties. She said parking has become an issue and it should be a consideration to the Board.

There was no one else present for or against the application.

Ms. Smith moved to close the public hearing.

Mr. Papaleo seconded the motion.

The motion passed unanimously.

Mr. Brandt moved to declare the action a Type II action pursuant to SEQRA.

Mr. Allen seconded the motion.

The motion passed unanimously.

Mr. Papaleo moved to approve the application as submitted.
Mr. Allen seconded the motion.
The vote passed 6-1 via roll call vote.
Ms. Lindell voted against the application.

With respect to Appeal No. 2018-17

The Chairperson opened the public hearing.

There was no one present for or against the application.

Ms. Smith moved to close the public hearing.
Mr. Allen seconded the motion.
The motion passed unanimously.

Mr. Allen moved to declare the action a Type II action pursuant to SEQRA.
Mr. Papaleo seconded the motion.
The motion passed unanimously.

Mr. Allen moved to approve the application as submitted.
Mr. Papaleo seconded the motion.
The vote passed unanimously via roll call vote.

With respect to Appeal No. 2018-19

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 passed unanimously.

Mr. Brandt moved to declare the action a Type II action pursuant to SEQRA.
Mr. Allen seconded the motion.
The motion passed unanimously.

Mr. Allen moved to approve the application as submitted.
Mr. Brandt seconded the motion.
The motion passed unanimously via roll call vote.

The Applicant was informed to return to the following ZBA meeting on September 25, 2018 for a vote on appeal numbers 2018-18, 2018-20, 2018-21 and 2018-22.

Appeal No. 2018-23

Applicant: Martin Estrella
Owner: 31 Benkard Ave LLC
Location: 31 Benkard Avenue

Requesting an **AREA Variance** for 385 feet on lot area, 10 feet on lot depth, 5 feet on the side yard setback, 30% on lot coverage and 3 off-street parking spaces which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Martin Estrella, Applicant, appeared before the Board on a second call of his application.

The Applicant said he purchased the three-story building approximately two (2) months earlier from the City. He said the building was abandoned for approximately 20 years and the first-floor was vacant for an unspecified amount of time. He said the intent is to renovate the building and convert the building into a three-family dwelling. He said the Medium Density zone allows a three-family dwelling by right but the building does not meet the requirements of the Schedule of Use and Bulk Regulations. He submitted new pictures of off-street parking conditions near 31 Benkard Avenue (which was made part of the record) and requested approval.

Ms. Lindell said there is an existing curb cut towards the rear of the property and asked if the Applicant has explored parking options in the rear of the building.

Mr. Brandt said the building used to have a glass storefront on the first-floor and said he is concerned with converting the commercial space into a residential unit.

The Applicant said he was under the impression the first-floor was an established residential unit.

The Assistant Corporation Counsel said that the previous Certificate of Occupancy ("CO") carried the use of the first-floor as vacant and the use of the second-floor and third-floor as residential. He said the Medium Density Residential zone per § 300-31 of the City Code allows a variety of uses by right. He said a three-family dwelling is allowed by right and it is up to the Applicant to determine which use he intends to pursue. He said the Board may consider whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties and if the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

Ms. Dixon said parking on the rear of the property may not have been legal.

The Applicant said he is interested in adding parking spaces to the rear but he does not have a survey and said he must explore the idea later. He said he may not have adequate spaces to add parking on his property.

The Chairperson opened the public hearing.

Judy Thomas, 32 Benkard Avenue, said she is happy the Applicant intends to renovate the property. She said the building at 32 Benkard Avenue is similar and was erected in 1890s with a commercial storefront. She said it was legally converted to a residential use in the 1940s. She said the Applicant should research the previous CO and suggested the Applicant should consider adding parking in the rear. She said parking will become an issue in the neighborhood.

O'Neill Charles, said parking is a concern and the Applicant should explore adding parking spaces to his property.

Mr. Allen moved to close the public hearing.

Ms. Lindell seconded the motion.

The motion passed unanimously.

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

Mr. Brandt seconded the motion.

The motion passed unanimously.

Ms. Smith moved to approve the application as submitted.

Ms. Lugo seconded the motion.

Ms. Lindell clarified she has no issue with granting the area variances concerning the building footprint. She said her concern lies with granting the off-street parking variance and before she is comfortable approving any motion, the Applicant should explore every possibility to add parking to the property. She said the motion should be separated into two (2) votes.

Ms. Smith said the Applicant may only be able to provide one (1) off-street parking space and he would still require a variance for parking. She asked if the Applicant is willing to return with additional information.

(Corey Allen left the ARC meeting at 8:58 p.m.)

Mr. Brandt said the Applicant is requesting three (3) off-street parking spaces because of the third residential unit. He said the Applicant would still need to apply for a parking variance for two (2) off street parking spaces if he kept the use listed on the previous CO.

The Applicant said he has two (2) off street parking spaces available and the reason he is before the Board is because he wants to convert the use to a three-family dwelling. He said he does not have to request a parking variance if the use is not changed.

The Assistant Corporation Counsel clarified the property does not meet the current zoning requirements and would require an area variance for parking either way. He said depending on the Applicant's proposal, the use of the building may require approval from the Planning Board. He said when an applicant requests a change in use, the first step is requesting an Informational Report, in which the Building Inspector makes certain use and usage determinations. . He said the Applicant has the option to adjourn/table the vote in order to address the concerns of the Board or he can choose to proceed with the vote.

Ms. Smith said granting the area variance does not prohibit the Applicant from developing the parking area.

The Applicant said he will research the parking availability and requested to proceed with the vote.

The motion passed 4-2 via roll call vote.

Mr. Brandt voted against the application,

Ms. Lindell voted against the application.

Mr. Allen left meeting prior to vote.

Approval of Minutes

The Assistant Corporation Counsel said at the June meeting, Ms. Smith wished to abstain from voting to approve the May minutes, as she was not present for the May meeting. With only three possible votes, approval of the May minutes were carried over to the July meeting. At the July meeting, 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. He said the Board has a duty to keep and approve a record of the minutes to its meetings. The purpose of the minutes is to create an official record of the actions taken at a meeting. The minutes are not intended to serve as an exact account of who said what and when. The minutes record the decisions made. Thus, members should only vote against or abstain from voting on the minutes if they had a good faith reason why the minute should not be approved as submitted. He asked the Board if there is any reason to believe that the Board did not follow the normal procedure. If no such reason existed, he urged the Board members to approve the minutes as a matter of regular business.

Ms. Smith says she is not comfortable approving the minutes to meetings where she was not in attendance.

The Assistant Corporation Counsel asked Ms. Smith if there is any good faith reason to believe the Board deviated from normal meeting procedures during the above mentioned meetings or if the votes were improper.

Ms. Smith said no because she was not present.

Mr. Brandt said the minutes must be approved prior to becoming available to the public.

The Assistant Corporation Counsel said the Board may vote as they deem appropriate. He advised the Board to approve the minutes.

Ms. Lindell moved to approve the May minutes.
Mr. Brandt seconded the motion.
The motion passed 4-0
Ms. Smith abstained
Ms. Dixon abstained
Mr. Allen left meeting prior to vote.

Ms. Lindell moved to approve the June minutes.
Mr. Papaleo seconded the motion.
The motion passed 5-0
Ms. Dixon abstained
Mr. Allen left meeting prior to vote.

Ms. Lindell moved to approve the July minutes.
Mr. Papaleo seconded the motion.
The motion passed 5-0
Ms. Dixon abstained
Mr. Allen left meeting prior to vote.

With no further business to discuss, the meeting was adjourned at 9:15 p.m.

Respectfully Submitted:

Approved:

Omar E. Balbuena-Palma, Secretary

Joanne Lugo, Chairperson