

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 September 25, 2018 at 7:00 p.m. at the City of Newburgh Activity Center, 401 Washington Street, Newburgh, New York 12550.

Members Present: Barbara Smith, Acting Chairperson
Michael Papaleo
Ben Brandt
Julie Lindell
Dianne Dixon (alternate, voting)

Members Absent: Joanne Lugo
Corey Allen
Melvin Hales (alternate)

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

The Acting Chairperson said appeal numbers 2018-18, 2018-20, 2018-21, 2018-22, 2018-26, 2018-27, and 2018-28 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 for the August 28, 2018 ZBA meeting and were tabled. She said those applications are now eligible for a vote.

Old Business

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. 2018-20

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.

New Business

Appeal No. 2018-26

Applicant: Coppola Associates
Owner: Newburgh Community Land Bank, Inc.
Location: 193 First 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. 2018-27

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

Requesting an **AREA Variance** for 10 feet on the front yard setback, 3.8 feet and 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. 2018-28

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

Requesting an **AREA Variance** for 10 feet on the front yard setback, 5 feet and 2.5 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, and Burke Blackman from the Newburgh Community Land Bank appeared before the Board.

The Project Architect said appeal numbers 2018-18, 2018-20, 2018-21, 2018-22, 2018-26, 2018-27, and 2018-28 are part of the RUPCO/Land Bank, Phase II project. He gave a brief review of the project 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:

- 122 Lander Street
 - Construction of new, Renovation of existing building, 3-family
- 135 Lander Street

- Demolition of existing building and construction of a 3-family building
- 137 Lander Street
 - Renovation of existing building, 2-family
- 139 Lander Street
 - Renovation of existing building, 2-family
- 193 First Street
 - Renovation of existing building, 4-family with a carriage house as an accessory single family residential structure
- 135 Chamber Street
 - Renovation of existing building, 2-family
- 137 Chambers Street
 - Renovation of existing building, 2-family
- Erected buildings will have three (3) foot alleys on the side for rear property access and installation of gas meters

The Project Architect said the project is not concentrated in one area. He said it would not heavily affect parking availability in the neighborhood.

Mr. Blackman read a letter by Madeline Fletcher for consideration (which was made part of the record) and highlighted the following:

- Project is dispersed through the neighborhood
- Low demand for parking on Lander Street near proposed units
- Public parking garage at Dubois Street and First Street

The Assistant Corporation Counsel said the Board should open the public hearing for each application. 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 should consider the comments by the public and the parking impact on the community and the environment. He said the Board may ask for additional information regarding parking-related issues and vote each application separately.

With respect to Appeal No. 2018-18

The Acting Chairperson opened the public hearing.

There was no one present for or against the application.

The Acting Chairperson closed the public hearing.

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

Ms. Lindell seconded the motion.

The motion passed unanimously.

Mr. Papaleo moved to approve the application as submitted.

Ms. Lindell seconded the motion.

The vote passed unanimously via roll call vote.

With respect to Appeal No. 2018-20

The Acting Chairperson opened the public hearing.

There was no one present for or against the application.

The Acting Chairperson closed the public hearing.

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

Ms. Lindell seconded the motion.

The motion passed unanimously.

Ms. Lindell 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. 2018-21

The Acting Chairperson opened the public hearing.

There was no one present for or against the application.

The Acting Chairperson closed the public hearing.

Ms. Dixon moved to declare the action a Type II action pursuant to SEQRA.

Mr. Papaleo seconded the motion.

The motion passed unanimously.

Mr. Brandt moved to approve the application as submitted.

Ms. Dixon seconded the motion.

The vote passed unanimously via roll call vote.

With respect to Appeal No. 2018-22

The Acting Chairperson opened the public hearing.

There was no one present for or against the application.

The Acting Chairperson closed the public hearing.

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

Ms. Dixon seconded the motion.

The motion passed unanimously.

Mr. Brandt moved to approve the application as submitted.

Ms. Dixon seconded the motion.

The vote passed unanimously via roll call vote.

With respect to Appeal No. 2018-26

The Acting Chairperson opened the public hearing.

There was no one present for or against the application.

The Acting Chairperson closed the public hearing.

Ms. Dixon moved to declare the action a Type II action pursuant to SEQRA.

Mr. Papaleo seconded the motion.

The motion passed unanimously.

Ms. Dixon moved to approve the application as submitted.

Ms. Lindell seconded the motion.

The vote passed unanimously via roll call vote.

With respect to Appeal No. 2018-27

The Acting Chairperson opened the public hearing.

There was no one present for or against the application.

The Acting Chairperson closed the public hearing.

Ms. Dixon moved to declare the action a Type II action pursuant to SEQRA.

Ms. Lindell seconded the motion.

The motion passed unanimously.

Mr. Papaleo moved to approve the application as submitted.

Ms. Dixon seconded the motion.

The vote passed unanimously via roll call vote.

With respect to Appeal No. 2018-28

The Acting Chairperson opened the public hearing.

Aubrey Nurse, 139 Chambers Street, said the side yard setbacks should be explained.

There was no one present for or against the application.

The Acting Chairperson closed the public hearing.

The Assistant Corporation Counsel confirmed the building footprint is not changing. He said the Applicant is requesting relief because the building does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone. He said the application is to permit a front yard setback of zero (0) feet where 10 feet are required; a side yard setback of 2.5 feet on the north side and zero (0) feet on the south side where 5 feet are required on each side; and zero (0) off-street parking spaces where 2 off-street parking space (1 per dwelling unit) are required.

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

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

Appeal No. 2018-29

Applicant: Andres Garcia
Owner: Andres Garcia
Location: 18 Liberty Street

Requesting an **AREA Variance** for 2 stories (17') on the building height which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Downtown Neighborhood Zone.

AJ Coppola, Project Architect, appeared before the Board. He said the intent is to reconstruct the first floor and basement on the same footprint into a 1,702 sq. foot retail store. He said the building will not be expanded and asked for a clarification as to why he was referred to the Zoning Board of Appeals for an Area Variance.

Ms. Smith clarified 18 Liberty Street is the existing one story building and the Applicant is not proposing to construct two additional stories.

The Assistant Corporation Counsel said the property is located in the Downtown Neighborhood Zone. He said per the Informational Report by the Building Inspector, the Certificate of Occupancy was never revoked for a three-story mixed-use with residential building and any use other than three-story mixed-use with residential will be considered a change in use. He said the proposed retail store is considered a change of use and compliance with the Schedule of Use and Bulk Regulations per § 300-31 of the City Code is required. He said the one-story building at 18 Liberty Street does not conform to the required building height and an area variance is from the ZBA is thus required.

Mr. Papaleo confirmed 18 Liberty Street will share party walls with the adjacent buildings.

The Acting Chairperson opened the public hearing.

There was no one present for or against the application.

The Acting Chairperson closed the public hearing.

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

Ms. Lindell seconded the motion.

The motion passed unanimously.

Mr. Papaleo moved to approve the application as submitted.

Ms. Lindell seconded the motion.

The vote passed unanimously via roll call vote.

Appeal No. 2018-33

Applicant: Guy B. Meeker

Owner: Guy B. Meeker

Location: 333 Carpenter Avenue

Requesting a **USE Variance** for a Restaurant which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Low Density Residential Zone.

John W. Furst, Esq. from Catania, Mahon, Milligram & Rider, PLLC, Dave Higgins, P.E. from Lanc & Tully Engineering & Surveying P.C. and Todd Wiley from Evaluation Consultants Incorporated appeared before the Board representing the Property Owner.

Mr. Furst gave an overview of the project to convert the building into a high-end restaurant. He highlighted the following:

- Requesting a use variance for a high-end Restaurant
- Site plan approval by the Planning Board will be required
- 2.2 acre property
- 333 Carpenter Avenue is just outside the Commercial Zone
- Maximum of 33 seats within restaurant area
- Proposing a parking lot with a valet service
- Proposing additional landscaping around building per site plan
- Most guests will arrive via car-service
- Restaurant will open from Thursday-Sunday
- No expansion of existing building
- Rear-pool has been filled in and the existing garage will be removed.
- Property purchased as a foreclosure

Mr. Furst submitted two (2) letters for consideration (which were made part of the record) and said the letters show the building was used as a Bed and Breakfast and previously held a three-family Certificate of Occupancy. He said under General City Law § 81 (b), the Applicant must

show that the applicable zoning regulations and restrictions have caused an unnecessary hardship in order for the ZBA to grant the use variance. He said the following:

- Mr. Meeker cannot realize a reasonable return and it is substantial per financial evidence from Greg Langer, New York State certified commercial appraiser from Valuation Consultants, Inc.
- The hardship is unique to the property because the building is much larger than most homes in the neighborhood. He said the topography and setback of 193 feet from the street give the building a limited commercial use. He said the building was used as the Pickerel Rush Bed and Breakfast from 2008 through 2016. He said the property abuts the Commercial zone on the rear and side property lines.
- The proposal will not alter the character of the neighborhood because the access and driveway will remain the same and parking will be set back far from the street with screening to mitigate the impact to the adjoining neighbors.
- The hardship is not self created due to factors outside of the Owner's control. He said the renovation and operating costs of the building coupled with the zoning changes do not allow the Owner to realize a reasonable rate of return on the property as a single-family dwelling.

Ms. Dixon said the noise and traffic levels are a concern in a residential neighborhood. She requested the hours of operation and asked for the date of the photograph of the property.

Mr. Furst said he is unsure about the exact hours of operation and said potential hours of operation range from 7:00 p.m. to 11:00 p.m. He said the use will comply with the noise requirements of the City. He said there will be a slight increase to traffic levels and no traffic study was prepared.

Mr. Higgins said he is unaware when the photograph was taken.

Ms. Dixon confirmed the Owner purchased the property as a single-family dwelling and is aware that the building lies within a residential neighborhood. She said she finds it hard to believe the action is not a self-created difficulty. She said the Owner should provide an up to date picture of the property and she cannot take into consideration the Bed & Breakfast.

Mr. Furst said the Bed & Breakfast operated for several years without a violation.

Ms. Lindell said the use was illegal and cannot be used a reasonable argument. She said the noise and traffic impact is a major concern and asked if grease and garbage from will impact the neighborhood.

Mr. Higgins said the dumpster will be emptied daily in an airtight container and grease traps will be installed.

Ms. Dixon asked if there is any proposed signage.

Mr. Furst said there is no proposed signage at this time.

Mr. Papaleo asked if there will be a membership to the restaurant and what type of food will be served.

Mr. Furst said there will be high-end clients driven to the restaurant directly from Stewart airport and he does not know what type of food will be served.

Ms. Smith said she needs additional financial information relating to each available use of the property.

The Assistant Corporation Counsel reminded the Board that the standards for a Use Variance are found in section 300-115(A) of the City Code and that unlike the standard for an Area Variance, the Board must determine whether the Applicant met each and every one of the four (4) criteria for a Use Variance. He read the criteria for the benefit of the public:

- The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the neighborhood;
- The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- The alleged hardship has not been self-created.

Ms. Smith clarified that the Property Owner has already purchased the property.

The acting Acting Chairperson opened the public hearing.

There was no on in favor of the Application

Karen McCarthy, 330 Carpenter Avenue, spoke against the application. She said she noticed the illegal Bed & Breakfast after it stopped operating and that parking is a serious concern during the winter when ice and snow block the road. She said the traffic impact should be reviewed with a parking study.

Chris Gnasiak, 334 Carpenter Avenue, spoke against the application. She submitted an article from Victorian Homes (which was made part of the record) and said the article depicts the interior of the building. She said it is hard to believe a residential home such as this should be allowed to be converted into a restaurant. She said the previous Owners, Karen and Jose DiZefalo, invested a lot of time to renovate the building that they were going to live in. She said the noise impact would be terrible to the neighborhood.

Faith Kuprych, 340 Carpenter Avenue, spoke against the application. She said the previous Owner did a fantastic job renovating the building and the Bed & Breakfast, although illegal, did not impact the neighborhood. She said the impact by the restaurant would be much different in terms of parking, lighting, noise and traffic. She said the Owner seems to have enough resources to find a property for the restaurant elsewhere.

Stephen R Kuprych, 340 Carpenter Avenue, spoke against the application. He said the Property Owner just demolished the pool and asked if he obtained the required permits. He said the impact to the neighborhood will be substantial. He said traffic levels will increase, lighting and noise will negatively impact the neighborhood and is concerned about clients potentially entering his property.

Rose Liss, 345 Carpenter Avenue, spoke against the application. She submitted a letter and pictures to the Board for consideration (which were made part of the record). She said the pictures demonstrate the proximity of the Building at 333 Carpenter Avenue to 345 Carpenter Avenue and said a restaurant next door cannot be properly screened. She read her letter and highlighted the following:

- 333 Carpenter Avenue is not unique to the neighborhood, there are many properties with similar historically large buildings
- Mr. Meeker should've performed his due diligence when purchasing the building
- 333 Carpenter Avenue was purchased at a greatly undervalued price and there are reasonable alternatives that are feasible for the use of the property
- 333 Carpenter Avenue is clearly visible to the surrounding neighbors even with heavy foliage
- Commercial zone is separated from Carpenter Avenue and not visible nor a part of the existing neighborhood
- ZBA cannot control what type of Restaurant 333 Carpenter Avenue may turn into.
- ZBA should not approve the Use variance

Tony Lewis, 345 Carpenter Avenue, spoke against the application. He submitted pictures to the Board (which were made part of the record). He said the neighbors agree that the restaurant, if approved, will destroy the tranquility of the neighborhood. He said the pictures show no screening for the adjacent properties and a property that is not properly maintained by the Owner. He said why should the Board approve a Use Variance for a Property Owner who cannot properly maintain his property? He said he has seen approximately six (6) dumpster trucks move to and from the property and asked if the Owner obtained the required permits to demolish the pool and whatever else requires that amount of garbage removal.

Cristian Ramirez, 293 Robinson Avenue, spoke against the application. He said the neighborhood is mostly against the restaurant and he does not view it as a positive impact to the neighborhood. He said additional traffic will cause concern during the winter.

The Acting Chairperson closed the public hearing.

Mr. Furst said he would like to keep the public hearing open and would like to table the application until the following month.

Ms. Lindell said she would like to see the permits issued to the property for the last six (6) months.

Ms. Dixon said she would like to know the Owner's intent for the property when it was initially purchased.

The application was tabled and the Applicant was informed to submit additional information to the Board for the October 23, 2018 ZBA meeting.

Discussion

Appeal No. 2018-25

Applicant: Rural Ulster Preservation Company
Owner: Newburgh Community Land Bank, Inc.
Location: 116 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.

The Project Architect said he will not be discussing the project at this time. He said he will submit an application for the October ZBA meeting.

Approval of Minutes

Ms. Lindell moved to approve the October minutes.
Mr. Papaleo seconded the motion.
The motion passed unanimously.

With no further business to discuss, the meeting was adjourned at 9:00 p.m.

Respectfully Submitted:

Approved:

Omar E. Balbuena-Palma, Secretary

Barbara Smith, Acting Chairperson