

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 November 27, 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
Ben Brandt
Dianne Dixon (alternate, voting)
Melvin Hales (alternate, voting)

Members Absent: Corey Allen
Julie Lindell

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

Old Business

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.

AJ Coppola, Project Architect, and Emily Hamilton from RUPCO appeared before the Board.

The Project Architect said appeal number 2018-25 is part of the RUPCO/Land Bank, Phase II project. He said the application received preliminary plat approval from the Planning Board on November 20, 2018 and in order to move forward with final plat approval, the application requires approval for appropriate area variances from the ZBA. The Project Architect gave a brief review of the project and highlighted the following:

- Sanborn map from 1887 showed two (2) houses on 116 Lander Street and the proposal has been modified to reduce the building size on the south end of the lot
- Existing building at 116 Lander Street is collapsing and the intent is to renovate the building,, thus creating three (3)total buildings on the proposed subdivided property

- 116 Lander Street proposal is to subdivide into the following three lots:
 - 118 Lander Street – one (1) one-bedroom apartment and two (2) three-bedroom apartments in new building
 - 116 Lander Street – one (1) bedroom apartment and two (2) two-bedroom apartments in existing building
 - 114 Lander Street – two (2) one-bedroom apartments in new building

The Assistant Corporation Counsel reiterated that the Board should consider the comments by the public and the overall environmental impact of the entire Phase II project, so as to address any segmentation concerns. He said the preliminary plat approval from the Planning Board is conditioned upon obtaining the appropriate variances by the ZBA.

Mr. Papaleo confirmed the lot at the corner of Farrington Street and Lander Street will be discussed as part of a separate application.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Mr. Brandt moved to close the public hearing.

Ms. Smith seconded the motion.

The motion was passed unanimously.

Ms. Smith requested to clarify why the Board must declare itself lead agency in order to vote on the application if the Planning Board already issued a negative declaration. She asked why the action is not a Type II action.

The Assistant Corporation Counsel said the ZBA did not issue a negative declaration prior to its lead agency declaration. The proper sequence is declaration of lead agency, followed by declaration of no significant environmental impact. As for Type II actions, the list of actions identified as Type II are found in §617.5 of the New York Codes, Rules and Regulations. He said the current application does not fall into a Type II category. It is also not a Type I action, as defined in NYCRR §617.4. Therefore, it is an unlisted action. In an unlisted action, each voting agency must make its own determination of non-significance.

Mr. Papaleo moved to declare the Zoning Board of Appeals Lead Agency pursuant to SEQRA.

Ms. Dixon seconded the motion.

The motion passed 5-0 (Ms. Smith abstained)

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

Ms. Dixon seconded the motion.

The motion passed 5-0 (Ms. Smith abstained)

Mr. Papaleo moved to approve the Area Variance as requested
Ms. Dixon seconded the motion.
The motion was passed 5-1 via roll call vote.
Ms. Smith voted against the Application

New Business

Appeal No. 2018-37

Applicant: Joseph W. Ariano
Owner: Joseph W. Ariano
Location: 48-50 City Terrace

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

Joseph W. Ariano, Property Owner, appeared before the Board.

The Property Owner said he recently purchased the property from the City of Newburgh. He said he is now in the process of renovating the building. He said the intent is to rehabilitate the existing structure into a two-family dwelling with an attached accessory garage for tenant's use only. He said there is no proposed expansion of the building footprint and the existing setbacks are similar to the other buildings in the neighborhood.

Mr. Papaleo confirmed the intent is to rent out the building.

Mr. Brandt confirmed the previous use of the building was for a two-family dwelling.

The Chairperson opened the public hearing.

There was no one present for or against the application.

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

Ms. Dixon 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
Ms. Dixon seconded the motion.
The motion was passed unanimously via roll call vote.

Appeal No. 2018-38

Applicant: Philippe Pierre
Owner: Old Newburgh Properties, LLC.
Location: 23 Dubois Street

Requesting an **AREA Variance** for 8,150 feet on the lot area, 20 feet on lot width, 2.8 feet on the front yard setback, 10 feet on the side yard setbacks, 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.

Philippe Pierre, Applicant, appeared before the Board representing the Property Owner.

The Applicant said he purchased the property at the corner of Dubois Street and Van Ness Street recently and is an existing three (3) story building. He gave an overview of the project and highlighted the following:

- Existing Certificate of Occupancy (“CO”) allows five (5) occupied units in the building;
- Intent is to convert the first floor, east unit to a residential unit, making six (6) units;
- Vacant unit has a full kitchen and bathroom available for use;
- Building has two (2) available parking spaces and a backyard;
- No proposed changes to the exterior or building footprint;
- Site plan approval by the Planning Board was granted at the November 20, 2018 meeting conditioned on ZBA approvals.

Mr. Papaleo confirmed the vacant space has not been used since the Owner purchased the property.

The Applicant said the building was purchased under the assumption that it was a six (6) family dwelling.

Ms. Dixon said it is the Owner’s obligation to verify the CO on file at the Building Department.

The Applicant clarified that the building has a full kitchen and bathroom available for use and when the building was purchased. When he saw the actual CO, he submitted the appropriate applications to ensure the building is compliant with City Code.

Ms. Lugo said the previous Owner may have installed the sixth unit illegally.

Mr. Hales asked if approval by the ZBA will immediately remedy the Applicant’s situation.

Mr. Papaleo asked if the ZBA should wait until a determination is made by the Building Department.

The Assistant Corporation Counsel clarified that the Applicant was well aware of the risks associated getting approved for the sixth unit when he applied to the Planning Board, ZBA and the Building Department. He said the fact that a prior owner may have installed the unit illegally does

not make it legal with a new owner. He said approval by the ZBA would leave only an approval for a CO to make the sixth unit legal. He said there was no requirement to receive approval by the Building Department for a CO prior to approval by the ZBA.

Ms. Dixon confirmed that if the ZBA approves the application and the unit is not compliant with the City Code, the Applicant must then revise the building floor plan and resubmit to the Building Department.

Mr. Brandt asked if the issue lies with the parking variance and the density of the neighborhood and whether granting the application will have a detrimental impact overall.

The Applicant said the neighborhood has parking readily available.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Ms. Dixon moved to close the public hearing.

Mr. Papaleo seconded the motion.

The motion carried unanimously.

The Assistant Corporation Counsel said the action is an unlisted action under SEQRA and without coordination; each involved agency must make its own determination of non-significance.

Ms. Dixon moved to declare the Zoning Board of Appeals Lead Agency pursuant to SEQRA.

Ms. Papaleo seconded the motion.

The motion passed 5-0 (Ms. Smith abstained)

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

Ms. Dixon seconded the motion.

The motion passed unanimously.

Mr. Papaleo moved to approve the Area Variance as requested

Mr. Brandt seconded the motion.

The motion was passed unanimously via roll call vote.

Approval of Minutes

Ms. Dixon moved to approve the October minutes.

Ms. Lugo seconded the motion.

The motion passed unanimously.

Ms. Lugo said the next ZBA meeting falls on Christmas Day and must be rescheduled.

The Board discussed potential ZBA meeting dates and were not able to come to a consensus on a December date. Ms. Lugo suggested canceling the December meeting and pushing any/all pending applications to the January ZBA meeting. The Board members agreed that the next ZBA meeting will be held on January 22, 2019.

With no further business to discuss, the meeting was adjourned at 8:00 p.m.

Respectfully Submitted:

Approved:

Omar E. Balbuena-Palma, Secretary

Joanne Lugo, Chairperson