

CITY OF NEWBURGH
ZONING BOARD OF APPEALS

123 Grand Street, Newburgh, N.Y. 12550

Joanne Lugo, Chairperson
Omar E. Balbuena-Palma, Secretary
Phone: (845) 569-7380 Fax: (845)-569-7380

ZONING BOARD OF APPEALS MEETING

Summary of record of actions taken at the Regular Meeting of the Newburgh Zoning Board of Appeals held on February 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
David Schwartz
Barbara Smith
Michael Papaleo
Corey Allen
Austin DuBois

Members Absent: LaShawn Jasper

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

Old Business

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, Cesar Grados, Owner/Applicant, and Cesar Grados Jr., Owner's son, appeared before the Board. Mr. Cella said the Owner has appeared before the Board since November 28, 2017. He re-stated a brief overview of the project. He said the Owner purchased the property in 2011 and under the previous Zoning Code. Under that version of the Code, both an Assembly Hall and Activity Facility were allowed uses with Planning Board approval. As new information for this meeting, the Owner reduced approximately 20% to the maximum occupancy of the building to about 80 people. He said the Owner submitted financial documents demonstrating that the Owner operates the current building at a substantial loss. He asserted that alternative uses are not profitable and if the use were granted, it would cover current costs. He said off-street parking will not impact the adjacent businesses because the use will be during off-peak hours and hours that the other businesses typically do not operate.

The Owner's son said the hours of operation will be:

Activity Facility	Monday-Thursday	4:00 p.m. to 10:00 p.m.
Activity Facility	Friday	5:00 p.m. to 1:00 a.m.
Assembly Hall	Saturday	5:00 p.m. to 1:00 a.m.

He said parking will not be a concern because: most of their patrons live nearby or cannot drive. He submitted pictures showing available parking during the proposed hours of operation. He said any vehicles will be directed to park at the municipal parking lot. He said the Use Variance will be primarily for family-oriented parties, such as baptisms, first communions, etc. and there are no plans to sell alcoholic beverages on the premises.

The Project Engineer said the building will be closed on Sunday.

Mr. Papaleo asked who enforces the reduced maximum occupancy of the building.

The Assistant Corporation Counsel clarified that the maximum occupancy of a building is determined by the Building Inspector, who uses a formula provided in New York State rules/regulations. The Owner does not get to make an occupancy determination. He said the Building Inspector determined a maximum occupancy of 125 people based on the square footage of this property.

Mr. DuBois said the Board cannot override the occupancy determination.

Mr. Papaleo asked about regulating parking. He asked what happens if people don't want to utilize the municipal parking lot? He said it's human nature that people don't want to park far away from their destination. He said there are a lot of unknown factors that could make the parking situation worse than it already is.

The Project Engineer said the Assembly Hall hours of operation are off-peak hours and should not cause a parking congestion.

Mr. Papaleo said the nearby Church holds several services in a given week. Some services, such as funeral services, sometimes last up to six (6) hours, and those services will interfere with the proposed hours of operation. He said there are at least one to two accidents at the intersection of Mill Street and Ann Street every month.

Ms. Smith asked if the Owner researched the reasons behind the Zoning change. She said the Board must refer to the current Zoning Code when making a determination and they cannot grant a Use Variance simply because it was once a previously allowed use. She asked if any thought was made to include multiple businesses within the building, or to explore the other currently-permitted uses in the zone.

The Project Engineer said he does not know why the use (for Assembly Hall) was removed as a permitted use and asked why the zoning code drastically changes a block away from Broadway.

He said that renting the building to multiple businesses will be very difficult and will not be feasible to the Owner.

Ms. Lugo requested the price to use the soccer field.

The Owner's son said the fee is \$75.00 dollars per hour and he will take responsibility of running the business.

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 suggested that the Board first vote on the Use Variance. If approved, the Board could move to a vote on the Area Variance for the Assembly Hall. If denied, an Area Variance vote on the Assembly Hall would be moot. After that, the Board could vote on the Area Variance for the Activity Facility.

The Board members reviewed section 300-115(A) of the City Code.

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

Mr. Schwartz seconded the motion.

The motion carried 5-1 (Smith voted against).

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

Ms. Lugo seconded the motion.

The motion carried 5-1 (Smith voted against)

Mr. Allen moved to approve the Use Variance for an Assembly Hall.

Mr. Papaleo seconded the motion.

The motion was denied 3-3 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), with the voting results as follows:

Ms. Lugo	Voting for granting the variance
Mr. DuBois	Voting for granting the variance
Mr. Papaleo	Voting against granting the variance
Mr. Schwartz	Voting against granting the variance
Ms. Smith	Voting against granting the variance
Mr. Allen	Voting for granting the variance

The Board did not make a determination with respect to the Assembly Hall Area Variance application, as it was deemed moot after having denied the Use Variance application according to the roll call votes indicated above.

With respect to the Area Variance for the Activity Facility:
Mr. DuBois moved to declare Lead Agency pursuant to SEQRA.
Mr. Schwartz seconded the motion.
The motion carried 5-1 (Smith voted against).

Mr. DuBois moved to issue a Negative Declaration pursuant to SEQRA.
Mr. Schwartz seconded the motion.
The motion carried 5-1 (Smith voted against)

Mr. Schwartz moved to approve the Activity Facility Area Variance.
Mr. Papaleo seconded the motion.
The motion was carried 4-2 via roll call vote.

Ms. Lugo	Voting for granting the variance
Mr. DuBois	Voting for granting the variance
Mr. Papaleo	Voting for granting the variance
Mr. Schwartz	Voting against granting the variance
Ms. Smith	Voting against granting the variance
Mr. Allen	Voting for granting the variance

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 Applicant submitted a letter requesting the application to be adjourned until the March 27, 2018 meeting.

The application was tabled and the public hearing was kept open until the March 27, 2018 meeting.

Appeal No. 2018-01

Applicant: Juan Galaviz
Owner: Juan Galaviz
Location: 57 South Lander Street

Requesting an **AREA Variance** for 1,131 feet on the lot area, 64 feet on the lot depth, 10 feet on the front yard setback, 5 feet on the South side yard setback, 20 feet on the rear yard setback, 35% on lot coverage and 2 off-street parking spaces, which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Juan Galaviz, Owner/Applicant, and Navia Mordan, appeared before the Board. The Owner said his intent is to increase the use of the building from a 1-family dwelling into a 2-family dwelling for his family. He said his cousin will live in one unit and he will rent the second unit for supplementary income.

Mr. DuBois confirmed the existing building will be renovated with no proposed changes to the buildings footprint.

Ms. Mordan said the building looks like it was used as a 4-family dwelling at one point. Then it was converted into a 2-family dwelling before it was abandoned.

Ms. Lugo said the building may have been an illegal 4-family dwelling.

The Assistant Corporation Counsel said the building was sold by the City as a vacant building in 2000 and there is some indication that it was deemed a 1-family dwelling around 2005.

Mr. DuBois said a 2-family dwelling is allowed by right.

The Chairperson opened the public hearing.

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

Mr. Allen moved to close the public hearing.

Mr. DuBois seconded the motion.

The motion carried unanimously.

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

Mr. DuBois seconded the motion.

The motion carried unanimously.

Mr. Papaleo moved to approve the Area Variance as requested

Mr. DuBois seconded the motion.

The motion was carried 6-0 via roll call vote.

The Chairperson moved the Application for 110 Johnston Street forward on the agenda.

Appeal No. 2018-04

Applicant: Juan Galaviz

Owner: Juan Galaviz

Location: 110 Johnston Street

Requesting an **AREA Variance** for 775 feet on the lot area, 2 feet on the lot width, 20 feet on the lot depth, 8 feet on the front yard setback, 4 feet on the North side yard setback, 5 feet on the South side yard setback, 20% on lot coverage 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.

Mr. Galaviz, Owner/Applicant, and Ms. Mordan remained before the Board. The Owner said he intends to increase the use of the building from a 1-family dwelling into a 3-family dwelling. He said he will live on the first floor, his parents will live on the second floor, and the third floor will be rented. He said the application for 110 Johnston Street is substantially the same as 57 S. Lander Street.

Mr. Papaleo said he is happy the building will be owner-occupied.

Ms. Mordan said the current layout for the duplex apartment does not make sense and a kitchen will be installed on the third floor to create a third unit.

The Assistant Corporation Counsel said the property was condemned in 2014 and has been vacant since at least 2016.

The Chairperson opened the public hearing.

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

Mr. Allen moved to close the public hearing.

Mr. Schwartz 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. DuBois moved to approve the Area Variance requested.

Mr. Papaleo seconded the motion.

The motion was carried 6-0 via roll call vote.

Appeal No. 2018-02

Applicant: Rose Rodriguez

Owner: Rose Rodriguez

Location: 9 Maple Street

Requesting an **AREA Variance** for 9 feet on the side yard setback and 19 feet on the rear yard setback, which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low Density Residential Zone.

Rose Rodriguez, Owner/Applicant, appeared before the Board. The Applicant said she has lived at 9 Maple Street since the property was first purchased in 2005. She said an above-ground pool was installed in 2017 for her family and her intent now is to install a wooden deck with a gate next

to the pool. She said that she is requesting the Area Variance because the location of the proposed deck does not conform to the required setbacks.

The Chairperson opened the public hearing.

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

Mr. Allen 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. Allen seconded the motion.

The motion carried unanimously.

Mr. Papaleo moved to approve the Area Variance as requested.

Mr. Schwartz seconded the motion.

The motion was carried 6-0 via roll call vote.

Appeal No. 2018-03

Applicant: Michael Robinson

Owner: Stephen Taya Property Development LLC

Location: 195-197 N. Miller Street (SBL Pending)

Requesting an **AREA Variance** for 23 feet on the lot depth, 8 feet on the front yard setback, 3 feet on the 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.

Michael Robinson, Owner/Applicant, appeared before the Board. He said the intent is to increase the use of the building from a 1-family dwelling to a 3-family dwelling. He submitted time-stamped photos of parking on the street and requested a variance for three (3) parking spaces. He said the photos depict about seven (7) to ten (10) parking spaces available.

Mr. Papaleo asked what the Applicant intended for 195 N. Miller Street.

Ms. Smith asked if the Owner was made aware of the required approvals when he purchased the property from the City.

The Owner said that City staff informed him of the required approvals based on his stated intentions before he purchased the properties. He submitted an application to the City Assessor to combine the property lots at 195 N. Miller Street and 197 N. Miller Street. He said his intent later would be to submit an application for a lot line change at 193 N. Miller Street and the new 195/197 N. Miller Street property line.

The Assistant Corporation Counsel said the Owner's original application was to obtain a variance for 197 N. Miller Street and not combine the 195/197 lots. The Informational Report dated December 15, 2017 reflected that original intent. However, the building at 197 N. Miller Street is a zero lot-line building on the 195/197 side and the Owner's proposed work would have encroached on the property at 195 N. Miller Street, which is currently a non-conforming vacant parcel. He said the Applicant's proposal was not allowed by Code. As an alternative, City staff discussed with the Applicant the possibility of combining the lots at 195 N. Miller Street and 197 N. Miller Street. The Applicant elected to move forward with that option. He said the Informational Report dated February 8, 2018 was revised based on the assumption that the lots at 195 N. Miller St. and 197 N. Miller St. will be combined. Once combined, the Applicant could retain the option of submitting a lot line change application for the 193 N. Miller and new 195/197 N. Miller parcels.

The Assistant Corporation Counsel clarified that the Owner could construct a garage or accessory building at the new 195/197 N. Miller Street lot, but he will not be able to build a separate residential structure on the new combined lot.

The Owner confirmed the Assistant Corporation Counsel's description of events and stated his intention to proceed with the plan as outlined.

The Chairperson opened the Public hearing.

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

Mr. DuBois moved to close the public hearing.

Mr. Schwartz seconded the motion.

The motion carried unanimously.

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

Mr. Schwartz seconded the motion.

The motion carried unanimously.

Mr. Allen moved to approve the Area Variance requested.

Mr. Papaleo seconded the motion.

The motion was carried 6-0 via roll call vote.

Approval of Minutes

Mr. Schwartz moved to approve the January 23, 2018 minutes.

Mr. Allen seconded the motion.

The motion carried unanimously.

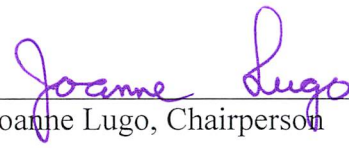
Meeting adjourned at 8:30 p.m.

Respectfully Submitted:

Approved:



Omar E. Balbuena-Palma, Secretary



Joanne Lugo, Chairperson