

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 27, 2019 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
Corey Allen
Julie Lindell
Dianne Dixon
Melvin Hales (alternate-voting)

Members Absent: Joanne Lugo
Michael Papaleo
Ben Brandt

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

Approval of Minutes

Mr. Allen moved to approve the July 2019 minutes.
Ms. Dixon seconded the motion.
The motion passed unanimously.

NEW BUSINESS

Appeal No. 2019-19

Applicant: Jose L. Ramos
Owner: Jose L. Ramos
Location: 357 Ann Street

Requesting an **AREA Variance** for 2.5 feet on the West side yard setback, 2.5 feet on the East side yard setback and 18 feet on the rear yard setback, which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone with a Commercial District Overlay.

Jose Ramos, property owner, appeared with his attorney, Ronald Tomlins, before the Board.

Mr. Tomlins gave an overview of the project. He highlighted the following:

- Property owner previously appeared before the Board in June 2018;
- Over one (1) year has passed since the original application was submitted/denied;
- Property owner is in court proceedings and re-submitted an application for consideration by the Board;
- The following information was not presented to the Board in 2018;
 - Above ground pool already existed when the property owner purchased the building in 2016;
 - Property owner assumed installation of an in-ground pool was allowed;
 - Violation was issued during the final days of construction for the in-ground pool;
 - Property owner would incur hardship if the Board requires removal/modification of the in-ground pool;
 - Neighbors support the application;
 - Granting the variance will not cause a significant detriment to the health, safety and welfare of the neighborhood/community;
- Property owner made an error on proceeding without obtaining a Building Permit and he will settle violations in court.

Mr. Hales said he was not present when the Board denied the variance the first time. He said he does not personally see an issue with the pool but the Board should respect the existing determination unless the application is substantially different.

Ms. Smith said the Owner requested a variance from the Board in 2018. She said at that time, the Board asked the Owner if he considered modifying the pool to meet the setback requirements. She said the Owner refused to modify the plan and elected to move forward with a vote.

Mr. Tomlins said an in-ground pool is not easily removed. He said the Owner performed all of the work himself and he would incur a significant financial hardship if he has to modify/remove the pool. He said the in-ground pool does not significantly change the character of the neighborhood and it is an improvement over the above ground pool. He said an above ground pool causes a lot of noise and is very visible to the neighbors. He said the Owner is willing to install a taller vinyl fence to keep the noise level down.

The Owner said he obtained and submitted a survey to the Board. He displayed the exact location of the in-ground pool on the survey and said the pool location matches the above ground pool location.

Ms. Smith asked if the pool construction has been completed.

The Owner said the pool was in the final stages of completion when the stop work order was first issued in 2018.

Mr. Hales said the Board was not made aware of this information at that time.

Ms. Lindell said a pre-existing pool is a significant change.

The Owner said he is a construction worker and he knows he did not go through the proper permit process but he genuinely believed there would be no issue for the pool because of the existence of the above ground pool on the property. He said he just did not have sufficient time to go through the process the right way.

Mr. Allen said the owner should have known better.

Ms. Smith said the pool is now complete and the Owner is requesting approval for the installed pool.

Mr. Tomlins said it would cost approximately \$45,000 to re-adjust/remove the pool.

Ms. Dixon said the ZBA made its determination and considered the benefit to the Applicant if the variances were granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such variance.

The Assistant Corporation Counsel said there was no one present in favor or against the application at the last public hearing.

Ms. Lindell said the Board requested reducing the pool size to comply with some of the setbacks. She said seeing pictures of the actual pool adds an additional perspective. She said the Owner's effort on the pool shows.

Mr. Allen said the Owner is a construction worker and needs to adhere to the process the City established. He said approving the application will set a bad precedent for future applications.

Ms. Lindell said the process was very different six (6) years ago.

The Assistant Corporation Counsel cautioned the Board that enforcement of the existing City Code is not under purview of the Board. He said the Building Department and the Corporation Counsel are charged with enforcing the existing regulations. The City Court will issue fines as required.

Mr. Allen said it is difficult to disregard the violations.

Ms. Dixon said the Board should consider only the relevant factors on the application.

Ms. Lindell said the Board should also look at the circumstances surrounding the Applicant.

Ms. Smith said the fact of the matter is that the Owner did something inappropriate and consequently, he was sent to City Court to deal with the ramifications. She said the Board should vote on the application and let the City Court enforce the City Code.

Mr. Tomlins said the Owner will face the consequences of his actions in City Court. He said the Owner realizes the error he committed and will probably have to pay a fine. He said the Owner purchased the building with the above ground pool already installed and he had no reason to think

an in-ground pool was illegal. He said the neighbors are present at the meeting and they will comment on the application and the impact it has on the neighborhood.

Ms. Smith asked if the Owner is utilizing the pool.

The Owner said that he is utilizing the pool because it is difficult to tell his children not to use the pool.

The Acting Chairperson opened the public hearing.

Lisbeth Almonte, 355 Ann Street, spoke in favor of the application.

Mary Meja, 355 Ann Street, spoke in favor of the application.

Luz Villada, 357 Ann Street, spoke in favor of the application.

Carlos Barra, 355 Ann Street, spoke in favor of the application.

There was no one present to speak against the application.

The Acting Chairperson closed the public hearing.

The Assistant Corporation Counsel said the action is considered a Type II action under SEQRA and the Board should vote to determine if the reapplication meets the criteria found in §300-14 of the City Code prior to any vote on the application.

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

Mr. Allen seconded the motion.

The motion passed unanimously.

Ms. Dixon moved to determine that the new application is substantially different from the original application.

Ms. Lindell seconded the motion.

The motion passed unanimously via roll-call vote.

Ms. Dixon moved to approve the Area Variance as requested

Ms. Lindell seconded the motion.

The motion passed unanimously via roll call vote.

Appeal No. 2019-20

Applicant: Irline Antoine
Owner: Irline Belizaire Antoine & Joel Antoine
Location: 90 Lander Street

Requesting an **AREA Variance** for 4 feet on the front yard setback, 5 feet on the side yard setback 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.

Irline Antoine, property owner, appeared before the Board.

The Owner said the intent is to convert the use of the building into a two-family dwelling. She said the footprint of the building will not change and all of the work will be on the interior of the building.

Ms. Smith said she would like to see a floor plan of the building.

Ms. Lindell said the Building Department will ensure the floor plan is adequate for the use and is not required for approval.

The Assistant Corporation Counsel said the Board is entitled to request documents from the Applicant but a floor plan is not a requirement for approval.

Mr. Allen confirmed the building was vacant for approximately six (6) years.

The Owner said she is appearing before the Board to address violations on the property.

Ms. Smith asked if she intends to restore and sell the building.

The Owner said she invested heavily into the building and the intent is to rent it. She said the added income will help her family and son.

Mr. Allen said restoring a building to help her family financially is good for her son and the community.

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

Ms. Dixon seconded the motion.

The motion passed unanimously.

Ms. Dixon moved to approve the Area Variance as requested
Ms. Lindell seconded the motion.
The motion passed 4-1 via roll call vote (Ms. Smith voted against the application).

PERMIT EXTENSION REQUESTS

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.

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.

Appeal No. 2018-26

Applicant: Rural Ulster Preservation Company
Owner: Newburgh Community Land Bank, Inc.
Location: 193 First Street

Requesting an **AREA Variance** for 5 feet on the front yard setback, 5 feet and 3.5 feet on the side yard setbacks, 33.9% on lot coverage and 5 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: Rural Ulster Preservation Company
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: Rural Ulster Preservation Company
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.

Appeal No. 2018-32

Applicant: Rural Ulster Preservation Company
Owner: Newburgh Community Land Bank, Inc.
Location: 35 Dubois Street

Requesting an **AREA Variance** for 10 feet on the front yard setback, 5 feet and 2 feet on the side yard setback, 11% on lot coverage and 6 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. 2018-33

Applicant: Rural Ulster Preservation Company
Owner: Newburgh Community Land Bank, Inc.
Location: 98 Lander Street

Requesting an **AREA Variance** for 3.5 feet on the front yard setback and 30% on lot coverage which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Appeal No. 2018-34

Applicant: Rural Ulster Preservation Company
Owner: Newburgh Community Land Bank, Inc.
Location: 215 First Street

Requesting an **AREA Variance** for 872 feet on lot area, 47 feet on lot depth, 10 feet on the front yard setback, 13 feet on the rear yard setback, 15% on lot coverage and 6 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. 2018-35

Applicant: Rural Ulster Preservation Company
Owner: Newburgh Community Land Bank, Inc.
Location: 33 Lander Street

Requesting an **AREA Variance** for 10 feet on the front yard setback, 1.5 feet on the side yard setback and 6 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. 2018-36

Applicant: Rural Ulster Preservation Company
Owner: Newburgh Community Land Bank, Inc.
Location: 44 S. Miller Street

Requesting an **AREA Variance** for 1,395 feet on lot area, 2.9 feet on lot width, 45 feet on lot depth, 10 feet on the front yard setback, 5 feet on the side yard setbacks, 38% on lot coverage 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.

The Assistant Corporation Counsel said appeal numbers 2018-16 through 2018-36 are part of the RUPCO/Land Bank, Phase II project. He said the applications received approval from the ZBA in 2018. The Applicant recently requested an extension on those approvals. He said the project secured funding through the New York State Agency Homes and Community Renewal and the Applicant is planning on a construction start date in the first quarter of 2020. He said it is up to the Board to vote and determine whether or not to grant the extension and for how long.

Ms. Dixon moved to extend the approval for appeal numbers 2018-16 through 2018-36 for one (1) year.

Ms. Lindell seconded the motion.

The motion passed unanimously via roll call vote.

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

Respectfully Submitted:

Approved:

Omar E. Balbuena-Palma, Secretary

Barbara Smith, Acting Chairperson