

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 24, 2019 at 7:00 p.m. at the City of Newburgh Activity Center, 401 Washington Street, Newburgh, New York 12550.

Members Present: Joanne Lugo, Chairperson (arrived at 7:24 p.m.)
Barbara Smith
Corey Allen (left at 7:33 p.m.)
Ben Brandt
Dianne Dixon
Melvin Hales

Members Absent: Michael Papaleo
Julie Lindell

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

Approval of Minutes

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

NEW BUSINESS

Appeal No. 2019-21

Applicant: AMP Architecture
Owner: St. Marks Holy Tabernacle Inc.
Location: 313 Fullerton Avenue

Requesting an **AREA Variance** for 8.6 feet and 8.4 feet on the side yard setbacks, which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Commercial Zone.

Anthony Portillo, Project Architect, and Robert Ferrer, Pastor, appeared before the Board on behalf of the property owner.

The Project Architect submitted a revised site plan for consideration (which was made part of the record). He gave an overview of the application and highlighted the following:

- Converting the existing building into a church with a maximum occupancy of 50 people;

- No proposed expansion of the building footprint;
- Project requires Site Plan approval from the Planning Board;
- Revised site plan provides eight (8) off-street parking spaces;
- Requesting an area variance for two (2) off-street parking spaces in addition to the setbacks;
- Basement area will be used for storage.

The Pastor said part of the basement will be used as a common area for small congregations but the main use of the building will be on Sunday and sometimes Fridays.

The Project Architect said per the Informational Report dated August 12, 2019, the Commercial Zone requires one (1) parking space for every five (5) seats within the House of worship. He said they are proposing 50 seats and require 10 off-street parking spaces. He said they originally proposed more than eight (8) off-street parking spaces but at the Planning Board meeting on September 17, 2019, they were advised to revise the off-street parking layout. He said they have addressed the comments received at the Planning Board meeting and they are requesting approval for the setbacks and two (2) off-street parking spaces.

The Assistant Corporation Counsel confirmed the Applicant's Site Plan application is currently under review by the Planning Board. He said at the September 17, 2019 Planning Board meeting, the City Engineer determined that the site plan did not provide adequate space for vehicles to navigate in/around the parking lot. The Applicant was informed of the option to reconfigure the site plan or reduce the number of proposed parking spaces and request a parking variance. He said the Applicant submitted a revised site plan this evening. He said the Zoning Enforcement Officer ("ZEO") must issue a revised Informational Report that includes the off-street parking determination prior to a ZBA approval with respect to the parking variance.

Ms. Smith said the Informational Report will confirm the required number of off-street parking spaces for the project.

The Project Architect said the building footprint is not changing and there are no other changes to the site plan other than a reconfiguration of the parking layout. He said the previous Informational Report required 10 off-street parking spaces for the use of the building.

The Assistant Corporation Counsel clarified that before any vote can be made, the ZEO must revise the Informational Report and determine if the revised number of proposed parking spaces meet the bulk table parking requirements.

Mr. Brandt asked if the Board is able to vote on the side yard setbacks since there will be no change to the footprint of the building.

The Project Architect said that the project will most likely require 10 off-street parking spaces and they are providing eight (8) parking spaces. He asked if the Board may issue a conditional approval instead.

The Assistant Corporation Counsel said a vote on the setbacks is up to the collective determination of the Board. He said the Board could not vote on granting a parking variance until a parking determination is made by the ZEO.

Ms. Dixon said the Applicant must return for a parking variance. She confirmed the number of parking spaces are determined by the occupancy of the building. She asked if the Applicant has taken into consideration the growth of the church and accounted for additional parking spaces.

The Project Architect said they must return for a change of use if they propose additional seats, which would in turn require additional parking spaces. He said the church is limited to that area and the maximum number of seats being proposed is 50.

Ms. Smith asked when the Applicant left the Bronx and began to utilize the space at 313 Fullerton Avenue.

The Applicant said he has used the building since March.

The Project Architect said he was under the impression that the building was already a church and did not require a change of use because the Applicant informed him that he was already using it the property as a church. He said there is a sign outside the building for a church, and he just assumed all that was required was a building permit. He said he was unaware that Planning Board approval was still required in addition to a parking variance. He said the Applicant has been using the building for a while.

Ms. Smith said Facebook posts online show the building actively being used since at least January 2019.

The Project Architect said the Applicant was misinformed when he purchased the property and he overlooked the use of the building.

Ms. Smith asked what is being constructed now.

The Applicant said he is using a small space inside the building for church services and he also has a full pantry for food distribution. He clarified nothing is being cooked onsite. He said youth gatherings are also done on site. He said only minor things are being done.

(The Chairperson arrived to the meeting at 7:24 p.m.)

The Assistant Corporation Counsel said the Applicant may not operate until site plan approval and the applicable area variances are obtained.

Mr. Brandt asked if the Planning Board waived the public hearing requirements for site plan approval.

The Assistant Corporation Counsel confirmed the Planning Board waived the public hearing for the site plan application.

The Chairperson said she is not comfortable voting on the application without a determination on the parking by the ZEO. She said there is a one (1) week delay in between the Planning Board meeting and the ZBA meeting and the delay would not cause a significant impact to the Applicant since he is not allowed to operate anyway.

(Mr. Allen left the meeting at 7:33 p.m.)

Mr. Hales confirmed there are commercial properties around the building at 313 Fullerton Avenue and some residential buildings down the road.

The Project Architect said he does not understand why the Board does not vote on the parking variance. He said the building layout is not changing.

The Assistant Corporation Counsel said the application needs a revised Informational with a parking determination from the ZEO. He said that without a determination, there is nothing to appeal.

The Project Architect asked what information is needed to revise the Informational Report.

The Secretary said the Applicant must provide the ZEO with a revised site plan for the parking area and specify the specific uses and square footage of each floor. He suggested attendance at the next Planning Board workshop on October 1, 2019 to review any other technical details of the site plan.

The Project Architect said he can forward that information via e-mail but cannot attend the workshop meeting.

The Pastor confirmed he would attend the workshop. He asked if he was able to obtain a conditional approval because he is not changing anything. He said it is the same building and the change is inside.

The Assistant Corporation Counsel said this is not allowed under the City Code.

The Pastor asked why wasn't he made aware at the Planning Board workshop that the Planning Board would require a lighting plan and revised parking area.

The Assistant Corporation Counsel said City staff cannot foresee comments by the members of the Planning Board. He said it is up to the Applicant to review the Code, be familiar with its requirements, and make a thorough presentation to a land use board that anticipates and addresses all possible issues with respect to the application.

The Pastor asked if he can obtain approval to begin interior work.

The Assistant Corporation Counsel said the Applicant should speak to the Building Department for that answer.

The Chairperson opened the public hearing.

There was no one present for or against the application.

The application was tabled and the Applicant was informed to submit revised details to the Building Inspector for a revised Informational Report. The public hearing was kept opened until the following ZBA meeting on October 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