

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 February 26, 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
Barbara Smith
Michael Papaleo
Ben Brandt
Julie Lindell
Dianne Dixon (alternate, voting)
Melvin Hales, arrived at 7:06 p.m. (alternate, voting)

Members Absent: Corey Allen

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

New Business

Appeal No. 2019-01

Applicant: Juwel Isaac
Owner: J. Isaac & Associates, LLC
Location: 43 Beacon Street

Application requesting an **AREA Variance** for 5 feet on the front yard setback and 2 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low Density Residential Zone.

Chris Berg, Project Architect from Berg Moss Architects, on behalf of the Property Owner, along with Junior Thomas.

The Project Architect said the intent is to convert the use of the building from a 2-family dwelling into a 3-family dwelling. He said a 3-family dwelling is allowed by right, subject to Site Plan approval by the Planning Board in the zone. He said there are no proposed expansions to the building’s footprint. The request is for area variances for the front yard setback and two (2) off-street parking spaces. He said the remnants of the garage on the property will be removed and they are not proposing to rebuild the garage. He said the garage area will be used for two (2) additional parking spaces. He said there are a total of four (4) off-street parking spaces available on the property. The applicant requests a variance for the remaining two (2) spaces.

Melvin Hales arrived to the meeting at 7:06 p.m.

The Assistant Corporation Counsel confirmed that the Applicant was before the Planning Board on February 19, 2019. He said the Planning Board declared the action a Type II action under the State Environmental Quality Review Act (“SEQRA”) and received approval conditioned on obtaining the appropriate area variances from the ZBA. He said the property is located within the Local Waterfront Revitalization Program (“LWRP”). The Conservation Advisory Council (“CAC”) issued a comment letter for consideration. He said the ZBA may choose to declare the action a Type II action and vote on the application.

Mr. Papaleo confirmed that Mr. Thomas intends to live at 43 Beacon Street.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Mr. Papaleo moved to close the public hearing.

Ms. Lindell seconded the motion.

The motion passed unanimously.

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

Ms. Lindell seconded the motion.

The motion passed unanimously.

Mr. Papaleo moved to approve the Area Variance as requested

Ms. Dixon seconded the motion.

The motion passed unanimously via roll call vote.

Appeal No. 2019-03

Applicant: Jonathan Cella

Owner: Amiris Diaz

Location: 49 Carpenter Avenue

Application requesting an **AREA Variance** for 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.

The Applicant was not present upon first call of the application.

Appeal No. 2019-04

Applicant: Owen Thomas
Owner: VIP Partners LLC
Location: 46 William Street

Application requesting an **AREA Variance** for 7 off-street parking spaces, which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Commercial District Zone.

Owen Thomas, Applicant, appeared before the Board with his wife, Suzan Mckenzie.

Ms. Mckenzie said the intent is to open a Jamaican restaurant and said there are no proposed changes to the exterior of the building or the building footprint. She submitted a poster board with various pictures (which was made part of the record) for consideration by the Board. She said the pictures highlight the availability of parking on William Street and Clark Street throughout various dates and times of the week. She said unfortunately the time stamps were omitted by accident.

Ms. Lugo confirmed the intent is to create a carry-out restaurant with a small seating area.

Mr. Papaleo asked if the Property Owner will work in the restaurant and if it was adjacent to an automobile service and repair business in the same building.

Ms. Mckenzie confirmed that she will work in the restaurant and that the automobile service and repair business is no longer at 46 William Street.

The Assistant Corporation Counsel said 46 William Street is a large building shaped like an “L” with sufficient room to house multiple businesses. He said the Applicant for the automobile service and repair business appeared before the ZBA on September 26, 2017 and was approved for variances relating to lot coverage/setbacks and two (2) off street parking spaces. He said the Informational Report incorrectly identifies the Property Owner as Jaber Nidal and the Board should be aware that the new owner is VIP Partners LLC. He said this mistake is procedural and not substantive for the application. He said the action is a Type II action under SEQRA and the Board may proceed with a vote on the application.

The Chairperson opened the public hearing.

Alvin Moonesar, 44 Johnson Street, said he is the managing member of VIP Partners LLC. He said he is in favor of the application. He said 46 William Street is one of several properties that he owns in the area and goal is to reinvigorate the William Street.

There was no one else present against the application.

Ms. Lindell moved to close the public hearing.
Ms. Dixon seconded the motion.
The motion passed unanimously.

Ms. Dixon moved to declare the application a Type II action under SEQRA.
Mr. Papaleo 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 unanimously via roll call vote.

Appeal No. 2019-05

Applicant: Nemias Magana
Owner: JSN Property Management
Location: 82 Bridge Street

Application requesting an **AREA Variance** for 1.3 and 2.2 feet on the side yard setbacks, which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Commercial District Zone.

The Applicant was not present upon first call of the application.

Appeal No. 2019-06

Applicant: VIP Partners LLC
Owner: VIP Partners LLC
Location: 77 William Street

Application requesting an **AREA Variance** for 13 off-street parking spaces, which does not meet the requirements of the Schedule of Use and Bulk Regulations in the Commercial District Zone.

Alvin Moonesar, Applicant, appeared before the Board on behalf of the Property Owner.

The Applicant said 77 William Street is part of a larger project at 69-79 William Street. He said the intent is redevelop three (3) lots into a mixed-use redevelopment. He gave a brief overview of the project and highlighted the following:

- 69 William Street has an existing three-story building with a connecting one-story building;
- 77 William Street has an existing one-story building shaped like an “L” with an empty lot area in the front;
- 79 William Street has an existing three-story building in the front and an empty lot area in the rear;
- Project will require approval from the Planning Board for Site Plan and the ARC for any exterior work.

He summarized the intent for each of the buildings:

- 69 William Street
 - Add a second story to the existing one-story building at the rear of the lot for a total of four (4) residential units and two commercial unit (Mixed-use with Residential);
- 77 William Street
 - Add a second story to the existing “L” building for a total of six (6) commercial units (Shopping Center);
- 79 William Street
 - Construct a one-story building on the empty lot area to create residential units

The Applicant submitted three (3) poster boards with pictures of parking at various dates and times during the week (which were made part of the record) for consideration by the Board. He said the pictures highlight the parking availability on the street within 500 feet of 77 William Street. He said parking is not a big issue considering that he has seven (7) parking spaces available on-site and sufficient off-street parking spaces are available nearby.

Mr. Hales asked for the size of the building.

The Applicant said the building is approximately 4,500 sq. ft. and the intent is to create a shopping center. He said the building will be renovated and a second story will be added.

Ms. Smith and Ms. Lindell asked for the proposed types of commercial business at 77 William Street.

The Applicant said they are proposing retail spaces and maybe a grocery store but the determining factor will be the community need. He said the building will have a community space and his offices will be located on the second floor.

Mr. Brandt asked if a supermarket is being proposed.

The Applicant said a supermarket is not being proposed.

Mr. Hales said the available on-site parking may not be enough to support the uses of the building.

Ms. Lindell said the Applicant should be aware that people tend to double park and it may cause traffic jams at 77 William Street.

The Applicant said he has seven (7) parking spaces on site and sufficient parking available in the area. He said parking should not be an issue.

The Assistant Corporation Counsel said the Applicant has a pending Site Plan application before the Planning Board. He said SEQRA requires the City of Newburgh Land Use Boards to consider the environmental impacts of an entire project/proposal and not just an individual portion of the project that might be before a particular land use board. He said although 69 and 79 William Street are not before the ZBA, the ZBA must consider the environmental impacts of the entire project.

He said that even considering the entire project, and due to current changes in SEQRA, the project would be considered a Type II action.

Ms. Smith asked what is the William Street Revitalization Project.

The Applicant said William Street used to be recognized as the shopping district to visit within the City of Newburgh. He said renovating 77 William Street will help jump start the effort to bring that hub back. He said he was developing a plan to revitalize Newburgh approximately 12 years ago and since then he has purchased several properties in William Street that will be renovated.

The Chairperson opened the public hearing.

William Bollinger, 60 Appletree Road, Esopus, said he owns a property on William Street and Hasbrouck and he is in favor of the Applicant. He said it is a great idea and he supports it.

There was no one else present or against the application.

Mr. Papaleo moved to close the public hearing.

Ms. Dixon seconded the motion.

The motion passed unanimously.

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

Ms. Dixon seconded the motion.

The motion passed unanimously.

Mr. Papaleo moved to approve the Area Variance as requested

Ms. Dixon seconded the motion.

The motion passed unanimously via roll call vote.

Appeal No. 2019-03

Applicant: Jonathan Cella

Owner: Amiris Diaz

Location: 49 Carpenter Avenue

Application requesting an **AREA Variance** for 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.

Jonathan Cella, Applicant, and the Property Owner, Amiris Diaz, appeared before the Board.

The Applicant gave a brief history of the project. She said the Property Owner converted the building from a 3-family dwelling into a 4-family dwelling with Site Plan approval a few years ago. He said the Planning Board granted a Special Off-Street Parking Permit at the time. Now, the Property Owner is requesting an area variance for one (1) off-street parking space from the ZBA.

The Assistant Corporation Counsel clarified that the Applicant's original intent was to convert the basement at 49 Carpenter Avenue into an apartment; thereby making the building a 4-family dwelling. He said a 4-family dwelling is allowed by right per § 300-31 of the City Code. He said the change of use triggered compliance with the Schedule of Bulk, Area & Parking Regulations for the Medium Density Residential zone. He said four (4) off-street parking spaces are required per § 300-32 of the City Code. He said the Property does not have any parking spaces on-site and the Applicant had the option to obtain a Special Off-Street Parking Permit from the Planning Board or an area variance from the ZBA. He said the Applicant chose to apply for the Special Off-Street Parking Permit from the Planning Board at the time of the original application. He said the Planning Board approved a Site Plan in connection with the Special Off-Street Parking Permit on February 21, 2017 and an extension to the Special Off-Street Parking Permit on February 20, 2018.

Ms. Smith asked why the Applicant is requesting approval by the ZBA if the Planning Board approved the Site Plan and Special Off-Street Parking Permit.

The Assistant Corporation Counsel said the Special Off-Street Parking Permit must be periodically renewed, whereas a variance for the parking is permanent.

Mr. Papaleo confirmed the Applicant is requesting the area variance to make the effect of the Special Off-Street Parking Permit permanent.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Mr. Papaleo moved to close the public hearing.

Ms. Lindell seconded the motion.

The motion passed unanimously.

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 Area Variance as requested

Ms. Dixon seconded the motion.

The motion passed unanimously via roll call vote.

Appeal No. 2019-05

Applicant: Nemias Magana
Owner: JSN Property Management
Location: 82 Bridge Street

Application requesting an **AREA Variance** for 1.3 and 2.2 feet on the side yard setbacks, which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Commercial District Zone.

Nemias Magana, Applicant, and Magda Arauz, Mr. Magana's translator, appeared before the Board.

The Applicant said the intent is to re-acquire a Special Use Permit for a taxi dispatch service.

[In Spanish] Ms. Lugo asked for the use of the vacant space at 82 Bridge Street.

[In Spanish] The Applicant said the vacant space used to be a taxi radio base. He said the office space is finished but when he tried to renew the Special Use Permit, his request was denied due to violations. He said he is now applying for the same Special Use Permit and the application requires approval by the ZBA.

[In Spanish] Ms. Lugo asked if the violations were related to the taxis parked outside the building.

[In Spanish] The Applicant said yes.

Ms. Lugo summarized the conversation above to the Board. He said the Applicant is applying for a new Special Use Permit at 82 Bridge Street and as part of the approval process, an area variance for the setback of the building is required.

Ms. Dixon asked what the Special Use Permit allowed.

The Assistant Corporation Counsel gave a brief summary of the Special Use Permit for 82 Bridge Street. He said there were two (2) Special Use Permits in effect at 82 Bridge Street at the August 21, 2018 Planning Board meeting – one for a taxi radio base and one for automotive sales/repair. The motion to extend the Special Use Permit to establish a radio base office for taxi service did not have enough votes for renewal and thus expired. He said the Planning Board used the opportunity at the time to give notice to the Applicant that the Planning Board, based on the violations and other information submitted relative to the property, intended to revoke the second Special Use Permit for automotive sales/repair, which was originally set to expire on October 15, 2019. He said the Applicant addressed some of the Planning Board's concerns at the September 18, 2018 meeting and the Planning Board tabled the hearing for further compliance and a continuation of the revocation hearing at the December 18, 2018 Board meeting. He said prior to the December Planning Board meeting, the Applicant submitted a new Special Use Permit application for a taxi radio base to the Planning Board. He said at the December 18, 2018 Planning Board meeting, the Planning Board amended the terms of the Special Use Permit for automotive

sales/repair for one (1) month and scheduled a public hearing for January 15, 2019 for the taxi radio base. He said at the Planning Board meeting on January 15, 2019 the Planning Board felt satisfied with the Applicant's compliance to the amended conditions of the Special Use Permit for automotive sales/repair and concluded the revocation hearing. He said the Planning Board informed the Applicant to address their concerns for the taxi radio base and return to the March 19, 2019 Planning Board meeting. He said the Applicant is not proposing any site work and is before the ZBA because the existing building does not conform to the area requirements of the zone per § 300-32 of the City Code. He said the CAC submitted a letter for consideration. The action is considered a Type II action under SEQRA. He said the Board may ask additional questions or vote on the application.

Ms. Smith confirmed the Applicant is requesting approval for the side yard setbacks of the existing building on the lot and nothing else.

Mr. Papaleo clarified that the Applicant needs the area variance in connection to the approval by the Planning Board. He confirmed the owner of Express Taxi is Mr. Magana.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Ms. Dixon moved to close the public hearing.

Ms. Lindell seconded the motion.

The motion passed unanimously.

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

Ms. Lindell seconded the motion.

The motion passed unanimously.

Ms. Smith moved to approve the Area Variance as requested

Ms. Dixon seconded the motion.

The motion passed 6-1 via roll call vote, with the voting results as follows:

Joanne Lugo, Chairperson	Voting for granting the variance
Ben Brandt, Member	Voting for granting the variance
Dianne Dixon, Alternate	Voting for granting the variance
Melvin Hale, Alternate	Voting for granting the variance
Julie Lindell, Member	Voting for granting the variance
Michael Papaleo, Member	Voting against granting the variance
Barbara Smith, Member	Voting for granting the variance

Approval of Minutes

Ms. Dixon moved to approve the January minutes.

Ms. Lugo seconded the motion.

The motion passed unanimously.

With no further business to discuss, the meeting was adjourned at 7:52 p.m.

Respectfully Submitted:

Approved:

Omar E. Balbuena-Palma, Secretary

Joanne Lugo, Chairperson