

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 April 23, 2019 at 7:00 p.m. at the City of Newburgh Activity Center, 401 Washington Street, Newburgh, New York 12550.

Members Present: Michael Papaleo, Acting Chairperson
Barbara Smith
Corey Allen
Julie Lindell
Dianne Dixon
Melvin Hales (alternate, voting)

Members Absent: Joanne Lugo
Ben Brandt

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

Approval of Minutes

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

New Business

Appeal No. 2019-08

Applicant: Paul Henderson
Owner: Catherine Hunsburger
Location: 133 Third Street

Requesting an **AREA Variance** for 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.

Beth Sigler from Sigler Henderson Studio appeared before the Board on behalf of the property owner.

Ms. Sigler said her partner, Paul Henderson, was not able to attend the meeting. She gave a brief overview of the project and highlighted the following:

- Create a two-family dwelling in a preexisting building;
- No change to the building footprint;
- Requesting area variance for five (5) feet on the side yard setback and two (2) off-street parking spaces;
- Use is allowed and consistent within the Medium Density Residential zone.

Ms. Smith said the Orange County Records show Keith and Diane Hills as the property owners. She asked if the new owner purchased or is under contract to purchase the property.

The Assistant Corporation Counsel clarified the sale of the property was January 11, 2019 with a deed being recorded on January 23, 2019 in the Orange County Clerk's Office. He said the Orange County Real Property records have not been updated to reflect the new property owner.

Mr. Papaleo confirmed the property has been historically used as a one-family dwelling.

Ms. Sigler clarified that the first unit of the building will be the entire ground/first floor and the second unit will be a duplex apartment consisting of the second and third floor.

Ms. Dixon said there seems to be available space on the left side of the building for an additional parking space. She asked why the requested variance is for two (2) parking spaces and not one (1).

Ms. Sigler said their measurements allowed for two (2) parking spaces on the property but she said she was directed to obtain an area variance for two (2) parking spaces.

Ms. Lindell asked if it would be advantages to have a one-family dwelling with an accessory apartment in the same building.

The Assistant Corporation Counsel said the City Code defines an accessory apartment as a secondary building/structure which supports the use of the primary structure. He said it is not intended to be an additional apartment space within an existing building.

Ms. Smith said the proposed two-family dwelling within the pre-existing building requires one (1) parking space per dwelling unit. She said there are two (2) residential units proposed and the application requires (2) parking spaces. She said the Applicant represented the ability to provide (1) parking space and asked if the request for two (2) parking spaces is to address if/when the occupancy of the building increases.

The Board discussed the applicable parking requirements in the zone.

The Assistant Corporation Counsel said new construction in the zone requires two (2) parking spaces per dwelling while pre-existing buildings require one (1) parking space per dwelling unit. He said even though the property may be able to accommodate one (1) parking space, the Building Inspector determined that the project requires a variance for (2) parking spaces.

Mr. Allen asked why the parking study does not show parking availability on Thursday or Friday.

Ms. Sigler said the individual conducting the study was able to do it consecutively on Monday through Wednesday but not on Thursday or Friday.

Ms. Lindell said the Applicant obviously wants the application to be approved and asked if there was a conflict of interest with the parking study submitted by the Applicant.

The Assistant Corporation Counsel said there is no conflict of interest. The applicant is advocated for its position. The Board is free to evaluate the information, ask for more information, or commission its own study.

Mr. Papaleo confirmed the street in front of the building is a one-way street.

Ms. Smith said if a variance is given for two (2) off-street parking spaces, what would happen if a future owner wanted to build-out from the existing building and utilize one (1) of the parking spaces. She asked if the owner would be required to return to the ZBA.

The Assistant Corporation Counsel said it would depend on the nature and extent of the use, the proposed project, and the zoning code applicable at the time.

The public hearing was opened.

There was no one present for or against the application.

The public hearing was closed.

The Assistant Corporation Counsel said the action is considered a Type II action under SEQRA.

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

Ms. Dixon seconded the motion.

The motion passed unanimously.

Mr. Allen moved to approve the Area Variance as requested

Ms. Lindell seconded the motion.

The motion passed unanimously via roll call vote.

Appeal No. 2019-09

Applicant: Jonathan Cella

Owner: 34 Carter Realty Partners, LLC

Location: 34 Carter Street

Requesting an **AREA Variance** for 10% on lot coverage and 6 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Eulogio Santiago appeared before the Board on behalf of the property owner, along with Jonathan Cella, Project Engineer.

The Project Engineer gave a brief overview of the project and highlighted the following:

- Existing building is in disrepair and will be demolished;
- Proposing a new two-story, four-family residence (Apartment House);
- Apartment House is allowed pending Site Plan Approval from the Planning Board in the Medium Density Residential zone;
- Proposing driveway for three (3) off street parking spaces on the rear of the property;
- Requires variance for: six (6) off-street parking spaces and 10% on lot coverage;

Ms. Lindell asked what changed occurred since the purchase of the property that prompted a demolition plan.

Mr. Santiago said an Informational Request, for a four-family residence, was submitted to the Building Department. He said the corresponding Informational Report by the Building Inspector showed that the use is allowed in the zone. He said as a result, the property was purchased from the City in order to move forward with the project. He said the only way to make the project financially viable is to enlarge the building.

Ms. Dixon confirmed the two-story building will contain four (4) duplex apartments.

Mr. Cella said the entrances to the building will be located on the side of the building with one (1) entrance facing the street. He said this will fit the character of the neighborhood better.

Ms. Smith clarified the building was already purchased from the City.

Mr. Papaleo confirmed the adjacent building to the west is a zero lot-line building and the structure on the rear of the property belongs to the neighbor on the east side.

Ms. Lindell asked how the Board should consider the decision by an Applicant who buys into a property and intends to convert the building for a use that has not been historically used.

The Assistant Corporation Counsel referred the Board to the State code with respect to area variances and §300-115(B)(2) of the City Code. He said the Board must consider all five (5) factors in making its determination. The consideration is a balancing test. He said even though the alleged difficulty may have been self-created, it does not necessarily preclude the granting of the variance. He said many of the area variances applications brought before the Board in the past have implicated the owner/self-created hardship issue because many owners bought vacant buildings and are looking to convert them into a more productive use.

Ms. Lindell clarified the owner is changing the footprint of the building and confirmed the existing use of the building is vacant and the previous use was a two-family dwelling.

Mr. Hales said it appears that the City may have lead the Applicant to believe that the Land Use Boards will approve the project.

The Assistant Corporation Counsel said there are no promises made to any Applicant from the City. He said the City Code and procedure drive the application process. He said any Applicant who purchases a building/property within the City of Newburgh will come up with a projected use through their own investigation/research. He said must then be evaluated by City staff to determine if the City Code allows the proposed use. He said this process begins with the submission of an Informational Request to the Building Department wherein the Applicant states the intended use of the property. He said the Building Inspector then writes an Informational Report that determines what approvals might be required in connection with the project. He said the Applicant is provided with the Informational Report and the applicant is free to evaluate his/her options from there.

Ms. Smith said the City Code does not appear to show new construction dwellings above one (1), two (2), or three (3) family dwellings in the Medium Density Residential zone. She said it is inconsistent with the allowable uses for pre-existing buildings. She asked if the property is not in a High Density zone, should that not automatically determine the decision.

The Assistant Corporation Counsel clarified that the City Code determines that anything greater than a three-family dwelling for new construction is characterized as an Apartment House.

Ms. Lindell asked why the zone is considered a Medium Density zone and not a High Density zone. She asked if the Board is tasked with maintaining that density.

The Assistant Corporation Counsel clarified the zone density/designation is not a consideration for the Board.

Ms. Smith asked why the Applicant has not appeared before the Planning Board.

The Assistant Corporation Counsel said the Applicant is not required to go before the Planning Board first. Any Zoning Board of Appeals or Planning Board approvals can happen on parallel paths in this case.

Ms. Lindell asked if the Board is allowed to approve a 10-family dwelling in the zone. She asked what the limit is for the zone.

The Assistant Corporation Counsel clarified that the Board is not approving the number of families allowed in a particular building. He said that is not a proper consideration of the Board. He said the Board must consider whether the applicant's proposal meets the criteria set forth in §300-115(B)(2).

The Project Engineer said the Medium Density Residential zone requires 1,800 sq. ft. per dwelling unit and the building they are proposing has a total square footage of 7,763. He said the proposed building does not meet the required lot coverage and off-street parking but the remainder of the area requirements are met. He reiterated that the use is allowed in the zone.

Ms. Lindell asked if proposed building may be reduced for additional parking spaces.

The Project Engineer said a reduction in the size of the building will not impact the parking requirement significantly because the difference would be one (1) less parking space that is requested.

Mr. Allen asked if the owner is intending to move to 34 Carter Street.

Mr. Santiago said he currently resides on Hasbrouck Street and is not intending to move.

The Project Engineer said they have a long driveway on the property but it is not eligible to be considered for legal parking spaces. He said they might have to redesign the driveway as part of the Planning Board process.

The public hearing was opened.

Marcelina Cortez, 31 & 35 Carter Street, was not in favor of the application. She said parking availability is a real concern to the neighborhood because it is a very congested area. She said there are many people from the hospital who also park in the area to avoid the garage-parking fee. She said several neighbors are in the audience who share her opinion.

Pedro A. Montes Denizard, 35 Carter Street, said he has an off-street parking availability plan to submit to the Board for consideration.

The Assistant Corporation Counsel said the public may not submit documents as evidence in connection with the application. He said the public hearing is for comment only about the project.

Ms. Lindell asked for a clarification because at a previous meeting the public submitted pictures of an active application.

The Assistant Corporation Counsel clarified that the pictures referred to were not showed to the Board. Those pictures were received at a ZBA meeting, but they were then forwarded to the Building Department for consideration.

Pedro A. Montes Denizard, 35 Carter Street, was not in favor of the application. He said parking along Carter Street is already congested. He said there are approximately 13 off-street parking spaces available on the north side of Carter Street with 20 off-street parking spaces on the south side. He said five (5) properties, with three-family dwellings, and four (4) properties, with two-family dwellings, utilize off-street parking spaces on Carter Street now and there isn't sufficient parking availability left in the neighborhood. He said the people who work/visit the hospital further burden the availability of off-street parking and it only worsens when the street sweeper passes. He said when winter arrives; it will create a real problem. He said the Applicant should add additional parking spaces on-site.

Jesus Mestizo, 21, 37 and 39 Carter Street, was not in favor of the application. He reiterated the comments made by Mr. Montes and Ms. Cortez. He said the use of the building should stay as a two-family dwelling to avoid disrupting the neighborhood.

Marina Tsesarskaya, 36 Carter Street, was not in favor of the application. She agreed with the comments made by the Mr. Montes, Ms. Cortez and Mr. Mestizo.

The public hearing was closed.

Ms. Dixon asked for a parking study.

Mr. Cella asked to table the application for further parking information.

Ms. Lindell said a revised plan with additional parking spaces would benefit the Applicant.

Mr. Santiago said the driveway is 10 feet wide and may hold additional parking spaces that are not considered as legal parking spaces.

Ms. Smith asked if the Applicant has considered scaling the project down.

Mr. Santiago said the cost to demolish the building is approximately \$100,000.00 without adding in the cost for new construction.

Ms. Lindell said she considers the application as a self-imposed hardship.

Mr. Santiago said the other option they have is to return the property back to the City.

Mr. Papaleo said he understands the intent of the project but a 10-foot driveway may cause a parking issue with the tenants later on.

Ms. Lindell said the Applicant should consider adding additional parking spaces to the property.

Ms. Dixon said the parking study should include what parking is really like in the area throughout different times of the day and week and near the hospital to give a sense of what the true parking availability is. She said the Board should consider the comprehensive study and hopefully be in a position to render a vote.

The application was tabled and the Applicant was informed to submit a parking study and a revised plan for consideration by the Board for the following meeting on May 28, 2019.

Appeal No. 2019-10

Applicant: Miguel Espinoza & Maria Caguana
Owner: Miguel Espinoza & Maria Caguana
Location: 451 Third Street

Requesting an **AREA Variance** for 6 feet on the side yard setback, 36% 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 Low Density Residential Zone.

The Secretary to the Land Use Boards said the Applicant did not meet the applicable public hearing requirements and the application is not eligible for a vote.

The Board tabled the application until the May 28, 2019 meeting.

Appeal No. 2019-11

Applicant: Cristhian D. Castro
Owner: Julia G. Castro
Location: 33 Carpenter Avenue

Requesting an **AREA Variance** for 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.

Cristhian D. Castro, Applicant, appeared on behalf of the property owner before the Board.

The Applicant said the property was purchased under the assumption that it was a legal three-family dwelling because it has three (3) apartments. He said the Certificate of Occupancy does not reflect the existing use and the intent is to legalize the building as a three-family dwelling. He said a variance for four (4) feet on the front yard setback is required per the Informational Report and there are no proposed changes to the building footprint. He said if the front porch setback is not considered, then the building meets the area requirements.

Ms. Dixon said the Informational Report is for a two-family dwelling and not a three-family dwelling.

The Assistant Corporation Counsel said the change in use from a two-family dwelling into a three-family dwelling does not change the density requirements but it does have an impact on the parking requirements. He said the Informational Report would need to be updated prior to a vote on the application.

The Applicant said the adjacent lot is under the same ownership and will be used for parking.

The Assistant Corporation Counsel said the Building Inspector needs to review the revised proposal and modify the Informational Report accordingly. He said the Board cannot make a

determination at this time because the appeal is made from the Informational Report. If the Information Report does not accurately reflect the applicant's proposal, then it must first be amended.

The Applicant said the Building Inspector agreed that a three-family dwelling would not be an issue with respect to parking.

The Assistant Corporation Counsel said the application should be tabled pending a revised Informational Report from the Building Inspector. He said the public hearing should remain open.

The application was tabled pending a revised Informational Report from the Building Inspector. The Applicant was advised to return to the following Board meeting on May 28, 2019.

Appeal No. 2019-12

Applicant: Timothy Peters
Owner: Penchant Capital LLC
Location: 21 Benkard Avenue

Requesting an **AREA Variance** for 10 feet on the front yard setback, 5 feet on the side yard setbacks 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.

The Secretary to the Land Use Boards said the Applicant did not meet the applicable public hearing requirements and the application is not eligible for a vote.

The Board tabled the application until the May 28, 2019 meeting.

Appeal No. 2019-13

Applicant: Benedetto Papaleo
Owner: Benedetto Papaleo
Location: 28-30 Carpenter Avenue

Michael Papaleo recused himself from appeal number 2019-13 citing a personal relationship to the Applicant.

Requesting an **AREA Variance** for 15 feet on the front yard setback, 10 feet on the side yard setback, 13 feet on the rear yard setback, 38% 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.

Benedetto Papaleo, property owner, appeared before the Board.

The Owner said he intends to change the use of the building to Cottage Industry. He said the use is allowed in the zone and there are no proposed residential dwellings.

Ms. Lindell confirmed the entire property suffered severe fire damage.

The Owner said the only the bricks and concrete structure remained after the fire.

The Assistant Corporation Counsel said the proposed use covers a wide range of light industry uses and clarified that it was not designed to cover heavy industrial uses.

Ms. Lindell confirmed Auto Repair is not considered as part of Cottage Industry and there are no changes proposed to the building footprint.

Ms. Dixon clarified that the Applicant referenced the 2015 Zoning code change as part of his application.

The public hearing was opened.

There was no one present for or against the application.

The public hearing was closed.

The Assistant Corporation Counsel said the commercial use is less than 4,000 square feet and thus the action is considered a Type II action under SEQRA.

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

Ms. Dixon seconded the motion.

The motion passed unanimously.

Mr. Allen moved to approve the Area Variance as requested

Ms. Dixon seconded the motion.

The motion passed unanimously via roll call vote.

With no further business to discuss, the meeting was adjourned at 8:30 p.m.

Respectfully Submitted:

Approved:

Omar E. Balbuena-Palma, Secretary

Michael Papaleo, Acting Chairperson