

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 May 28, 2019 at 7:00 p.m. at the City of Newburgh Activity Center (Hall of Fame Building), 401 Washington Street, Newburgh, New York 12550.

Members Present: Joanne Lugo, Chairperson
Barbara Smith
Michael Papaleo
Ben Brandt (arrived at 7:15 p.m.)
Julie Lindell
Dianne Dixon
Melvin Hales (alternate, voting)

Members Absent: Corey Allen

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

OLD BUSINESS

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 review of the project and highlighted the following:

- Existing building is in disrepair and will be demolished;
- Proposing a new four-family residence (Apartment House), with each unit being a duplex apartment;
- 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;
- Provided parking study for consideration.

Ms. Dixon confirmed the parking study has timestamped photos of multiple streets near Carter Street that documents parking availability.

Ms. Lindell asked if there are pictures documenting the parking availability at night.

The Project Engineer said the photos show parking availability at 7:30 p.m.

Mr. Hales said the parking congestion is greatest at night.

The Project Engineer said there is reasonable parking availability within 500 feet.

Ms. Dixon confirmed the existing use of the building is for a two-family dwelling.

The Project Engineer said the structure is in complete disrepair and requires demolition. He said any use will require a variance and the requested area variance is not unreasonable.

Ms. Smith said she visited the site and believes the parking situation near the project site is no different than anywhere else in the City. She said if the building is demolished and a new building is constructed, it would become an asset to the neighborhood.

Ms. Lindell asked for additional information related to the hardship.

The Project Engineer said the hardship is the cost of demolition. He said there is no way to salvage the old building and that constructing a new multi-family dwelling is the only way to make the project feasible.

The Assistant Corporation Counsel said the public hearing was opened and closed at the previous meeting in April 23. He said the action is a Type II action pursuant to SEQRA and the Board may vote on the application.

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

Mr. Papaleo 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 (6-0) via roll call vote.

(Mr. Brandt arrived to the meeting at 7:15 p.m.)

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 gave a brief review of the application. He said the property was purchased under the assumption that it was a legal three-family dwelling because it currently has three (3) apartments. He said the Certificate of Occupancy ("CO") does not reflect the existing use and the intent is to apply for a Certificate of Occupancy as a three-family dwelling. He said he is able to provide the required off-street parking spaces by utilizing the lot next door however, a variance for four (4) feet on the front yard setback is still required per the Informational Report. He said there are no proposed changes to the building footprint and if the front porch setback is not considered, then the building meets the area requirements. He said the Board was unable to render a vote at the last meeting and he is returning for a determination on the application.

The Assistant Corporation Counsel said the Informational Report at the last meeting did not accurately reflect the Applicant's intent. He said the Building Inspector has since amended the Informational Report. A copy was provided to the Board and the Applicant for reference. He said the Board should open the public hearing for comment. He said the action is a Type II action pursuant to SEQRA and the Board may vote on the application after closing the public hearing.

Ms. Lindell confirmed the building has three (3) electric meters installed.

Ms. Smith said the Orange County Records list the property as a one-family dwelling and confirmed the intent is to change the use into a three-family dwelling.

Mr. Papaleo confirmed the basement will be used as a one-bedroom apartment.

Mr. Hales confirmed the building meets the egress requirements.

The public hearing was opened.

There was no one present for or against the application.

Mr. Papaleo moved to close the public hearing.

Ms. Dixon seconded the motion.

The motion passed unanimously.

The public hearing was closed.

Mr. Papaleo 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
Mr. Papaleo seconded the motion.
The motion passed unanimously via roll-call vote.

NEW BUSINESS

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.

Miguel Espinoza, property owner, appeared before the Board with Jonathan Cella, project engineer.

The Project Engineer said a fire damaged the existing building. The property owner proposes to demolish the structure and construct a new three-family dwelling. He said they can provide four (4) off-street parking spaces and are requesting an area variance for the side yard setback, lot coverage and two (2) off-street parking spaces. He said the garage will not be demolished.

Ms. Lindell confirmed the property does not fall within the East End Historic District.

The Project Engineer said a survey of the property was provided to the Board. He said the new structure will be relocated on the site and it will require site plan approval from the Planning Board.

Mr. Papaleo confirmed the building will not be owner occupied.

The Project Engineer said the purpose is to rent the apartments.

The Chairperson opened the public hearing.

There was no one present for or against the application.

Ms. Dixon moved to close the public hearing.
Mr. Papaleo seconded the motion.
The motion passed unanimously.
The public hearing was closed.

The Assistant Corporation Counsel said the action is considered a Type II action pursuant to SEQRA. He said §300-79 of the City code allows a structure damaged by fire to be restored provided certain provisions are met. He said those provisions are:

- The area occupied by the foundation of the building must occupy the same or lesser amount of the area occupied by the damaged building;
- The rebuilt structure may not exceed the original height of the total or partially destroyed structure;
- The total square footage of the repaired or rebuilt building must be the same as or less than the damaged or destroyed building.

He said the actual location of the building footprint will determine if an area variance is required. He said the Board must vote to approve/deny the associated area variances based off the location of the proposed building. He said in addition to the area variance(s), the project will also require site plan approval from the Planning Board. He said the Planning Board will consider the remaining portions of §300-79 as part of site plan approval.

The Project Engineer said they are proposing to construct a new two-story structure for a three-family dwelling.

Mr. Papaleo said the submitted application refers to a new three-story building.

The Project Engineer requested to verbally amend the application and said the intent is to construct a new two-story building and not a three-story building.

Ms. Lindell confirmed the footprint of the new structure will be relocated on the property.

The Assistant Corporation Counsel said the footprint of the building may be moved, subject to receiving any required area variances, but the new structure may not exceed the footprint or building area occupied by the original damaged building.

Mr. Brandt said he is not opposed to granting the requested area variances. He encouraged the Applicant into relocating the building so that it matches the front yard setbacks of the buildings next door. He said by complying with the existing front yard setback of the City Ccode, the building will look out of place in the neighborhood.

The Assistant Corporation Counsel said that the Applicant is free to listen and amend their application based on the feedback provided by the Board, but that the Applicant is not required to change the location of the building. He said the action is a Type II action pursuant to SEQRA and the Board may vote on the application as presented which includes the verbal amendment to construct a two-story building instead of a three-story building.

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

Mr. Papaleo 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 6-1 via roll-call vote (Ms. Smith voted against the application).

Appeal No. 2019-12

Applicant: Timothy Peters
Owner: Tim Peters & Aynsley Vogel
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.

Timothy Peters, property owner, appeared before the Board.

The property owner said the intent is to convert the basement into a third residential unit. He said there are no exterior changes and no expansion of the building footprint.

Mr. Papaleo confirmed the building is currently vacant.

Ms. Lindell confirmed the property owner cannot provide any off-street parking spaces.

Mr. Papaleo confirmed the building was vacant since 2012 and the proposed use is allowed by right in the Medium Density Residential zone.

The Assistant Corporation Counsel said the action is a Type II action pursuant to SEQRA and the Board may vote on the application as submitted after opening and closing the public hearing.

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.

The public hearing was closed.

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

Mr. Papaleo 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. 2019-14

Applicant: Jeff Wilkinson
Owner: 194 Lander LLC
Location: 194 Lander Street

Requesting an **AREA Variance** for 223 feet on lot area, 2 feet on lot width, 5 feet on the side yard setbacks, one-half story on building height, 6 percent 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.

Andrew Lemon appeared on behalf of the property owner before the Board with Jeff Wilkinson, project architect.

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

- Building is currently vacant;
- Intent is to convert the basement into a one-bedroom apartment and the top three (3) floors into a four-bedroom apartment;
- Building will be renovated using tax credits;
- Rear of the property is accessible via an access agreement;
- Adding a deck on top of the first floor;
- No change to building footprint.

Mr. Lemon said the building was constructed around 1868 and access to the rear was enabled for carriages.

Ms. Dixon asked why the area variance application includes a request for two (2) off-street parking spaces.

The Project Architect said they were instructed by the Building Department to obtain a variance for parking in order to comply with the bulk area requirements. He said the property has sufficient space on the rear for two (2) parking spaces.

The Assistant Corporation Counsel said the Building Inspector reviews the applicable codes, rules and regulations in determining the number of off-street parking spaces a project requires. He said in this case, the Building Inspector determined that the Applicant was not able to provide any off-street parking spaces and referred the Applicant to obtain a variance for two (2) off-street parking spaces. He said the Applicant may have a different interpretation of the number of off-street parking spaces it can provide on site, but the final determination is made by the Building Inspector. The applicant is permitted to appeal any decisions of the Building Inspector to the Board.

Mr. Lemon said he had a prior engagement and left the meeting at 8:00 p.m.

Ms. Lindell confirmed the property owner intends to reside at 194 Lander Street. She said if the Building Inspector determined the property was not able to provide any off-street parking spaces, then the proposed parking locations may be illegal.

The Project Architect said he wanted to demonstrate to the Board that there were two (2) off-street parking spaces available on site but in light of the information presented at the Board, he would like to request the variance for two (2) off-street parking spaces. He said the request is not unreasonable since the owner is proposing a two-family dwelling instead of a three-family or four-family dwelling.

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.

The public hearing was closed.

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. 2019-15

Applicant: Lawrence D. Smith

Owner: Lawrence D. Smith

Location: 144 Johnston Street

Requesting an **AREA Variance** for 10 feet on the front yard setback, 2 feet and 5 feet on the side yard setbacks 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.

Lawrence Smith, property owner, appeared before the Board.

The property owner said the intent is to convert the building into a two-family dwelling. He said there are no changes to the building's footprint and there is sufficient off-street parking spaces on Johnston Street for the use.

Ms. Dixon confirmed the existing use is for a one-family dwelling and the owner is requesting a variance for two (2) off-street parking spaces.

Ms. Lindell asked if the building was bought as a one-family dwelling.

The property owner said the building was purchased under the assumption that it was a legal two-family dwelling. He said he was unaware at the time of purchase that it was a one-family dwelling.

Ms. Smith confirmed that a carbon monoxide alarm will be installed within the building. She said the building used to have a furnace and asked if it will be used for heating.

The property owner said the furnace has been removed and the intent is to hire someone who can successfully setup a heating system in the building. He said it is difficult to find a reliable contractor within the City.

The Assistant Corporation Counsel said the issues under discussion are subject to the Building Code. He said in order for a Certificate of Occupancy to be issued, the Building Inspector must determine that the property is in compliance with the Building Code. He said there is no other way for the CO to be issued.

The property owner said he will comply with the Building Code and keep his rental license up to date.

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.

The public hearing was closed.

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

Ms. Lindell 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 6-1 via roll-call vote (Ms. Smith voted against the application).

Approval of Minutes

Ms. Dixon moved to approve the April minutes.

Ms. Lindell seconded the motion.

The motion passed unanimously.

With no further business to discuss, the meeting was adjourned at 8:13 p.m.

Respectfully Submitted:

Approved:

Omar E. Balbuena-Palma, Secretary

Joanne Lugo, Chairperson