

**REGULAR MEETING
APRIL 22, 2008**

City of Newburgh Zoning Board of Appeals

Summary of Record of Actions Taken at the Regular Meeting of the Newburgh Zoning Board of Appeals held on April 22, 2008 at 7:30 p.m. at the Newburgh Activity Center, 401 Washington Street, Newburgh, NY.

Members Present: Joann Lugo, Chairperson
Mirta Rivas
David Schwartz
Victor Mirabelli
Barbara Smith
Joshua Smith

Members Absent: Mary Ann Prokosch

Also Present: Michelle Kelson, Assistant Corporation Counsel
Michelle Mills, Secretary to the Board

Requests for One-Year Extension:

- 1. Appeal No. 2006-33
Location: 179 Renwick Street
Applicant: RECAP, Inc.**

Requesting Use Variance to convert a single family dwelling into a two family dwelling and an Area Variance for two off-street parking spaces, which does not meet the requirements of the Schedule of Use and Bulk Regulations in a R1 Zone.

Antonio Figueroa, Director of RECAP, Inc., addressed the Board and advised that no significant changes have been made to the original floor plan. He also advised of funding sources involved in the plan and that a tentative closing date is scheduled for April 29, 2008. Michelle Kelson advised the public that this application is not scheduled for, or subject to, a public hearing at this time.

Motion to approve Use Variance: Victor Mirabelli.

Motion Second: Joshua Smith.

Roll Call Vote: Unanimous

Motion Carried: Unanimous

Motion to approve Area Variance made by Joshua Smith.

Motion seconded by Victor Mirabelli

Roll Call Vote: Unanimous

Motion Carried: Unanimous

- 2. Appeal No. 2006-34**
Location: 181 Renwick Street
Applicant: RECAP, Inc.

Requesting Use Variance to convert a single family dwelling into a two family dwelling and an Area Variance for two off-street parking spaces, which does not meet the requirements of the Schedule of Use and Bulk Regulations in a R1 Zone.

Motion to approve Use Variance: David Schwartz
Motion Second: Mirta Rivas
Roll Call Vote: Unanimous
Motion Carried: Unanimous

Motion to approve Area Variance: Victor Mirabelli
Motion Second: David Schwartz
Roll Call Vote: Unanimous
Motion Carried: Unanimous

Old Business:

- 1. Appeal No. 2008-10**
Location: 41 Wisner Avenue and 13 Locust Street
Applicant: Newburgh Family YMCA

Requesting Use Variance to allow a YMCA facility to be constructed on a property which is in both an R1 and PO2 Zone.

Dominic Cordisco, Attorney for the applicant, appeared before the Board to answer questions regarding this request. He emphasized the proposed plan use. Detailed the current state of the property involved and advised Board that without the Variance there is no project.

Greg Shaw presented a brief overview of the site plan using charts to describe the proposed future use of the eleven acre site which included details of several new structures, improvements to existing infrastructure, water usage, storm water discharge and parking space issues.

Joshua Smith voiced concern about the time lapse from the original date of several letters of support for the project and inquired of any specific action(s) taken. He also asked about the project funding status and was advised by Mr. Cordisco that without the variance there is no funding in place. He explained that the letters previously received by the Board were simply expressions of support.

Ms. Rivas stated that there is a lot of opposition to this variance from the public and that the Board needs solid grounds for approval. She requested clarification in the event the variance is granted but the project does not proceed as anticipated. She was advised that the property would remain as is.

Michelle Kelson stated that the public would have an opportunity to be heard. She went on to state that the Board has a statutory obligation to determine if variance is warranted in order to realize a reasonable return on the property and whether issuing the variance due to a unique hardship would alter the essential characteristics of the property. She cautioned the Board to focus on their duties.

Barbara Smith claimed that some of the same questions were raised at the last meeting and that nothing new is being reported. Mr. Cordisco responded that some issues will be addressed to the Planning Board as necessary and states that this project would be a significant benefit to the City and the most likely use for the property in question.

Victor Mirabelli asks about the number of parking spaces involved and believes it to be around three hundred. He also states that the property would be taken off the tax rolls if the project is approved.

Mr. Cordisco replied that the property is currently off the tax roles, the YMCA is a not-for-profit organization and that there have been preliminary discussions with the City Council regarding payments in lieu of taxes.

Mr. Mirabelli followed up, with all due respect, that the City does not have a lot of land to build on, to increase the tax base, and that there may be other businesses who could also find good use for the property.

Joanne Lugo agreed that it is possible that other businesses could come to that location. She expressed her concerns about the adverse effect on the characteristics of the neighborhood. She mentioned that Chestnut and Locust Streets are not very wide and how traffic congestion could occur. She also raised the issue of water and soil contamination from prior use.

Mr. Mirabelli again raised the issue of parking spaces and inquired about special events at the site that would require a substantial amount of spaces. He does not think that 300 is sufficient.

Mr. Cordisco replied that the property in question is currently zoned for a distribution center which could include truck traffic, idling and congestion and could potentially happen without any new variance approval. He urged the Board to consider this factor when they measure adverse impact on the neighborhood.

Mr. Mirabelli asked if this project was compatible with the City's current Master Plan project. Michelle Kelson responded that the Master Plan does make provisions for recreation and places for the public to go for productive amusement and that program-wise, this project does fit in with the Master Plan.

The Chairperson opened the public hearing by reading the text of the notice.

The following people spoke in favor of the project:

1. Ed Scooter, 48 Ellis Avenue, Newburgh, NY
2. Jessica Gonzalez, 72 Carson Avenue, Newburgh, NY
3. Rev. Charles Campbell, 42 Liberty Street, Newburgh, NY
4. Nick Angelo, 753 Broadway, Newburgh, NY
5. Dae Vitale, 15 Overlook Place, Newburgh, NY
6. Bill Whalen, 23 Jack Pond Road
7. Mike Fogarty, 49 North Street, Newburgh, NY 12550
8. Chris Townsend, 1 Rogers Place, Newburgh, NY
9. Doug Hovey, 1069 Bruynswick Rd, Gardiner, NY
10. Arike Diggs, 10 Bayview Terrace, Newburgh, NY
11. Felicia DeFranco, 47 Courtney Avenue, Newburgh, NY

The following people spoke in opposition to the project:

1. Jeremiah Ventri McGee, 711 Broadway, Newburgh, NY
2. Katherine Ventri, 711 Broadway, Newburgh, NY
3. Alfred Acevedo, 715 Broadway, Newburgh, NY
4. Robert Ushman, 12 Balmville Rd, Newburgh, NY (Presented written statement on behalf of Carole Seneca and Joseph Pucino, residents of Locust Street).

The public hearing was duly convened and completed on April 22, 2008.

Motion to close public hearing: Victor Mirabelli

Motion Second: Barbara Smith

Roll Call Vote: Unanimous

Motion Carried: Unanimous

Barbara Smith stated she had expected to receive information regarding funding and environmental issues as requested at the last meeting. David Schwartz agreed and said he would have a hard time making a decision without some solid plans, studies or current letters of commitment.

Michelle Kelson advised the applicant the need to provide documentation of ways to help mitigate the impact on the neighborhood and address the concerns of the residents. She went on to say that the Board was not presently inclined to vote in favor of the request and offered an opportunity to table the item to allow for the compilation of additional information by the applicant. She suggested the item be tabled until the June 2008 meeting which was agreeable to all.

Motion to Table : Joshua Smith

Motion Second: Mirta Rivas

Roll Call Vote: Unanimous

Motion Carried: Unanimous

NEW BUSINESS:

1. Appeal No. 2008-09

Location: 109 William Street

Applicant: Neley Diaz

Requesting a Use Variance of Section 300-10 District Regulations to permit the continuation of a store and take-out restaurant in the C-1 Zone.

Mr. Neley Diaz appeared before the Board but does not speak English. Mirta Rivas served as interpreter for the applicant. He is the owner of 109 William Street and rents out the store front of the building to two tenants. One section has been rented as a retail store and the other for a take out, deli style, restaurant for at least six years. It was discovered by the Code Compliance Department that, due to the re-zoning of the City several years ago, the current Certificate of Occupancy issued to him by the City on 1989 does not reflect the actual use of the building for the last few years. In addition the Use Variance is required since the take out restaurant use of the building does not comply with the C-1 Zone regulations. The information provided by Mr. Diaz clearly indicates and establishes the fact that there is no impact or change to the characteristics of the neighborhood. Mr. Diaz was told to apply for a new Certificate of Occupancy.

At this time the Chairperson opened the public hearing by reading the text of the notice.

No one spoke in favor or opposition to the request.

The public hearing was duly convened and completed on April 22, 2008.

Motion to Close Public Hearing: Joshua Smith

Motion Second: Victor Mirabelli

Roll Call Vote: Unanimous

Motion Carried: Unanimous

Zoning Board of Appeals to assume Lead Agency status for S.E.Q.R.A.:

Motion Made: Victor Mirabelli

Motion Second: Joshua Smith

Roll Call Vote: Unanimous
Motion Carried: Unanimous

Zoning Board of Appeals declares a Negative Declaration for S.E.Q.R.A.:
Motion Made: David Schwartz
Motion Second: Joshua Smith
Roll Call Vote: Unanimous
Motion Carried: Unanimous

Motion Made to **APPROVE USE VARIANCE**: Joshua Smith
Motion Second: Victor Mirabelli
Roll Call Vote: Unanimous
Motion Carried: Unanimous

2. **Appeal No. 2008-12**
Location: 76 Courtney Avenue
Applicant: Rene Garcia

Requesting Use Variance to convert an existing deli into a bar and restaurant. Property located in a R-1 Zone.

The Board was advised that this item was tabled at the request of the applicant.

OTHER:

The meeting was adjourned at 9:25p.m..
The next meeting of the Newburgh Zoning Board of Appeal will be held on May 27, 2008.

Respectfully Submitted:

Approved:

Michelle M. Mills, Secretary

Joanne Lugo, Chairperson