

**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 August 22, 2023 at 7:00 p.m. at the Activity Center, 401 Washington Street, Newburgh, New York.

Members Present: Joanne Lugo Chairperson  
Corey Allen  
Tiffany Buxton (arrived 7:17 p.m.)  
Dianne Dixon  
Melvin Hales (alternate)  
Julie Lindell  
Michael Papaleo

Absent: Ben Brandt

Also Present: Jeremy Kaufman, Assistant Corporation Counsel  
J.K. Gentile, Secretary

The Chairperson called the meeting to order at 7:17 p.m. after confirming a quorum.

**OLD BUSINESS**

**APPEAL NO. 2022-29**

**Applicant:** Colin Jarvis / The Newburgh Ministry, Inc.  
**Owner (17 Johnston):** City of Newburgh  
**Owner (19 Johnston):** The Newburgh Ministry, Inc.  
**Location:** 17 & 19 Johnston Street

Requesting an **AREA Variance** on **Lot A** for 7.9 feet on the front yard setback, 5 feet on the South side yard setback, 15.7 feet on the rear yard setback, 2 stories/16.5 feet on the building height and 35% on lot coverage which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone.

Requesting an **AREA Variance** on **Lot B** for 7.6 feet on the front yard setback, 5 feet on the North side yard setback, 5 feet on the South side yard setback, 20 feet on the rear yard setback and 56% on lot coverage which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Medium Density Residential Zone

Colin Jarvis, Lee Lasberg, and Don Petruncola appeared before the Board.

The Assistant Corporation Counsel said the ZBA completed its public hearing at the July 2023 meeting. He said the Planning Board issued a “negative declaration” pursuant to SEQRA at its August 2023 meeting and as part of a coordinated review process. He said the ZBA could vote on the application tonight if it wished.

Mr. Lasberg said the applicant made no substantial updates to the plan set since July 2023.

Mr. Hales said he was unable to attend the last meeting and presentation. He said he is concerned with this type of housing as it will not remove the problem of displacement for the citizens of Newburgh, and that the project is open to the needs of individuals not necessarily living in Newburgh. He said private investors that purchase property in the City of Newburgh drive up the cost of market rate housing and it displaces the working people. He said this project is for individuals with special needs. He said the community views this housing project as not helping to relieve Newburgh residents displaced by economic gentrification. He said the public hearing at the July meeting felt more organic, people showed up from the neighborhood. He said in his opinion this will not help the displaced population of Newburgh.

Mr. Hales continued that the new construction requests large variances. He said if the Board votes for this new construction, that has control over its design before it commits the money, it will set a precedent and how would it be viewed for those who have no control over variances on existing buildings. He asked why this could not be considered for another area in Newburgh. He said a project like this should be placed in an area of Newburgh where people are doing better, that you can't keep condensing the neighborhood with poor people. He said there are studies that show people do better when they are exposed to people doing better. He said the County continues to place the poor in Downtown Newburgh. He said the County is not placing these special projects in Cornwall or New Windsor. He said the working-class poor and people of color, who cannot afford market rate, need affordable housing. He said the County continues to place these projects in Newburgh. He said he supports the concept; he supports people who are re-entering and people who need rehabilitation. He said he would like to see the revitalization of Downtown Newburgh. He said this is a big project to have to vote on. He said since he has been on the Board, he has not experienced anything quite as contentious as this project. He said people from the community have been approaching him from both sides about this project. He said he would like to see pathways out of poverty not just maintaining poverty. He said the poor need to be protected. He said the poor can get pushed around. He said he would like to see more training and education programs to assist getting people out from being poor.

The Assistant Corporation Counsel said many of the issues raised at last month's public hearing were not relevant to area variance requirements under the City Code. He said the Board's vote must be tied to the requirements and criteria of City Code Section 300-115 for area variances.

Mr. Hales asked whether the vote would consider the impact on the neighborhood.

The Assistant Corporation Counsel that is one of the appropriate considerations, and the board should focus on the requirements for area variances requested and not the end use of the project. He said the proposed end use of the premises is immaterial to the consideration for area variances. He said that concerns related to types of housing such as affordable or supportive housing, or

housing types in different locations in the city may be better served towards other boards or City Council members. He said the current application is about land use. He said the applicant may address the comments made by Mr. Hales. He cautioned the Board that whatever those comments may be, they are not relevant to end use.

Mr. Allen said that if that is the case, all the evidence the applicants presented to the Board has shown that there will be no adverse effect on the neighborhood.

Ms. Dixon said she disagreed.

Mr. Allen said other applicants have come to the Board requesting large parking variances right around the corner from this property and the Board has approved those applications. He said this application does not present any parking variance requests, only area variances. He said there are stark differences between this application and other applications presented and approved.

Ms. Lindell referred to a past application requesting a conversion from a three-family dwelling to a five-family dwelling near the corner of Grand Street and Water Street. She said the Board voted against the application as it would have added density and additional parking spaces to the neighborhood.

The Assistant Corporation Counsel clarified that the application Ms. Lindell referred to was a proposed four-family conversion from a single-family dwelling. He said a four-family was not permitted in a low-density neighborhood without obtaining a use variance. He said the applicant, with knowledge that a use variance for a four-family would be a difficult variance to obtain legally, amended its application to convert the property to a three-family, which was allowed in the Low-Density Residential zone. He said the Planning Board approved the conversion and the Zoning Board approved the requested area variances.

Ms. Lindell said the variances requested for this application are significant. She said the building size is a tight squeeze for the neighborhood, leaving little room for other buildings in the future.

Ms. Buxton said the size of the building should not be an issue as the Board approved a five-story building on the corner of Broadway, right next door to this property.

The Assistant Corporation Counsel said this property is adjacent to the property that Ms. Buxton referred to. He also said that the property Ms. Buxton referred to was located in the Broadway Corridor zone. He said this proposal is within the Medium-Density Residential zone.

Ms. Lindell said the 50-unit residential apartment count brings significant density to the Medium-Density Residential District. She said this is a self-created hardship. She said they are choosing to put this project in a poor neighborhood, where the people have no power to fight back, and not choosing to put this in a rich neighborhood.

Mr. Hales asked if the city approved the large, luxury apartment complex proposed right across from this project.

Ms. Lindell said she is unaware if that application has been approved. She said if it is approved there will be a lot of density to the area.

Mr. Allen asked where this energy was when the applicant on the corner of Dubois and First Street came before the Board requesting all the parking spaces when half of the residents of South Miller Street came out to speak against the application and the Board still approved it. Mr. Allen said the energy should be the same across the Board.

Ms. Lindell said the building is necessary but that it would be better placed on a larger lot to accommodate for outdoor green space. She said the people who lived there would have a place to go sit outside instead of just on the street.

Mr. Allen said they are proposing common areas within the building for the residents.

Ms. Lindell said they are not going to stay inside all day.

Ms. Buxton said she considers all the factors and leads with her heart. She said the City of Newburgh needs affordable housing and there are homeless people everywhere, if the variance was 99.9 just so the people are off the street and have a place to live, she would vote for it. She said the issue is the structure of the program. She said the Board agrees that people need housing. She said the Board would agree if this program would open on a Monday and on Tuesday fifty families could come in from off the street and have a place to live. She said she thinks it is because of the type of the program and agreed with Mr. Allen that the considerations should be fair, if the Board could vote for one large project, they should vote the same for the other project. She said it is a difficult decision because the program is not limited to only the citizens of the City of Newburgh.

The Assistant Corporation Counsel said everyone appreciates raising those issues, but they are also not relevant to the relationship between the building and the land and not relevant to this Board's decision.

Ms. Buxton said she will be voting yes because there is a need to get people off the street and into housing.

Ms. Dixon said she has several concerns. She said the building is being built from scratch instead of renovating an existing building within compliance of code. She said she has more understanding of self-created hardship for applicants who come before the Board with existing buildings, and they are confined by the code for an old building. She said this project is not confined. It could have been built to comply with the code. She said they had the ability to not have had to present to the Zoning Board if they had decided to comply with the zoning code. She said this will have an adverse effect on the neighborhood because it adds more people into an already dense area. She said the Board did approve another large project in this area recently and yet this is another large project in the same area. She said at some point the amount of density added is not fair to the residents of this block. She said the residents came and spoke at the public hearing and she listened to their concerns. She said she is aware that the board cannot consider the end use of the building in its consideration but the residents living on the block have to live with the building and all the

residents of the building and they need to be heard as well. She said for them to hear that they will have fifty new people added to the block and another fifty people from the previous application and that they are being told to just deal with it, she finds it offensive. She said whether the project benefits the neighborhood we do not know because the applicant does not have the authority to determine who will be a resident of this building. She said they can screen potential residents, but they do not have the authority to select. She said there is no guarantee that a single Newburgh resident will benefit from this project.

Mr. Allen said he does not think this is a hardship. He said when you go into a project you know what you are going into. He said they knew exactly what kind of funding they were going after and what kind of funding was available to them. He said a hardship is when you go into a project zoned for two-family and you approach the Board to convert the property to a four-family. He said they went into the project with their eyes open.

Ms. Dixon said her point was that this application was not a hardship.

Mr. Allen said he did not know why they keep referring to a hardship.

Ms. Dixon said because it is one of the factors the Board is asked to consider is whether or not this would be a significant hardship if they are not allowed to get the variances. She said this is a hardship they created themselves by proposing a building from scratch.

Mr. Allen said if they do not get the variances for this, they will not get the ESSHI funding. He said they need to have 50 units minimum.

Ms. Dixon said they knew that before they started the project and decided where to locate it.

Mr. Allen said Newburgh residents came out to speak on both sides of the project. He said he saw it with his own eyes, at the second public hearing, a bunch of folks who spoke in favor of the project.

Ms. Dixon said a lot of people spoke in favor of the project and I heard the people who live on the block in one and two-family housing.

Mr. Allen said he went into the neighborhood and spoke to the people. He said every other project that comes in front of the Board the Board is okay with. He said now that it is affordable housing, we have problems.

Ms. Dixon said that comment is so inappropriate and so wrong.

Mr. Hales asked whether the project is affordable housing or special needs housing, because if it is affordable housing it is just working-class people who cannot afford rent, people with jobs. He said special needs is a different story, it is a program.

The Assistant Corporation Counsel said this is not relevant.

Mr. Lasberg said he would like to address displaced housing. He said the proposed lot currently has two dilapidated, condemned buildings. He said these lots are not going to develop marketplace housing. He said the Architectural Review Commission requested a cost analysis to renovate the two buildings and it demonstrated it would not be economically feasible. He said he wants to be clear this is not displacing market rate housing.

Mr. Hales said he did not say displaced market rate housing. He said provide affordable housing for people who are displaced by market rate housing. He said when developers come, they want to make money. He said the new rates of rent that is coming in is displacing affordable housing for working people, not just homeless. He said homeless need housing, people with special needs need housing. He said there is an illusion that this project will help displaced Newburgh people who are being removed by landlords because they cannot afford their rent. He said this is a whole other ballgame by providing other people, parolees who need housing too. He said they are selling the project like it is going to help displaced people. He said people are buying into Newburgh who want their money back and they are going to charge that kind of rent. He said they are evicting people who cannot afford other apartments. He said to sell it like it is going to help displaced people is disingenuous. He said there is a need to help people get a second chance, to help parolees. He said that is real and that he is not trying to waffle from that. He said Newburgh has been doing that for years, it has always been an industry, send them to Newburgh, that is where the programs are, if you are homeless in Cornwall send them to Newburgh. He said there is nothing new about this. He said there are working people who need affordable housing because they cannot afford the rent.

Mr. Lasberg said that is not what this project is.

Mr. Hales said he knows that is not what the project is. He said he can guarantee that there are a lot of people out there who will think that this is helping.

Mr. Lasberg said the project will help in need.

Mr. Allen said they need to change the definition of what homeless is.

The Assistant Corporation Counsel none of the conversation about housing type is relevant. He told the Board not to focus on the end use. He said do not consider housing, supportive housing, gentrification, or homelessness in the analysis. He said that is legal advice to the Board. He said if you have concerns about the project, they must be related to the criteria that you are all obligated to uphold in the code for area variances.

Mr. Papaleo asked to confirm this the minimum unit count for funding is 50.

Mr. Lasberg confirmed. He said they are at the bottom of the threshold for funding.

Mr. Petruncola said the funding also dictates the building and dwelling unit size. He said they redesigned the project after receiving ARC approval. He said they shrunk the building footprint by 1000 square feet, brought the building down in height and made it as compact as they could, while still being eligible to receive funding. He said the Newburgh Ministry is giving up its side

yard. He said they have tried to make it as small as possible and still be eligible for state funding. He said they could not make this building comply with all the zoning regulations otherwise they would end up with 20 units.

Ms. Lindell asked if the excessive variance request was known during the design process.

Mr. Lasberg said they knew they would need variances but did not know the degree to which we needed them until there design was finalized. He said it was a process and the process evolved.

Ms. Lindell asked if there was a time that the applicant realized if different parcels would work better.

Mr. Jarvis said The Newburgh Ministry owns what it owns and has what it has. He said he does not have unlimited financial resources to secure property anywhere. He said part of the Ministry's mission is serving the poor in the City of Newburgh. He said variances exist for the reasons they exist and that is why they are before the Board.

Ms. Lindell asked if the feelings of the neighbors have been considered.

Mr. Jarvis said the Board has heard from some of the neighbors with misinformation that has been spread. He said the Board has heard from an abundance of other neighbors with their support of the project. He said what has been presented has been presented, everyone had an opportunity to hear what they wanted to hear. He said the Board has heard from the voices of opposition and the voices of support.

The Assistant Corporation Counsel asked if there were any other points or comments from the Board or the applicant.

After hearing none, the Assistant Corporation Counsel asked if there is any other information that the Board members, either individually or collectively, would like to see from the applicant in order to make the best and informed decision possible.

Ms. Lindell asked with the 50 units, all with smoke alarms, how many times the Fire Department is going to be going there because somebody's fire alarm is going off. She said she lives across the street from a low-income retirement building and they have two fire trucks at least once a month.

The Chairperson said that is not an appropriate question for this Board, that is not the Board's purpose.

Mr. Jarvis said he is happy to answer that question after the meeting.

The Assistant Corporation Counsel asked the applicant if it wished to proceed with the vote or to table it.

Mr. Jarvis asked to proceed with the vote.

Dianne Dixon moved to approve the application as submitted.  
Julie Lindell seconded the motion.  
The motion was denied 4-3 via roll-call vote.

### **NEW BUSINESS**

#### **APPEAL NO. 2023-35**

**Applicant:** Sims Foster/Foster Supply Hospitality  
**Owner:** Grand Street Newburgh Property Co., LLC  
**Location:** 48, 54 and 62 Grand Street

Requesting an **AREA Variance** for 9.3 feet on the rear yard setback which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Downtown Neighborhood Zone.

Matthew Milnamow appeared before the Board and gave an overview of the proposed project. He said they have received approval from the Planning Board in November 2021 and approval from the Architectural Review Commission in January 2022. He said when they redesigned the buildings aesthetics to meet the State Historic Preservation Office (SHPO) requirements, it created a rear yard setback encroachment.

Ms. Lindell asked about the location of the cantilever.

Mr. Milnamow showed the location using drawing A-301.

The Chairperson opened the public hearing.

Hayden Carlin spoke in favor of the application.

Dianne Dixon moved to close the public hearing.  
Julie Lindell seconded the motion.  
The motion passed unanimously via roll-call vote.

Dianne Dixon moved to declare the action Type II for SEQRA.  
Julie Lindell seconded the motion.  
The motion passed unanimously via roll-call vote.

Dianne Dixon moved to approve the application as submitted.  
Julie Lindell seconded the motion.  
The motion passed unanimously via roll-call vote.



**APPROVAL OF MINUTES**

Corey Allen moved to approve the July 2023 minutes as submitted.

Julie Lindell seconded the motion.

The motion was approved unanimously via roll-call vote.

With no further business to discuss, the meeting was adjourned at 8:10 p.m.

Respectfully submitted,

J.K. Gentile

Secretary to the Land Use Boards