

**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 October 24, 2023 at 7:00 p.m. at the Activity Center, 401 Washington Street, Newburgh, New York.

Members Present: Michael Papaleo, Acting Chairperson  
Tiffany Buxton  
Ben Brandt  
Dianne Dixon  
Melvin Hales (alternate)  
Julie Lindell

Absent: Joanne Lugo Chairperson  
Corey Allen

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

The Chairperson called the meeting to order at 7:09 p.m. after confirming a quorum.

**OLD BUSINESS**

**Applicant:** Angelo Balbo  
**Owner:** Angelo Balbo Management LLC  
**Location:** 825 Broadway, 829 Broadway

Requesting a **USE Variance** for an Apartment House in the Low-Density Residential Zone with a Neighborhood Commercial Overlay.

Natalie Quinn, Project Manager for KARC Architects, appeared before the Board and gave an overview of the proposed project for the Board members who were not present at the September meeting, as well as an update on the application.

Ms. Quinn 825 Broadway used to be a residential building that was converted into a commercial building. She said 829 Broadway has been many iterations of a restaurant. She said the two parcels fall into different zoning districts/overlays. She said 829 Broadway property is zoned as Commercial District with a Waterfront Protection Overlay, while 825 Broadway property is zoned as Low-Density Residential with a Neighborhood Commercial Overlay. She said the applicant filed for an Informational Report and discovered that upon the proposal to merge the two lots, the code stated that the most restrictive standards would apply to the entire site.

Ms. Quinn said the applicant was aware at that time that the zoning classification allowed for an Apartment House in a Low-Density Residential Zone with a Neighborhood Commercial Overlay and a Waterfront Protection Overlay. She said in May 2023 there was a zoning change and Apartment House was no longer allowed in the Neighborhood Commercial Overlay zone. She said upon receipt of this new code information, the applicant appealed to the Zoning Board of Appeals for a Use Variance to develop a mixed-use structure with ground floor commercial and apartments above.

Ms. Quinn referred to her Power Point presentation shows a basic concept plan with the Waterfront Protection boundary and the Quassaick Creek setbacks. She said the building reduced in size with these setback considerations. She said the applicant paused its site plan development until the use variance issue was resolved by the Zoning Board of Appeals.

Ms. Quinn referred to her Power Point presentation to show that the restaurant has been operating at a loss for the past three years.

Ms. Dixon asked if the 2022 financials were available for review.

Ms. Quinn said she did not provide them.

Ms. Dixon requested the income and expenses for 2022.

Ms. Quinn said the restaurant had been operating at a loss for the past four years. She said the owner cannot profit from the restaurant only. She said the owner understands the benefit of a commercial business to the neighborhood. She said for him not to operate at a loss he proposed the addition of the Apartment House.

Ms. Quinn said the unique circumstances of the situation of the zoning code change added to the hardship.

Ms. Dixon asked, besides the change in the code, how unique is that fact of a restaurant business not generating enough income as expected to be considered a reasonable hardship.

Ms. Quinn said the finances and the change in code are just two considerations of hardship. She said another unique hardship is the location of the property to the Quassaick Creek and losing a significant amount of the development to accommodate the setbacks required within the Waterfront Protection Overlay.

Mr. Hales asked the applicant to clarify whether the misunderstanding of the zoning code was the City's error.

Ms. Quinn said it was an inconsistency in the code. She said there was a zoning use table that suggested the proposal would have been a permitted use, but within the text it was not listed as a permitted use. She said the zoning code was posted online and the two pieces of information contradicted each other.

Ms. Dixon asked the applicant if they had inquired about the contradiction during discussions.

Ms. Quinn said they were told that apartments were permitted under the previous code. Ms. Quinn said granting the variance will not alter the essential character of the neighborhood. She said there are existing mixed-use within the neighborhood, both large and small buildings.

Ms. Dixon said the enormity of the proposal is not in keeping with the character of the neighborhood.

Ms. Lindell said there seems to be enough parking to accommodate an Apartment House.

Ms. Dixon said that would depend on the confirmed number of apartment units proposed.

Ms. Quinn agreed. She said the apartment count could not be confirmed until the decision of whether the Use Variance is approved as the cost to develop a fully fleshed out site plan is expensive. She said the contextual massing examples and that the box images shown in the submission is not the intended architecture; it is only to present where the building would sit on the parcel. She said bringing the building up to the street front creates a street wall and gives a consistent feel to the street.

Tiffany Buxton asked to confirm that the restaurant will be demolished if the project was approved.

Ms. Quinn confirmed.

Ms. Quinn said the final criteria to discuss is the hardship claimed by the applicant is not self-created. She said a zoning change in the middle of developing the project was unexpected and that market forces are making this commercial structure as it stands by itself not a viable business.

Ms. Quinn said the last few slides of the Power Point presentation are direct responses to questions from the September ZBA meeting. She showed how the building footprint changed from the July 2023 Building Inspector's ruling, addressing the required setbacks. She said the original unit proposal was 141 dwelling units, but with the proposed building reduction, the number of proposed dwelling units will be significantly reduced although not yet determined. She said one way to estimate the proposal would be to calculate the number of units allowed by square footage in the bulk table, and that calculation would yield approximately 58 apartment units. She said the proposed parking configuration on the revised concept plan shows 96 parking spaces. She said what is required per code for 58 apartments units is 44 parking spaces and for the commercial portion, 25 parking spaces.

Ms. Quinn highlighted the Institute of Transportation Engineers Trip Generation Standards to address potential traffic congestion concerns. She said the applicant would work with the City to implement recommendations in easing the existing traffic conditions.

Mr. Papaleo said to consider the traffic merge right above the site from two lanes into one lane. He said it becomes very congested there around 3 p.m. and it backs up to the traffic light.

Ms. Quinn said with the addition of the commercial portion the intent is to promote foot traffic in the area.

Ms. Dixon asked what business will be proposed for the commercial property.

Ms. Quinn said most likely a restaurant for a portion of the space, a gym, and a smoothie bar. She said there are currently no existing tenant agreements.

Mr. Papaleo asked what maximum number of units the owner is committed to.

Ms. Quinn said the code allows for 58 dwelling units maximum.

Mr. Papaleo asked if they propose parking under the building.

Ms. Quinn said yes.

Mr. Papaleo asked if they are still able to offer 58 dwelling units with parking underneath.

Ms. Quinn said it might be less. She said the owner will attempt to develop as many dwelling units as allowed by the code and the site constraints.

Ms. Dixon said the Quassaick Creek was there when the site was purchased, and the constraints were known.

Ms. Quinn said the owner had made multiple attempts to maintain a conforming use for many years and it was not successful.

Ms. Buxton said traffic is going to be an issue.

Ms. Dixon reiterated her request from the September 2022 meeting, an income breakdown, including 2022.

The Chairperson opened the public hearing.

Van McGrogan spoke against the application.

Stephanie McGrogan spoke against the application.

Kathy McDermott spoke against the application.

Don Satterly spoke against the application.

Dianne Dixon moved to close the public hearing.

Julie Lindell seconded the motion.

The motion passed unanimously via roll-call vote.

Ms. Dixon asked how the owner plans to address the public's concerns regarding the loss of light and the effect on the quality of life.

Ms. Quinn said the building will not be built to five stories. She said there will be a built-in protection for the neighboring backyards as the construction will not be up to the property line and that the Fire Department is requiring a twenty-foot drive lane so their fire vehicles can access that side of the building. She said there are existing trees to act as a natural buffer and the neighboring buildings currently have fences. She said the site's grade change lessens the height of the proposed building from the neighbors rear viewshed. She said this property shifting from a single-story restaurant with a parking lot to a proposed three-story mixed-use apartment house does not seem to be a significant impact on the quality of life especially when this can benefit City residents by providing housing.

Ms. Buxton asked if a site plan is not available for review because of the cost to develop a draft.

Ms. Quinn said they have tried to show the size of the building with the conceptual massing images. She said until the Use Variance is confirmed the building design could still change.

Mr. Papaleo said without plans it is difficult to make a comprehensive decision. Mr. Papaleo asked if the owner would consider investing in providing renderings for review.

Mr. Brandt said a building this scale is not in keeping with the character of the neighborhood. He said he is in favor of a mixed-use development but that he would like to see it conform with the neighborhood. He said what has been provided does not meet an adequate standard for review.

Ms. Buxton recommended pushing the building in more on the side that faces the neighbor's backyard, adding a running trail and park benches with greenery and allowing the building height to graduate up to full scale on the opposite side of the property. She recommended the owner invest in a design plan.

Mr. Papaleo asked if there is financing in place.

Ms. Quinn said it is private financing.

The Applicant requested a table of its application until next meeting.

### **APPEAL NO. 2023-42**

**Applicant:** Jonathan Moss, R.A. / Berg + Moss Architects, PC  
**Owner:** Zeqir Hakanjin  
**Location:** 405 Grand Street

Requesting an **AREA Variance** for 10 feet on the North side yard setback, 7.6 feet on the South side yard setback and 3 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low-Density Residential Zone.

Jonathan Moss, R.A. appeared before the Board and gave an update on the proposed project. He said they re-designed the site plan to accommodate three cars on site.

The Assistant Corporation Counsel clarified saying that is the number of allowable parking spaces from the Building Inspector's ruling that can safely address ingress and egress.

Mr. Moss said they considered public opinion and the limited number of parking spaces as this property is in close proximity to the college campus.

The Assistant Corporation Counsel said for the benefit of the Board members who were not present at the September meeting, the application is a conversion of a one-family to a three-family and there is no proposed change to the building footprint. He said there is site work to be done and that that will be reviewed by the Planning Board.

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

### **NEW BUSINESS**

#### **APPEAL NO. 2023-43**

**Applicant:** Chris Berg, R.A. / Berg + Moss Architects, PC  
**Owner:** 40 South Miller Street LLC  
**Location:** 40 South Miller Street

Requesting an **AREA Variance** for 580 square feet on lot area, 1 foot in the lot width, 15 feet on lot depth, 10 feet on the front yard setback, 2.1 feet on the north side yard setback, 5 feet on the south side yard setback 21% 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.

Chris Berg, R.A. appeared before the Board and gave an overview of the proposed project.

The Assistant Corporation Counsel asked if there is any change to the building footprint.

Mr. Berg said no.

The Chairperson opened the public hearing.

No one was present for or against 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 5-1 via roll-call vote.

**APPEAL NO. 2023-44**

**Applicant:** Chris Berg, R.A. / Berg + Moss Architects, PC  
**Owner:** 85 Renwick Street LLC  
**Location:** 85 Renwick Street

Requesting an **AREA Variance** for 2.1 feet on front yard setback, 3 feet on the east front yard setback, 3 feet on the south side yard setback, 45% on the frontage occupancy and 8 off-street parking spaces which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Downtown Neighborhood Zone.

Chris Berg, R.A. appeared before the Board and gave an overview of the proposed project. He said this project has been presented to the Architectural Review Commission and they are in favor of the sizing and bulk. He said the project will be a total of twelve units. He said the building will match the adjacent buildings front setbacks. He gave a brief review of the submitted parking study.

Ms. Dixon asked if they propose to keep the building units consistent with the neighboring properties.

Mr. Berg said the neighborhood consists of two and three family buildings. He said this is located at the crossroads of Washington Heights and it is the last lot in the Downtown District.

Mr. Brandt said the renderings are helpful.

Ms. Lindell asked for confirmation that this is a new construction on a currently vacant lot.

Mr. Berg confirmed. He said historically there was a building there and is unclear when it was taken down.

The Assistant Corporation Counsel said this project is in the process of a Planning Board environmental phasing study and Architectural Review Commission exterior approvals.

The Chairperson opened the public hearing.

Jackie Darrington requested clarification of what is being proposed for this property.

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.

**APPEAL NO. 2023-45**

**Applicant:** Joseph Barber Buxbaum  
**Owner:** 161 Johnston, LLC  
**Location:** 161 Johnston Street

Requesting an **AREA Variance** for 10 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, 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 Medium-Density Residential Zone.

Joseph Barber Buxbaum and Jonathan Cella, P.E. appeared before the Board.

Mr. Cella gave an overview of the proposed project.

The Assistant Corporation Counsel asked if there is any change to the building footprint.

Mr. Cella said no.

Ms. Dixon asked what the current certificate of occupancy is.

Mr. Buxbaum said previous occupancy was a two family. He said when he purchased the building it had two electrical and two gas meters.

Ms. Dixon said the Building Inspector's ruling states the certificate of occupancy as a one-family. She clarified that this proposal is to convert a one-family into a four-family.

Ms. Dixon asked for confirmation that two parking spaces will be provided on site and the variance request is two off-street parking spaces.

Mr. Cella confirmed.

Ms. Dixon said the parking study provided does not provide adequate evidence.

Mr. Brandt asked if the basement is a floor through unit.

Mr. Cella confirmed and said there is a staircase out to the backyard.

The Chairperson opened the public hearing.



No one was present for or against 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 5-1 via roll-call vote.

### **APPEAL NO. 2023-39**

**Applicant:** Allan Rothman

**Owner:** Hudson Visionary Development, LLC

**Location:** 449 First Street

Requesting an **AREA Variance** for 11.6 feet on the front yard setback, 1.1 feet on the east side yard setback, 9.4 feet on the west side yard setback and 6.7 feet on the rear yard setback which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low-Density Residential Zone.

Allan Rothman and Justin Dates, RLA, LEED AP appeared before the Board.

Mr. Dates gave an overview of the proposed project.

Mr. Brandt said if they proposed to match the setbacks of the neighboring building, he would be in favor.

Mr. Rothman said the reason the buildings are set back is to provide parking and adequate turnaround.

The Chairperson opened the public hearing.

Dr. Lisa Buon spoke against the application.

Dianne Dixon moved to close the public hearing.

Michael Papaleo seconded the motion.

The motion passed unanimously 5-1 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.

Mr. Rothman addressed the questions from public comment.

Dianne Dixon moved to approve the application as submitted.

Julie Lindell seconded the motion.

The motion passed unanimously via roll-call vote.

**APPEAL NO. 2023-46**

**Applicant:** 299 Properties, LLC  
**Owner (694 Broadway):** 694 Newburgh LLC  
**Owner (696 Broadway):** 696 Newburgh LLC  
**Owner (67 Wisner Avenue):** Wisner & Broadway, LLC  
**Locations:** 694 Broadway, 696 Broadway, 67 Wisner Avenue

Lot A: Requesting an **AREA Variance** for 3.8 feet on the east front yard setback and 7.8 feet on the west side yard setback which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low-Density Residential Zone, in the Neighborhood Commercial Overlay.

Lot C: Requesting an **AREA Variance** for 12 feet on the front yard setback and 7.1 feet on the north side yard setback which do not meet the requirements of the Schedule of Use and Bulk Regulations in the Low-Density Residential Zone, in the Neighborhood Commercial Overlay.

Andrei Lukianoff, Project Engineer, appeared before the Board and gave an overview of the proposed project.

Ms. Dixon asked if there are three distinct parcels currently.

Mr. Lukianoff said yes.

Ms. Dixon said the proposal is to split one of the parcels and add merge the split pieces into the remaining two parcels.

Mr. Lukianoff confirmed. He said there are two, two-story proposed buildings, both with first floor retail and second floor residential and shared parking lot in the rear.

Ms. Dixon asked if they propose demolishing the current buildings.

Mr. Lukianoff said only the two buildings in the front and the rear building will remain.

Mr. Brandt said although he does not want to see the loss of existing buildings, this proposal dramatically improves the intersection.

Ms. Dixon asked how many dwelling units are proposed.

Mr. Lukianoff said two to three dwelling units per building.

Ms. Buxton asked if they are proposing to take the third parcel for parking.

Mr. Lukianoff confirmed.

The Chairperson opened the public hearing.

No one was present for or against 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**

Minutes of the August 2023 and September 2023 Zoning Board meeting not available for review.

With no further business to discuss, the meeting was adjourned at 9:28 p.m.

Respectfully submitted,

J.K. Gentile

Secretary to the Land Use Boards