



Zoning Board of Appeals
Department of Planning & Community Development
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Shawyn Patterson-Howard
Mayor

Michael Justino
Chair

**ZONING BOARD OF APPEALS
MEETING MINUTES
MARCH 21, 2023**

A regular meeting of the Zoning Board of Appeals was held at 6:30 PM on Tuesday, March 21, 2023 in City Council Chambers on the 2nd floor of City Hall. Applicants and members of the public were permitted to attend and make public comment in person and via Zoom.

The Chair indicated that the roll call was the first item on the agenda.

Item #1 – ROLL CALL

The Chair called the roll: in addition to the Chair, attending were Commissioners Shez Darden, Elvira Castillo, Conrad Cutler and Henry Solly (who joined during discussion of 123 Haven Ave.).

Also attending were Katherine Mella, Associate Commissioner; Maria Pace, Land Use Board Secretary; Will Hyland, Senior Planner; and Nkechi Nwachukwu, Land Use Counsel.

With a quorum of four members present, the Chair opened the regular meeting at 6:30 pm. The Chair read the notice for the Zoning Board of Appeals meeting for Tuesday, March 21, 2023.

Item 2 - APPROVAL OF MINUTES

The Chair asked if the Commissioners had reviewed the minutes of the January 17, 2023 meeting. The Commissioners indicated that they had reviewed them. The Chair requested a correction to the minutes regarding 123 Haven Ave. and then asked for a motion to approve the minutes as recommended for January 17, 2023. Commissioner Cutler made the motion, seconded by Commissioner Castillo. The motion was approved 4-0.

Continued Public Hearing

The Chair read the description for **Calendar #1769-Z: 123 Haven Avenue (Section 165.73, Block 4009, Lot 09) in the R2-4.5 Zoning District**

The Chair read into the record how the legal notice for this matter was published.

Theresa Martinez is the owner of the subject property located at the corner of Haven Avenue and Carpenter Place. The owner is represented by Mr. Shahin Badaly, PE. Applicant is requesting an area variance to increase the impervious area on the property. The Applicant proposes to install pavers on the two front yards as well as additional asphalt pavement to the existing asphalt driveway in order to create two additional parking spaces.

Exterior alterations will also include a new retaining wall, new stone steps, new concrete sidewalk, and a new vinyl fence.

The Applicant proposes to provide erosion control measures to prevent adverse effects to the environmental conditions of the neighborhood.

Area Variance Requested:

Item	Required / Permitted	Proposed	Variance Requested
Impervious surfaces coverage (%)	70% maximum	96.91%	26.91%

SEQRA Determination: The proposed action is a Type II action based on 6 NYCRR 617.5(c)(17) “granting of an area variance for a single-family, two-family or three-family residence” (see SEQRA handbook).

The Chair then read into the record that most of the work at this property has already been completed and the owner is now requesting approval of the area variance to legalize the work.

Mr. Shahin Badaly said that he submitted a new site plan, including a change in the subsurface. Guardrails have also been installed and some shrubbery has been included.

Commissioner Castillo commented that the ZBA was looking for more landscaping.

The Chair reminded everyone that at the January meeting, the ZBA requested more landscaping to offset the stormwater runoff issue. It was also requested that the roof and gutters be connected to the culvec chambers and that Mr. Badaly walk the ZBA through the site plans. He also said that he had driven by the address and the PVC pipe that was installed on the next-door neighbor's property was still there and needed to be remedied right away. He also expressed concern as to where the water would then go since there is no grass.

Mr. Badaly said that if the application moved forward, drainage would be provided for the pavement.

After further discussion, the Chair asked if there were any public comments. There were none.

The Chair then asked for a motion to adjourn the application to the April 18 meeting and to keep the public hearing open. Commissioner Cutler made the motion, seconded by Commissioner Castillo. The motion was approved 5-0.

New Public Hearing

The Chair read the description for Calendar # **ZB- 22-3: 114 – 118 E. Third Street (Section 165.79, Block 3157, Lots 5 and 6) in the Neighborhood Business (NB) District.**

The Chair read into the record how the legal notice for this matter was published.

The owner, East Third Street Equities, is represented by attorney, Mr. Neil Alexander, Esq. from Cuddy & Feder, and architect, Mr. Mohammed Badaly.

The subject property is on the south side of East Third Street, approximately 335' west of Franklin Street in the Neighborhood Business district. The NB district extends approximately nine blocks from South Fulton Avenue on the east to South 7th Street on the west. The subject property lots 5 & 6 are 7,162 sf or .16 acres. The property's frontage is approximately 76'. It is occupied by a two story, approx. 3,000 sf commercial building, which is vacant.

The Applicant is seeking a use variance as well as area variances to construct a new, 28,788 sf apartment building. The proposed multi-family building would be 8 stories and approximately 75' in height with 49 units (21 studios, 21 one-bedrooms and 7 two-bedroom units). Applicant has provided a Zoning Analysis on the submitted site plan.

The Plan Examiner's Report indicates approvals are needed from the ZBA, the Planning Board, and the ARB.

In the application, Mr. Alexander of Cuddy & Feder provided written *Principal Points* in support of the use variance and the area variances. The Attorney indicated that the owner has owned the property since June 19, 1972 (some 50 years). He provided a letter from RM Friedlander dated 11/11/22 which described the firm's unsuccessful marketing efforts for the last three years along with their recommendations. Mr. Alexander also provided a description of the nature of the area, indicating that there are multi-family buildings at the northeast and southwest corners of East

Third Street and Union Avenue (1/2 block to the west of the site in the NB zone). He also notes that the 13-story Randy Daniels Towers (20 East Third Street) is one of other mid-rise, multi-family buildings approximately 2 blocks to the west of the subject property. Applicant has also provided a summary of construction and financing costs for the Zoning Board members.

Area Variances Requested: (§ 267-Attachment 2)

Item	Required / Permitted	Proposed	Variance Requested
Floor Area	1.0 maximum	5.36	4.36
Building Height (stories)	2 stories maximum	8 stories	6 stories
Building Height (feet)	30' maximum	74.67'	44.67'
Lot Coverage – Building (%)	60% maximum	67%	7%
Lot Coverage-Impervious Surface (%)	90% maximum	100%	10%
# off-street parking spaces	98 spaces (2 per dwelling unit)	12 spaces	86 spaces

SEQRA – The proposed action is a use variance and as such it is classified as an Unlisted action under SEQRA. The application has been referred to the Westchester County Planning Board for GML Section 239 review.

Prior to any presentation/discussion on the application, Commissioner Cutler disclosed that he has a minority business interest in this property and recused himself from involvement and discussion regarding this application. He then physically left the ZBA meeting room.

Daniel Patrick, an attorney with Cuddy & Feder, appeared before the ZBA to present Applicant’s position in support of the project. Regarding the Use Variance, Mr. Patrick stated that the NB district does not allow for residential use, but there is no market for the permitted commercial uses for the property because such commercial uses are either obsolete or saturated in the area; without the requested relief from the ZBA, the property will remain unused and Applicant will still have to pay property taxes on it; there is a need and market for quality residential dwellings in the area; \$10 million in unsubsidized private funds is being invested in the proposed project to support rejuvenation, increased tax revenue and property conditions in the area; the proposal is not out of character with the area since other similarly sized and situated buildings exist in the area, though not permitted in the NB zone.

Regarding the Area Variances, Mr. Patrick stated that the NB zone is not designed to accommodate residential dwellings, therefore the need for area variances is natural; the design

of the proposed building is not out of character with the neighborhood; the height variance is required because density is needed to offset the cost of construction and property taxes; regarding Floor Area Ratio and Lot Coverage, applicant is constrained by the size and shape of the small lot and the high taxes; therefore, to offset construction costs and tax burden, the height was increased; in addition, the building coverage proposed is just slightly over the requirement and most other properties in the area are 100% impervious; even the existing building is almost 100% impervious; regarding the parking variance, the project is a transit oriented development located near transportation; therefore, the 2 parking space requirement is not needed for this area; the intent is to draw residents that don't need parking.

Mr. Shahin Badaly presented renderings of the property and explained there would be 7 units per floor, for a total of 49 units. The first floor would include lobby space and the roof will be an open green space. Rents will be at market rate, and they will not be seeking PILOTs.

The Chair asked when 118 E. 3rd St. was purchased.

Mr. Patrick said the purchase was made within the last five years, to add to 114 E. 3rd St. and make it more marketable.

The Chair advised that he had questions regarding the area variances requested in the NB zone. He also mentioned that parking is an issue and should be worked on. He commented that the owner has created the hardship issue because of the purchase of the extra property at 118 E. 3rd St.

There was some discussion regarding other multi-story buildings in the area, including Grace Tower. The Chair asked whether Grace Tower is in the RMF-SC Senior Overlay zone and given the magnitude of the use and area variances requested, whether the proposed project is eligible for the senior overlay.

Commissioner Darden asked what the tax revenue would be for Mount Vernon.

Mr. Patrick said he could provide projections and numbers at the next meeting.

Commissioner Castillo asked whether there would be any amenities in the building.

Mr. Patrick referenced the rooftop space. There will likely be in-unit laundry and the building will have a generous lobby.

Commissioner Castillo asked whether the Applicant can decrease the number of units and still make a profit.

Mr. Patrick responded that they have requested the least amount of variance needed to make a profit and nothing below 49 units would cover the costs.

The Chair said that a marketability study is needed that shows whether the units can be rented and at what rate.

The Chair asked if there was a study for marketability of the existing properties and whether Applicant has reached out to the City's Industrial Development Agency to find commercial tenants.

Mr. Patrick said that they retained a real estate broker, who tried to lease the space. Given the challenges they faced finding commercial tenants, the broker recommended that this become a multifamily residence.

The Chair referenced the MX-1 District close by and Westchester County's recommendation that the project include retail on the first floor to increase walkability.

There was also discussion of the comprehensive planning process underway and how that will impact this area. Concerns were shared about the comprehensive plan having been in flux in the past and the plan potentially not being adopted.

Commissioner Darden referenced some of the other projects in the area and distinguished that unlike the towers at Grace Plaza which received a PILOT, the proposed project at E. Third Street would be paying full taxes. Commissioner Darden said she wants to know how much taxes the proposal would generate as that is very important to her considering the financial condition of the City. She also noted that the Governor seeks to build more TOD buildings in commutable areas.

Mr. Patrick noted that the key to pedestrian-friendly communities is to have pedestrians. They do not want to put this project on the back burner and don't want this opportunity to be lost.

Commissioner Solly mentioned that nothing has been done on E. 3rd Street for some time and that a new project should be commended, especially if they are not asking for PILOTs.

Commissioner Castillo noted that the project must be a right fit for the area, and she would like to see the project a little smaller.

The Chair commented that Applicant should correct Items #2, 5, 6, and 11 of Short Environmental Assessment Form Part 1. He also noted that since there are private residences near the property, a green buffer zone would be needed. The Chair then asked if there were any public comments.

Several residents shared the following comments/concerns:

- Happy that the building will be used and not left vacant
- Concern about the upkeep and maintenance of the building
- Lack of parking
- Concern about the area being kept clean
- The mailing radius should be expanded so that more homeowners will receive the notices
- The potential building is too big; make smaller
- Market rate seems good
- Will there be restrictions regarding children entering the schools? If the building were to be sold, would the restrictions continue with the new owner?

- **The application should not be allowed to move forward at this time. It should be referred to the City Council or deferred until the comprehensive plan is complete**
- **Would traffic be rerouted during construction and how long would construction take to complete?**

Regarding SEQRA, the Chair inquired as to what stage in the process the Zoning Board should declare its intent to serve as lead agency.

Land Use Counsel explained that this project can be considered as a coordinated review of an Unlisted action and as the first board to review this project, the ZBA can declare its intent to serve as lead agency for SEQRA purposes. However, since the Planning Board is the land use board most familiar with the environmental review process, once it receives the ZBA's notice of intent, the Planning Board can respond by indicating its preference to serve as lead agency itself, at which point the ZBA can defer and vote to have the Planning Board serve as lead agency. The Planning Board's coordinated environmental review and determination would then apply to all three land use boards, who can then proceed to vote on their respective applications.

The Chair said that he would like the application to be forwarded to the Planning Board and the Architectural Review Board for their comments.

The Chair then made a motion for the Zoning Board to declare its intent to serve as lead agency for SEQRA purposes, seconded by Commissioner Castillo. The motion was approved 4-0 with one recusal.

The Chair also made a motion to solicit comments from the Planning Board and ARB regarding the application, seconded by Commissioner Castillo. The vote was:

Chair Justino	yes
Commissioner Castillo	yes
Commissioner Darden	no
Commissioner Solly	yes

The motion was approved 3-1 with one recusal.

The Chair asked for a motion to keep the public hearing open and adjourn the application to the April meeting. Commissioner Castillo made the motion, seconded by Commissioner Darden. The motion was approved 4-0 with one recusal.

The Chair asked that the application be adjourned to the April 18 meeting with the following information to be provided:

- **Revised short EAF**
- **Updated renderings**
- **Information providing the expected tax revenue that will come to Mount Vernon and the projection of tax benefits**
- **Potential rental income vs. the rent info provided**
- **Have the owner/applicant contact the IDA and other Business Development Group to seek assistance in finding commercial tenants to lease or purchase the building.**

Meeting Adjournment

The Chair asked for a motion to adjourn the meeting. Commissioner Castillo made the motion to keep the public hearing open regarding the E. Third Street project and adjourn the ZBA meeting for the night, seconded by Commissioner Darden and carried by a vote of 4-0 with one recusal.

The meeting was adjourned at 8:40 pm.

Maria Pace
Land Use Board Secretary

Robert Galvin, AICP
Planning Administrator