

MINUTES

VILLAGE of CHESTER ZONING BOARD OF APPEALS

AUGUST 27, 2009

PUBLIC HEARINGS

PRESENT: Vincent RAPPA, Chairman
Ted KADALA, Member
David STEVENSON, Member
Gordon SHEHAB, Member
Diane BLANTON, Member
Daniel Gorman, Alternate
John ORR, Code Enforcement Officer
Harold PRESSBERG, Attorney

PUBLIC HEARING:

Contorino SBL 101-1-6

ZBA File #09-05

High Street and Contorino Way

Applicant: Lisa Contorino

Re: Area and Use Variances

James Dillin and Terence Seeley representing

Zoning Board Secretary Susan Marino read the Public Notice as it appeared in the Times Herald Record on August 19, 2009:

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Village of Chester, New York will hold a Public Hearing at the Village Hall, 47 Main Street, Chester, New York on Thursday, August 27, 2009 at 7:30 P.M., or as soon thereafter as the matter can be heard, concerning the application of **Lisa Contorino**. The applicant is requesting two variances from the Village Zoning Code.

Request 1: The applicant is requesting area variances from the Village Schedule of District Regulations for an RS Zone, Column 6, for two side-yard area variances. The side yard variance request for East side of Lot is for 2 ft. 7 inches; the side yard variance for West side is for 9 ft. 7 inches. These area variances are requested on a pre-existing lot and building.

Request 2: The applicant is requesting use variances from the Village Schedule of District Regulations for an RS Zone; applicant requests the ability to apply RA Zone Regulations. This use variance is requested on a pre-existing lot and building.

The property is located in the Village of Chester, New York at High Street and Contorino Way and is listed on the Village Tax Map as Section 101, Block 1, Lot 6 in an RS Zone.

The Zoning Board of Appeals of the Village of Chester, New York will hear all persons interested at the aforementioned time and place.

**BY: ORDER OF THE ZONING BOARD OF APPEALS
VILLAGE OF CHESTER, NEW YORK
VINCENT RAPPA, CHAIRMAN**

Chairman Rappa opened the Public Hearing and asked the representative for the certified mailings.

Mr. Dillin stated that the numbers in the Public Hearing Notice aren't exactly right. He said that the total of both side yard variances should be 35 feet. Our total is 17 feet. We are going for an 8 foot variance. This building has pre-existed zoning. The zoning has been changed to an RS zone. We looked at uses in the RS zone, and I don't think that one use in RS zoning fits this building. We are not requesting the Zoning Board of Appeals (ZBA) to change all uses within the RS zone, but we are requesting to give us Item #5 so that we can convert the existing farm building for another use.

Chairman Rappa asked how old is the building?

Mr. Dillin said that he didn't have the exact date.

Chairman Rappa asked if the Contorinos have owned the building all of this time.

Mr. Dillin said that it has always been owned by the Contorinos. There have been lots of uses. Farm use stopped around 2000.

Chairman Rappa said that there was a previous meeting regarding both of these buildings.

Code Enforcement Officer John Orr said that 5 years ago, the building was used for rental units. There was a trucking business, a bottled water company, a screen printing operation, and cars and automotive parts.

Chairman Rappa asked if there were any building permits issued before. The uses have changed a few times. Are there any building permits that would have identified these zoning problems? Why didn't we ever pick up before on all of these violations?

Mr. Dillin said to ask Mr. Orr about this matter.

Mr. Orr said that the owner of the property, by his own admission, has changed the use at least 5 times - none with permits. Upon investigating, I started a conversation with the owner in 2007. He came before the Planning Board and just let the matter die. The owner never followed through. The pre-existing building was there when the Code came in. The side and rear yards have probably been that way since the building was there.

Attorney Harold Pressberg said that this is a pre-existing non-conforming structure, and it remains as such until the use is changed.

Chairman Rappa said that you can see that the building has been changed.

Mr. Pressberg said that they're permitted to maintain it as long as they don't expand it.

Chairman Rappa opens the Hearing to public comment, asking people to state their names and addresses when speaking.

Mary Altobelli, 4 Garden Street: When there were rental units, nothing was done. There are currently motor vehicle repairs being done there. Engines rev and cars peel out on our street anytime. This happens at all hours of the day, every day of the week.

Edna Schultz, 6 Garden Street: What's the difference between RA zone and RS zone?

Chairman Rappa replied that RS is residential single family and RA is agricultural.

Mrs. Schultz said that he (Mr. Contorino) wants to have a business there, right? What does that have to do with single family residence or farming?

Mr. Pressberg explained that the RA zone, with a Special Use Permit, permits old barns and storage buildings.

Peter Falco, 15 Meadow Avenue: We see race cars there, in different states of repair. Cars are chopped in half. It looks like a garage and a hot rod facility. Doors are off cars; it's like a junkyard. There is noise and fumes. These are not regular cars - they are noisy, obnoxious, loud cars. I don't want to hear cars revving up.

Shelly Atkin, 1 Garden Street: There is no noise and there are no noxious fumes.

Rosalie Jonas, 7 Garden Street: There is peeling out and revving of engines - it's obnoxious and noisy. It smells like burning rubber.

Ms. Atkin said that there's more noise on the top of Garden Street.

Chairman Rappa said that as far as the side and rear yard variances, there is not much that we can do. The building was pre-existing before zoning.

Mr. Dillin said that it is not our intention to continue this use. We were told to come before the ZBA for Site Plan Approval. We are looking for a new tenant and to market the property. We are looking to the Board for a use. None of these uses are in the zoning. We don't want to do race cars - we have no use for cars. We're here to get a new Site Plan approved.

Mr. Pressberg, addressing Mr. Dillin, stated you said that the car use was discontinued.

Mr. Dillin replied that it is.

Mr. Pressberg replied that's not what the neighbors are saying.

Mr. Dillin said that he was told by the owner that it was discontinued. I don't live down there. Are cars still sitting there?

Mr. Orr showed photos that he took of cars and parts on the property yesterday. He can identify some of the parts on EBay.

Attorney Seeley, representing Mr. Contorino, stated that we didn't indicate that the warehouse had been cleaned out. We are asking for use like #5 in an RS zone. Right now, the only thing it's allowed for is a residential single family home. It makes a very ugly single family home. We want a warehouse.

Chairman Rappa said that the applicant may still have to go to the Planning Board for an application for a Special Permitted Use. Instead of just granting it now and hoping you do what's supposed to be done, let's halt everything down there. Clean it out first, then come back to the ZBA, then to the Planning Board. When we're satisfied, then maybe we can talk about it.

Mary Altobelli said that she doesn't trust this neighbor. He does whatever he wants. Then when someone complains, we're here in front of the Board. He has made our lives insufferable. He's likely to put anything he wants there because that's his track record.

Member Gordon Shehab asked how recently has it been that you've heard cars revving.

Ms. Altobelli replied on Monday. I called the police after 6:30 P.M.

Chairman Rappa asked Ms. Altobelli if she has made multiple complaints to the police about this.

Ms. Altobelli said that she has and that she will leave documentation for the Board.

Member David Stevenson asked if there is any sound ordinance violation.

Ms. Altobelli said no, but I'm paying taxes for residential.

Applicant Mario Contorino said I have a tractor in there. What I do is a hobby; I'm not running a shop. I have to generate some income from the building. The building is dead. I can't rent it. It's not even zoned.

Chairman Rappa asked have you already been cited for what you're doing there.

Mr. Contorino said I try to keep the place clean, nice, and orderly. There might be parts outside but I dispose of them. It's not a pigpen or a junkyard.

Ms. Altobelli said that if it's a hobby, do it in your own yard where you live and reside.

Chairman Rappa asked if there were any other comments about this particular property. There were none. Chairman Rappa made a **Motion** to close this Public Hearing. **Motion** was seconded by Member Stevenson. All in favor none opposed. **Motion** carries.

PUBLIC HEARING:

Contorino SBL 101-1-9

ZBA File #09-06

3 Contorino Way

Applicant: Mario and Lisa Contorino

Re: Area Variances

James Dillin and Terence Seeley representing

Chairman Rappa opens the Public Hearing.

Zoning Board Secretary Susan Marino read the Public Notice as it appeared in the Times Herald Record on August 19, 2009:

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Village of Chester, New York will hold a Public Hearing at the Village Hall, 47 Main Street, Chester, New York on Thursday, August 27, 2009 at 7:30 P.M., or as soon thereafter as the matter can be heard, concerning the application of Mario and Lisa Contorino. The applicant is requesting area variances from the Village Schedule of District Regulations for an RA Zone, Column 6, for 10 Lot Area, 2) Lot Width, 3) Side Yard, 4) Rear Yard, and 5) Lot Coverage. These area variances are requested on a pre-existing lot and building.

The property is located in the Village of Chester, New York at 3 Contorino Way and is listed on the Village Tax Map as Section 101, Block 1, Lot 9 in an RA Zone.

The Zoning Board of Appeals of the Village of Chester, New York will hear all persons interested at the aforementioned time and place.

**BY: ORDER OF THE ZONING BOARD OF APPEALS
VILLAGE OF CHESTER, NEW YORK
VINCENT RAPPA, CHAIRMAN**

Mr. Dillin said that this property is located in an RA Zone. It was built in the mid-80. I prepared the Site Plan. It has been used for farming. We'd like to convert to Special Permitted Use Item #5 - Former farm buildings to be used for different commercial uses. Legally, we have a use that can satisfy the Planning Board. We're not here for that now. This is a pre-existing building. I believe that this building has a Permit and a CO. A Site Plan was submitted.

This was verified by Code Enforcement Officer John Orr.

Chairman Rappa asked if the lot had changed at all.

Mr. Orr stated that the CO was issued on June 20, 1984. The Building Permit was issued in March, 1984. The building itself hasn't changed.

Attorney Pressberg said that at the time the building was constructed, you should have had Site Plan Approval with it.

Mr. Dillin said he didn't believe that he has it. He said that he wasn't here in 1983.

Mr. Orr said that if this were occurring today, he would have the applicant go through the Planning Board.

Mr. Dillin said that the Building Permit and CO were issued. We created new side yards within the zoning. We have to change the use or we have to be given an area variance.

Chairman Rappa asked Mr. Orr that there is no Planning Board approval for the use that the applicant is using it for now? It's not farming, correct?

Mr. Orr said that is correct. Garrett Custom Mill Works is currently in the building now. We have records in the past on this property. The applicant came before the Planning Board and was given a direction in which to go, but he never followed through.

Member Stevenson asked if the applicant would be asking for a Special Permitted Use Variance as well.

Chairman Rappa replied no, that's for the Planning Board, not the ZBA.

Mr. Pressberg said that the applicant can go to the Planning Board and ask for Special Permit #5.

Mr. Seeley said that we are trying to work our way up. We definitely need an area variance. Then we'll go to the Planning Board. Everyone will know what's approved and not approved. We're starting from the beginning and working our way through the whole process.

Member Stevenson said but if you weren't asking for an area variance - if it hadn't been brought up - it seems as if no one would have ever noticed.

Mr. Seeley said that would be a legitimate complaint by the Planning Board. I'm not aware of an automatic "grandfathering" clause. We're trying to start from ground zero and work our way up.

Mr. Pressberg said that this wasn't a pre-existing use. We have a building with a CO. The applicant isn't asking for a change of use. Mr. Pressberg asks Mr. Dillin to explain the area variance. Mr. Dillin does so on the drawing.

Chairman Rappa opens the Public Hearing to public comment, asking speakers to state their names and addresses.

Nancy Omgeorge of 22 Garden Street said that her family has owned the same house since 1842. She is concerned that the area will go from being a neighborhood to hodgepodge industry. She fears that this issue will never go to the Planning Board.

Mary Altobelli of 4 Garden Street said that the applicant was supposed to plant two rows of trees in 1984, and this was never done. Only one row of trees was planted. Even as far back as 1984, none of the things that the Village has told them to do have been carried out. I'm concerned about that.

Mr. Pressberg said that it appears that some of these variances have already been granted. The applicant hasn't complied with the conditions. Some of the area variances were granted in 1984.

Mr. Orr said that the area variances for the rear and side were granted.

Chairman Rappa asked Mr. Pressberg if the ZBA needs to table this matter in order to review documents.

Mr. Pressberg said that this is an enforcement issue, not before the ZBA but for the Code Enforcement Officer. The issues before this Board are variances that are being requested and which variances have been granted. I recommend that this matter be adjourned until the January 23, 1984 ZBA resolutions are discussed and compared.

Chairman Rappa said that the applicant should go back to the Planning Board for Special Permitted Use once this is resolved.

Ms. Altobelli asked so, in other words, we have to live with these conditions? Until or if they ever make an application to the Board for a change?

Chairman Rappa said that the ZBA can't do anything about that. We can grant or not grant area variances. It's up to the Code Enforcement Officer (CEO) and the Planning Board to decide if they're using it in the right manner as it's stated in the Code.

Mr. Seeley said that we believe we have a right to do it. It's been made very clear by the CEO that no action will result in severe action against my client. That's why we're trying to resolve this. We're taking steps - we can't do it automatically.

Chairman Rappa said that the property has changed several times now without complying with any rules or regulations. I understand the frustration of people who live nearby. The ZBA is sorry that we can't do anything but we hope that it will be resolved.

Mr. Orr said that the applicant has been informed that he can go to the Planning Board while he is going to the ZBA.

Mr. Seeley said that we were told by someone else on the Planning Board to come to the ZBA first. The application to the Planning Board is not inexpensive. If there is no area variance, then there is no point in making an application to the Planning Board. Our intention is to apply to the Planning Board. My anticipation is that the variance is a straightforward issue, I hope. If this is postponed another month, we will make a Planning Board application.

Chairman Rappa said that there will be no area variance granted if the property is not cleaned up. John's recommendation to do the Planning Board and the ZBA at the same time was a good one.

Ms. Altobelli said that the applicant does not have a good track record regarding the neighbors. In 1995, the Town devalued my property because of refrigeration trucks used by the applicant.

Chairman Rappa asked if anyone else had questions. There were none. Chairman Rappa made a **Motion** to close the Public Hearing and to table this matter until we can clarify the Minutes of January, 1984. **Motion** was seconded by Member Kadala. All in favor none opposed. **Motion** carries.

Chairman Rappa, in addressing the first matter, said that regarding the area variances, the building was pre-existing before zoning. I feel that we should grant these variances from RS to RA. I'd like to see it in compliance before we make that decision - then move forward from there.

Mr. Dillin said that the applicant is not requesting a Zone change. We are changing the use, not the zone. We are asking for a Special Permitted Use to permit RA in an RS Zone.

Mr. Pressberg said that a change of use is possible if certain criteria are satisfied. The ZBA has to determine if the applicant has made sufficient application and met the criteria. You're here in front of us for a Use Variance.

Mr. Seeley said that we should adjourn this as well until next month. We can re-open the Public Hearing so that the people can come back and we can address the Board's concerns. We can determine which area variances were or were not granted in 1984.

Chairman Rappa said that the applicant needs to give the ZBA something to show that nothing else can be done with this building - that the applicant needs this Use Variance.

Mr. Pressberg said that the applicant must satisfy the criteria of the Village Code and law for a Use Variance.

Member Shehab asked if there was ever a single family home on this property.

Mr. Dillin replied no. Part of it was an apartment.

Chairman Rappa made a **Motion** to table this matter and to reopen the Public Hearing at a later date. **Motion** was seconded by Member Shehab. All in favor none opposed. **Motion** carries.

Chairman Rappa made a **Motion** to accept the Minutes of the April 2009 ZBA Meeting as drafted. **Motion** was seconded by Member Stevenson. All in favor none opposed. **Motion** carries.

Chairman Rappa made a **Motion** to close the ZBA meeting. **Motion** was seconded by Member Kadala. All in favor none opposed. **Motion** carries. Meeting is adjourned.

Respectfully Submitted,

Susan Marino
Zoning Board Secretary