

M I N U T E S

VILLAGE OF CHESTER

ZONING BOARD OF APPEALS

FEBRUARY 21, 2008

P U B L I C H E A R I N G

**PRESENT:** VINCENT RAPPA, CHAIRMAN  
THEODORE KADALA, MEMBER  
LESLIE SMITH, MEMBER  
ANTHONY LaSPINA, MEMBER  
DAVID STEVENSON, MEMBER  
HAROLD PRESSBERG, ATTORNEY

**APPLICANT:** JOSEPH DIERNA JR.

Chairman Rappa read the Public Notice as it appeared in the Times Herald Record.

**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, February 21, 2008 at 7:30 P.M., or as soon thereafter as the matter can be heard concerning the application of Joseph Dierna, Jr. The applicant is requesting area variances from the Schedule of District Regulations, Column 5, Minimum Lot Size; lot area required is 12,500 SQ.FT. - lot area provided is 7,454; variance requested is 5,046 SQ.FT.; Column 6, Minimum Lot Width; lot width required is 100 FT - lot width provided is 49.5 FT. variance requested is 50.5 FT. and Minimum Yard Setback Dimensions, one side yard, minimum required is 15 FT. - provided is 11.5 FT. - variance requested is 3.5 FT., both side yards, Minimum required is 35 FT. - provided is 23 FT. - variance requested is 12 FT. The applicant has requested to construct a two-story, single family dwelling on an existing sub-standard sized lot measuring 7,454 SQ.FT.

The property is located in the Village of Chester, New York at 9 Greycourt Avenue and is listed on the Village Tax Map as Section 105, Block 1, and Lot 5 in a B-1 Zone.

All persons interested will be heard by the Zoning Board of Appeals of the Village of Chester, New York at the aforementioned time and place.

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

Chairman Rappa asked who will be representing the applicant, Joseph Dierna, this evening.

Mr. Mark Siemers, from Pietrzak & Pfau said he is representing the applicant. He stated that what was just read in the Public Notice is a summary of what they would like to do with this property. Mr. Siemers showed the lot in question on the plan stating it is an existing lot measuring approximately 7,500 SQ.FT. They are proposing to put a two-story framed single/family home on the lot. He said basically, as the setbacks are at this time, they only allow 14 FT width for a house which is not sufficient for building a single/family home. What they are proposing is a single/family home with the dimensions of 26 FT wide, 42 FT deep, situate it on the lot and connect it to the existing water and sewer in the road. He showed a small blow-up picture of the lot area showing the existing lot and where the proposed house will be located. The side yards will then be 11.4 and 11.5 on each side. There are no problems with the front or rear yard setbacks; basically just the existing area and lot width, which is 49.5 and the side yards for the proposed lot.

Chairman Rappa asked when this property was purchased on the deed.

They replied October 23, 2006.

Chairman Rappa asked if they knew it was non-conforming to the lot size when purchased.

The applicant replied "no" they received some conflicting information.

Mr. Pressberg read Chapter 98.10-A from the Village Code. He said the issue is not a self-created hardship because the prior owner would have had the

right to develop this lot. The only issue on the width and the lot area is whether it was ever owned by an adjacent lot and then sub-divided off. It was

ZONING BOARD OF APPEALS

-2-

2/21/08

never in the same ownership or same title. The lots are non-conforming; the property owner has the right to build on them. If the lot is in the RS Zone as opposed to the RA Zone, which incorporates the RS Zone regulations.

Zoning Law was developed in 1971, Member Smith said what this means is that this is a free standing, non-conforming lot and not part of another parcel. However, you cannot just develop the lot with disregard to the setbacks.

Member Smith asked the applicant if they now own the lot.

They replied if they receive approval they will go ahead with the purchase.

She questioned if the property owner ever owned any of the property next door to the lot.

They replied "no".

Member Kadala asked the applicant to give a description of the house they intend to build; color, size etc...

The applicant replied "no" they do not but if the Board required certain details they would provide them. However, whatever they build will be according to Code.

Member Stevenson asked if there will be a garage or any covered parking facility and will it be located in the back of the house.

The applicant replied possibly a carport or garage.

There was discussion about the garage and its location but it was agreed that that it was not relevant at this time and can be discussed later.

Chairman Rappa asked, "who owns the shed located on the property.

There was discussion about the ownership of the shed. The applicant said the shed is part of the property however, the neighbors claim that half of the shed belongs to them; the property line goes directly through the shed. She has a survey given to her by her father-in-law showing this. She said they have much concern about the strength between the two houses due to the black dirt. They have pictures of Mrs. Joyce Musumeci's house, which was built on railroad ties and is now sinking. She said her own house is built on a cement foundation and it also is leaning. Her concerns are if anyone starts digging into the black dirt will the Village be responsible when their houses fall over.

Member Smith said this is also a big concern of hers. She said there are several houses with problems. Also, a new house was built and was struck by lightning. The house was built on a poured concrete foundation but the entire foundation cracked apart.

She said she doesn't like the idea of anything being built here because the soil is muck.

Member LaSpina said if the shed does go through the property line it changes the entire application.

Mark Siemers, Project Engineer said they completed a Field Survey on the property. Mr. Siemers is not aware of any conflicting surveys but their survey shows that shed is 6 FT 2 IN inside the applicants' property.

There was discussion as to whether the Field Survey was certified or not.

The applicant said having the survey certified would not be a problem. He could have the property staked and the Board could come to the property at their leisure.

Member Smith said she already went to the property.

Chris Battiato said his father, Joseph Battiato, is a neighbor from across the street of the property in question and he received the letter for the meeting this evening. The question Joseph Battiato had is the property was not previously sold because they knew they could not build on the property. He said he thought the building was originally built because of a hardship. Therefore, to go through with a lot that is half the size it is supposed to

be does not make any sense to him and he doesn't understand why it is being heard this evening.

Member Smith agreed that the variances requested are very substantial.

Mr. Battiato also said he does not understand what the hardship would be in this case, the applicant does not own the property in question. As far as the original building lot is concerned; there isn't any existing footprint from

**ZONING BOARD OF APPEALS**

**-3-**

**2/21/08**

building is taken down to its original foundation; however, this foundation does not exist anymore, it has probably been gone for 50 years. He said, unfortunately this is just a lot that cannot be used.

Member Smith said "if this is not a "use variance" there is no need for a show of hardship". The question is if the situation is self-created. The applicant is requesting an "area variance".

Mr. Pressberg said it is the owners right to build on his property. The Code provides that if this was a lot that existed in this shape at the time we enlisted these coded, it is a non-conforming lot and you can build on it but it doesn't need the setbacks and area.

The concern of Member Smith and neighboring residents is the closeness of the houses when built, the concern being fire, etc... as shown of the plan, the setbacks are 5 to 7 feet.

The applicant suggested that the house as shown on the plan could possibly be set further back to help this situation.

Mr. Siemers said at one point, years ago when this house was built, the side yard setback was 5 feet now the side yard setback requirements are 15 feet.

The Chairman said this is not a self-created hardship.

He asked if the building will have any negative impact or reaction to the area.

Chairman Rappa said this Board has given side-yard variances multiple times. We try to help the applicant with the least amount of impact to the neighborhood. This is our goal to help the applicant accomplish what they need and also allow the person who owns the property to be able to do something with their property. We are trying to come up with a happy medium.

Member Smith asked if it would make any difference if the current owner built the house or if the property was sold can the new owner build on the non-conforming lot?

Mr. Pressberg said we do not regulate the user; we regulate the use.

If they are separate owners, as in this situation, then they can develop the property.

John Orr concurred by stating that they did not create this sub-standard lot just to build a house on it.

Chairman Rappa said we have to make an interpretation.

Mr. Orr asked if the house can be moved back enabling there to be a 20 foot clearance between the three (3) houses.

Mr. Siemers said "yes" the measurements would be 55 ft. front yard, 42 foot deep house and 43 foot backyard.

Member Stevenson asked if there are any regulations as to how far the house is to the Heritage Trail.

They replied "no".

Member Rappa said built as stated the house would not be any closer than 20 feet from each corner of the new house or to the existing houses.

The neighboring residents asked if the Board could put in some type of stipulation stating if something happens during construction or after, whom would the neighbors go to for assistance.

Chairman Rappa and Mr. Pressberg explained that they do not have any control over the situation. There is nothing that can be put into the record in that regard. Their only reprisal would be to go back to the original builder.

The engineers, Pietrzak & Pfau offered to give both neighbors on either side a Pre-Construction Survey. A crew will take pictures of their entire house and foundation. This information will be documented and put on file. This will protect both the builder and owner.

Mr. Pressberg stated it has been decided that this is to be considered an interpretation.

**Motion** was made by Member Kadala stating this application is a Type II action under SEQRA and does not require any further environmental review.

**ZONING BOARD OF APPEALS**

**-4-**

**2/21/08**

**Motion** was seconded by Chairman Rappa, four in favor, one opposed. Motion carries.

**Mr. Pressberg proposed a Resolution** that it is the Board's interpretation on pursuant of 98-10 A of the Village Code; the applicant is entitled to build a single/family residence on the property.

**Motion** was made by Member LaSpina stating that it is the Board's interpretation that pursuant to 98-10, A Exceptions to district regulations; they authorize a sub-standard size single/family residence on the lot with the following conditions. I make the motion that this applies and will impost the following conditions; the new construction will not be any closer than 20 feet to the existing structures, there will be a 55 ft. front yard set back, side yard will be 11.4 ft N.W. side-yard (left) and 11.5 ft N.E. side-yard (right). Motion was seconded by Member Kadala, four in favor, one opposed. Motion carries.

Respectfully Submitted,

Lorraine A. Loiacono  
Zoning/Planning Board Clerk