

MINUTES

VILLAGE of CHESTER ZONING BOARD OF APPEALS

JANUARY 23, 2014

PRESENT: David STEVENSON, Chairman
Gordon SHEHAB, Member
Daniel GORMAN, Member
Colleen COLLINS, Member
John ORR, Code Enforcement Officer
Ian SCHLANGER, Attorney

PUBLIC HEARING 7:05 PM:

Project: #ZBA-13-03 LGW Zoning Interpretation
Location: Kings Highway, Chester
Applicant: LGW properties, LLC
Re: Interpretation of zoning code as permitting
Use of first floor of property for pre-existing retail
use with additional use as health club/services or
a variance to permit those uses.
Presented By: Benjamin Ostrer, P.C.

Chairman Stevenson opened the Public Hearing at 7:05PM and asked the Zoning Board Secretary, Missy Sosler, to read the Notice of Public Hearing as it appeared in the Times Herald Record on January 10, 2014 (copy attached). Benjamin Ostrer, attorney for the applicant, gave Missy the certified mailings.

Mr. Ostrer began by commenting that this property is unique in that the road frontage, which extends into the corner of the building, is owned by the neighbor, Mr. Zoutman, The same scenario occurs at the easterly side and at the rear line. The rear of the building is on the property outside of the deed description. The easement for the access by use was not in the deed. There is a good relationship between neighbors, and the ability to access has never been contested.

Mr. Ostrer advised that the reason they are looking for an interpretation or a use variance is because there would be no use in the M2 zone which could apply to the property. The tile business that is still there, by appointment only, is having a very difficult time competing with Lowes and Home Depot. When we consulted with the Building Inspector regarding another retail or assembly use, he advised that it is not permitted and that we needed to come to the Zoning Board. We did approach the Village Board and did receive a license from the Village for parking. We will have the ability to park in what was a bed of the old main street which will give approximately 10 to 12 additional parking spaces. This will be enough parking to support a 1st. floor use.

Chairman Stevenson asked if the proposed parking area is part of the G&E property. Mr. Ostrer indicated that, on the map, the applicant's property line is indicated as the former center line in the worst possible location for the applicant rather than in the most advantaged area. This will allow the board to see the property line at its worse location. Without a use variance, there will be very limited use of this property. We feel that this is a clean use. There would be a bit more traffic, but not more than when the tile store was in full use. Mr. Ostrer stated that he did attach a copy of the agreement and that the Village Board was willing to work out with us. The Village Board is encouraging us to make use of the property.

Chairman Stevenson asked Mr. Ostrer if he needed any other area variances in addition to the use variance. Mr. Ostrer advised that he only needs a use variance because the building in grandfathered.

Chairman Stevenson asked Mr. Ostrer to fill us in as to what the business will be. Mr. Ostrer advised that the proposed tenant currently operates in the downtown Village of Chester, NY, and he wants a larger space. He

would like to have exercise, yoga, etc., and possibly a juice bar. We would have to address what is allowed with the Building Inspector. Chairman Stevenson asked if there is an apartment over the business. Mr. Ostrer advised that there is, and it has been in continuous use and is currently occupied. We only want the use variance for 1st floor use. Member Shehab asked if the client has attempted to get this property re-zoned to a B1 zone. Mr. Ostrer advised that this is an awkward piece of property. Member Shehab again asked if there is any reason why you would not ask to get this property re-zoned to a B1 which is wholesale and retail without a variance. Mr. Ostrer advised that if we don't get a variance that would be the next step. Although, due to the necessary setbacks, this could cause a hardship for our neighbors. We felt that a variance to allow the B1 zone use would be what we are looking for. Member Shehab advised that it would be easier for the ZBA to approve a setback variance than a use variance. Mr. Ostrer, again reiterated, that if we don't get a use variance, that certainly will be our only other alternative.

Chairman Stevenson asked John Orr to fill the board in on the stop work order sign that is tacked on to garage door #2 on the property. John Orr advised that there was construction going on without a permit and that he determined that they needed the Planning Board approval. The construction began back in August of 2012.

Chairman Stevenson asked if we are talking about a fitness club and or a health spa. Mr. Ostrer advised that it is a cross-fit studio. Chairman Stevenson advised that he wants to be sure that they are not opening up an adult spa such as a massage parlor which could lead to other undesirable services.

Chairman Stevenson asked if they are planning on resurfacing the parking lot. Mr. Ostrer advised that they will be working that out with Mr. Zoutman because we don't own it. John Orr asked when the current property owner purchased the property. Mr. Ostrer advised that he purchased it in May of 2007. Mr. Orr asked when was the last time the property was reconfigured with the highways around it. Mr. Ostrer advised that it was approximately 40 to 50 years ago. Mr. Orr concluded that the current property owner purchased the property in the existing condition that we are seeing it today.

Mr. Ostrer advised that Mr. Wenger had a floor covering and carpet business in Monroe, NY, and opened this store in 2007. He opened the tile business in Chester just before Lowes came in. He was unable to compete with Lowes' prices.

Chairman Stevenson asked Mr. Ostrer if the use variance requires that all other options have to be exhausted first. Attorney Schlanger advised that they have to demonstrate to the Zoning Board that all of the options of the M2 have been exhausted. Mr. Ostrer stated that they cannot change the use to a new M2 because none of the uses are available.

John Orr asked Mr. Ostrer what the acreage is, and he advised that it is .1469 acres. Mr. Orr advised the Board that regarding the M2 zone the minimum lot size is 1 acre, and it will not make that. The principal permitted uses in a M2 zone are wholesale storage and warehouse facility which is what the tile store was when it was operational. It is very difficult to get any of the M zone uses to work there.

Chairman Stevenson asked if the Board members had any other questions and or comments. He then opened the meeting up to the public.

Chris Palmer, 178 Gardnerville Rd., New Hampton, NY, who is part owner of G&E properties, was the first to address the Board. He advised that we do have concerns about the laid out parking area. We feel that it will impact our property. We are requesting that, if you do consider a variance, it can be postponed until you hear our story. Chairman Stevenson asked Mr. Palmer if he owns the property with the feed shed. Mr. Palmer advised that he does. He further advised that there are, approximately, 4 parking spaces and that it is our access to go to the feed barn. Mr. Palmer advised that there are other issues that we are also questioning such as: was there an abandonment of "Old Main St." Mr. Ostrer advised that this is a clouded issue with the deeds to both properties. Mr. Palmer continued on with another issue that his counsel will review: the 4 parking spaces (he indicates where the spaces are on the map) are actually owned by the county. Chairman Stevenson advised that this is almost becoming not our jurisdiction, if there is a discrepancy as to where the center line is that runs down "Old Main St". Mr. Ostrer advised that this is just to provide us with enough parking. We already have the use but still have to go to the Building Inspector for our use and perhaps the Planning Board. This would be a discussion we would have with the Building Inspector once you told us we could have the use there. Mr. Ostrer stated he doesn't feel that getting the use variance would burden the neighbor's property. The G&E property would also be confronted with a similar issue. It would be in both property owners' interests to obtain a use variance.

Chairman Stevenson addressed the issue of the use variance; if we have someone from the public who has requested a stay of the Public Hearing because they have counsel who would like to raise issues, are the issues they want to raise strictly addressing the use variance or property line parking? Attorney Schlanger advised that this is something that would be best addressed by the Planning Board. He feels that it will go to the Planning Board.

John Orr advised that the only other consideration is that a use variance will be "use" specific, and the Board may want to go jointly to get the property re-zoned. Mr. Ostrer advised that he feels that we could be on parallel tracks if we can get a use variance that would become obsolete if we got the zone changed. We could jointly approach the Village Board about a zone change. The use variance would allow us to get to the Planning Board and get our tenant in there. Chairman Stevenson asked if this application has gone before the Planning Board already. John Orr advised that they sat with the Planning Board at a work session and were offered a few different paths to take, and they chose to go to the Zoning Board.

Chairman Stevenson asked if it is up to the Zoning Board to type the action as initial agency. Attorney Schlanger advised that they will have to type the action for various purposes. Chairman Stevenson asked if it is unlisted or a type 2. Attorney Schlanger advised that it is unlisted.

Chairman Stevenson asked if there were any other comments and or questions from the public. Mr. Ostrer asked if the board needed any further information from the applicant to make the use specific. Chairman Stevenson advised that financials were mentioned but he understands Mr. Ostrer's argument about the retail and wholesale business being there before. John Orr asked the board to look at section 98-37 in the Zoning Manual for the use variance. For the record, this property is within 500 ft. of a municipal boundary. The Planning and Zoning Board Secretary has transmitted a letter to the Town of Chester and has not received a response as of yet. She did submit to the OCDP and received a reply advising that it is a local determination. John then read the response from OCDP.

Chairman Stevenson advised that his only concern is that if we do approve the variance that would allow them to proceed, it will hurt the neighbor. Mr. Palmer has stated that he wants his counsel to review. Attorney Schlanger stated that he doesn't feel that their objection is to the use variance, but to where the parking layouts may be and to that nature. Member Shehab stated that the problem may be that the other property owners may want to go to a business and according to the Code, the granting of the use variance is the minimum variance. He continued on and advised that it is not that he doesn't want the property owner to have the variance, but that he feels that the safer and more solid, legal foundation would be for them to get the property re-zoned. He also commented that he feels that the board may be setting a precedent which could mean that other manufacturers in there could decide that it would be easier to get a use variance instead of going through rezoning. He continued on to state, that, legally, we would be on stronger ground, as would the property owner, if he got it Re-zoned. It is clearly a B1 type of enterprise that they want to have and so might their neighbors in the future.

Ben Ostrer advised that, at this point, a B1 would give us a legal up on a zone change. He stated that he feels that G&E would welcome this and possibly Mr. Zoutman because it would open up the property to additional uses in the future. He advised that although he can't speak for these property owners, there may be issues in that the Village Board may not be able to re-zone it just for the same reasons that you have raised. He further advised that he does not want to prejudge what the Village Board may do, but we really need to get this property to use.

Mr. Ostrer advised that the property owner has such a tight configuration, and we are asking for a very limited, tight use variance. We are asking, specifically, for a Cross-Fit use. Mr. Orr echoed that you should go to the Village Board. Mr. Oster stated that we will, but we really need to get the use variance so we can continue to move forward. Even if we got the zone change, we still can't get to the Planning Board and we know the use we would like to put the property to. Attorney Schlanger advised that he wants to be sure that the Zoning Board understands that the Village Board would refer the applicant over to the Planning Board, and they would issue the report. The Planning Board then has sixty days from the first meeting to issue a report so it could feasibly be ninety days.

Mr. Ostrer advised that the tenant has been waiting for approximately a year and a half, and we don't want to lose him. Member Shehab asked if we could issue a contingent use variance; contingent on the fact that they will apply for a re-zone and the re-zone must be granted in a specific period of time and if this does not occur the use variance will be vacated. John Orr advised that if the Zoning Board offers a variance for a specific use,

they don't have to put conditions on it and if that use change, they are done. The board can make it as specific as they want. This would be the only use that you would be granting approval for. Mr. Ostrer advised that this would be incumbent upon us going to obtain the zoning changes because we are limited to cross-fit. He further advised that he will reach out to Mr. Fink, Mr. Palmer's attorney, tomorrow and, if variance is granted, to speak to the Mr. Wenger and seek the zone change. Of course, this is all possible as long as it doesn't have a negative impact on the Zoutman property.

Chairman Stevenson asked how the stop work order came to light. Mr. Ostrer advised that we thought that as long as we didn't do any structural changes, we could paint and re do the floors. The Building Inspector didn't agree, and he won.

Member Shehab asked how many members could use the facility at one time. Mr. Ostrer advised that approximately 10 could use it, and we could only accommodate approximately 12 cars.

Steven Zoutman then stood up and introduced himself and asked about where the parking actually is. He also expressed his concern about possibly losing his property to parking.

As there were no other comments, ***MOTION** was made by Member Daniel Gorman, second by Member Gordon Shehab, to CLOSE THE PUBLIC HEARING. Motion was passed 4-0.

REGULAR MEETING – 8:04 PM.

1. Minutes

Review Draft of June 13, 2013 Zoning Board Minutes. ***MOTION** was made by Member Gorman, second by Member Shehab, to ACCEPT the June 13, 2013 MEETING MINUTES AS DRAFTED. Motion passed 4-0.

A ***MOTION** was made to TYPE the action, under SEQRA, as an "UNLISTED" ACTION. Attorney Schlanger advised that there is no negative impact. The ***MOTION** was made by Member Gorman, second by Member Shehab, to type the action as "UNLISTED". Motion was passed 4-0.

A ***MOTION** was made to grant a use variance for 1st floor use only for property use as a Cross-Fit type facility in an M-2 zone. It will be available for members only. The applicant has demonstrated specific evidence that the hardship is not self-created and a reasonable return on investment cannot be realized under current M2 zoning. ***MOTION** was made by Member Gorman, second by Member Collins. Motion was passed 4-0.

Chairman Stevenson asked if anyone has anything else to discuss and there were no other comments, ***MOTION** was made by Member Gorman, second by Member Collins, to ADJOURN THE MEETING. Motion passed 4-0.

Respectfully Submitted,

Missy Sosler
Planning and Zoning Board Secretary