

MINUTES

VILLAGE of CHESTER ZONING BOARD OF APPEALS

JULY 17, 2014

PRESENT: David STEVENSON, Chairman
Gordon SHEHAB, Member
Daniel GORMAN, Member
Colleen COLLINS, Member
Keith BRIDEWESER, Member
John ORR, Code Enforcement Officer
Harold PRESSBERG, Attorney

PUBLIC HEARING 7:05 PM:

Project: #ZBA-14-01 2 Vadala Road
Location: 2 Vadala Road
Applicant: N2O Enterprises
Re: Seeking variance to build (2) duplexes on property.
 Front and rear yard distances need to be addressed

Presented By: **Matt Houston and John McGloin**

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 June 30, 2014. January 10, 2014 (copy attached). Matt Houston gave Missy the certified mailings.

John McGloin, Matt Houston's Surveyor, addressed the board. He advised that Mr. Houston is proposing to construct 2 – two-family dwellings and a parking lot to accommodate the tenants. His issue is trying to maintain the integrity of the property without doing a lot of grading. He wants to have parking in between the buildings. He is attempting to obtain a front and a rear yard variance. The structure that was there was much closer to the road, side and front yard, than what we are proposing; front yard is 40 and we are proposing to reduce to 32.5 and the rear yard is 35 and we are proposing to reduce to 17.

Chairman Stevenson asked the board members if they have any questions. Member Shehab asked if the front of the units face the parking lot or the other way. Mr. McGloin advised that they face the parking lot.

Harold Pressberg advised that Mr. Houston is proposing to dedicate land to the Village. He really has 52 ft. in front – to the center of the road - but by dedicating the property in the road to the Village, it cuts it down by 20 ft. which is why he will only have 32 ft. and needs to ask for the variance.

Mr. McGloin advised that when looking over the grade, the closer you get to the retaining wall (existing foundation wall) towards Main St., the steeper the access to our driveway becomes. We are trying to avoid building retaining walls. Chairman Stevenson asked if the retaining wall is kept there and the next housing unit starts a ways back, what will be in the rip rap. Mr. McGloin advised that there will have to be a slight swale around the structure.

Chairman Stevenson advised that if the 4 units (2 and 2), were turned sideways or moved to the center of the property and if the parking lot ringed the property, I believe that you wouldn't need a variance. What is the reason that you are not positioning it that way? Mr. Houston advised that the neighbor has the right of way

through it, and we want to keep the parking lot. Both driveways are on my property, but he does have the right of way and that is why we put the parking lot as close to where a right-of-way presently is so he has access to both Main St. and Vadala Rd. Chairman Stevenson advised that the idea is when Mr. Quinn would make a left and go up the hill, it would discourage him to not come through the parking lot. Mr. Houston advised that he does have that right. John Orr advised that the Planning Board looked at this preliminarily, and they felt that the buildings should not be in the middle. We felt that a center parking lot would be better. Member Shehab advised that you are asking for a variance on front yard at the top of the property and rear variance at the bottom; there will be 2 backyards. John Orr advised that we can't look at 2 buildings because it is 1 lot.

Chairman Stevenson advised that there will be 2 stories with a crawl space underneath because there is a slope to the land. The 1 unit down towards the filling station is a step down. Mr. McGloin advised that looking at the 5% cross slope on the parking lot and 4% on the rough grade if the position stays where it is. Chairman Stevenson asked if the parking lot would be sloped towards Vadala. Mr. McGloin advised that there will be a catch basin towards Vadala and on the upper side of the entrance. It appears from the inspection, the volume is very minimal because of very little erosion. Chairman Stevenson advised that on the application you said that you were looking for front and rear yard variances; the fact that the RM zone requires a minimum lot area of 80,000 ft. and you have 19,500 ft., do they need an area variance as well. Attorney Pressberg advised that it is preexisting. Chairman Stevenson asked if there were any other questions and if not, he would open up the meeting to the public.

Anthony Quinn of 77 Main St., a neighbor to the property, addressed the board. The Village Code states that 4 families are allowed on ½ acre with certain required setbacks. I just heard the details of them and it appears that they are trying to crunch this project a little bit. The Village Code is not factoring in my right of way which is 3600 ft. It is not supposed to be disturbed or deeded. The property has already been shrunk. I have an issue with sharing the driveway which is a Planning Board issue. There are gas pumps located there which is another issue. Has anyone received input from the Village Water Dept.; the people will be 8 ft. to 10 ft. from their operating lines. Cramming people together will affect the quality of life. Does Mr. Houston's donation of the land that the gas pumps weigh on your decision about the variance? Mr. Quinn also asked why there is no representation from the Village Board on how this will affect the Village of Chester. He stated that his 20 ft. driveway will not be maintained and that Mr. Houston will want me to sneak through the parking spaces and the dumpster to leave. He advised that the tenants and their friends and or families will be parking on my road and that will be aggravating. He stated that he can't believe that the Village of Chester is tearing down old, historic barns and bringing in buildings on tractor trailers which will be plastered on ½ acre with a shared driveway. Having 5 families on a shared driveway is challenging, at best, and not appropriate. These are my thoughts, and I hope that you will consider them.

Chairman Stevenson asked Mr. Quinn what his deed allows for a driveway. Mr. Quinn advised that it allows for it to be 20 ft. wide. "Mr. Houston wants me to sign off so that he can move my right of way, but I do not consent to the right of way being moved. I don't want to share a driveway with 4 families; there is not enough room for 4 families to be located there. When I purchased my home, I never thought that there would be a 4 family dwelling next to me. It is not possible to fit 4 families in that space without it negatively affecting me. What kind of quality of life will the people who live there have; trucks idle there, dumpster gets dumped at 6am in the morning. My job is to look to my interests."

Member Shehab asked Mr. Quinn if his driveway begins on Main St. or Vadala Rd. Mr. Quinn advised that it goes through the entire area. Mr. Quinn advised that it may be a bit over 20 ft. because I recently made the lower end a little wider. Member Gorman asked about the site plan that Mr. Quinn has and he advised that it is the one that was given to him at the Planning Board meeting. (At this point, conversation ensued between Mr. Quinn, Danny Gorman, Gordon Shehab and David Stevenson regarding different items on the blue print such as; parking, driveways etc.)

At this point, Phyllis Hubbard, of 68 Main St., addressed the board. She advised that she feels that the property is too small for 4 families. She stated that the view and the air that she has loved her entire life will be gone. She feels that the new buildings will be higher than the barn was and she wonders where the kids will play, where the people will park and she is overall not happy. Donald Hubbard, 68 Main St., also spoke and advised that there is no room for 4 apartments, no room for children to play or go. He wondered if he is living in NYC again and where has historic Chester gone?

Clifton Patrick, 119 Brookside Ave, spoke and advised that he is very confused about the code. Harold Pressberg then read section 98-11 to everyone.

Chairman Stevenson stated that the distance from the building to Main St. is more than 32.5 ft. after granting the piece to the Village of Chester. The distance from the building to Vadala Rd. is 25.6 ft. which isn't short. (Mr. Quinn then approached the table and discussed the site plan with Chairman Stevenson.)

Chairman Stevenson pointed out that you have right of way of passage but not the right of way of parking. (More discussion ensued.)

Harold Pressberg then reviewed the permitted use proposing 2 dwellings per lot; 2 dwellings, 4 units, 2-2 family dwellings, not to exceed 2 dwellings per lot. Chairman Stevenson then advised that it all seems like some type of loophole. Conversation the ensued between Phyllis Hubbard and Harold Pressberg regarding the parking issue and that it is not a Zoning Board issue.

John Orr then commented that there has been discussion with the Highway Superintendent regarding the fuel tanks. All of the departments and the Village of Chester have been sent notices about this project. He also stated that he believes that there is room to move the front of the building closer to Main St., increasing it to a 17 ft. set back in the rear. The only other way would be to erect a 6 ft. high stockade fence along the line so that there are no problems with any tampering of the fuel pumps. Regarding the height of the buildings we haven't seen the plans yet. "One unit has been built on Meadow Ave; a 2-story house. These buildings will be less in height then the barn was that was there but, again, I don't have the elevation plans in front of me".

Mr. Quinn then addressed the Board regarding the easement issue. He stated that he should not be asked to sue someone who is building something new in the Village and that it is known that they are breaking the law.

Mr. McGloin then advised that they will turn the dumpster area 90* towards the parking lot, perpendicular so that the access to the neighbor's right of way will be 25 ft. wide. His right of way will be increased in width but some of the trees and brush may have to be removed.

Mr. Quinn then advised that he wonders how you can attempt to control 4 families as to where they can and cannot park. Member Shehab asked if the parking spaces will be marked, and Mr. Houston advised that they will. He further advised that he will put it in the lease that Mr. Quinn has his right of way and he will have, exactly, what he has now. He advised that he will put it into their lease that they cannot park in Mr. Quinn's driveway.

Chairman Stevenson advised that the easement Mr. Quinn has indicates access to Vadala Lane but not necessarily on the current one. He continued on that Mr. Quinn's worry is that he may not find parking at times. Mr. Houston may guarantee by deed, but if people by human nature park there, that will be a problem.

Chairman Stevenson advised Mr. Houston that he needs to try to protect his tenants from the dusty landscape, as well as trucks driving back and forth all of the time. The tenants may want to know that the parking lot is doubling as a road. Mr. Houston advised that this "set-up" was the Planning Board's suggestion, and it made perfect sense.

Chairman Stevenson asked Mr. Quinn if he was at the Planning Board meetings, and he advised that he was at one meeting. He further advised that he has read over the Code for himself. Chairman Stevenson asked if it would be feasible to put 1 structure there (3-family). Mr. Houston advised that he originally wanted to do a 3 or 4 basic structure and it got "dug into" by the Planning Board.

Chairman Stevenson advised that no matter what we do, we will dig into the easement. Mr. Houston advised that, right now, if this plan is approved, there will be no easement issue; he will have total access. Member Gorman stated that he will have to move Mr. Quinn's easement. Mr. Houston stated that he may have to move it a few feet but he will still have access and that this is a preliminary site plan. He went on to say that he is hearing that the Board wants him to move closer to Main St. Mr. Quinn advised that there is a big, hill, drop off that is of concern. If it is moved over there, it is a drop off. Mr. Quinn went on to say that "his lawyer says he can, my lawyer says he can't. If you drive by my house, you will see that it pitches down therefore I would be driving off of a cliff with a drop off."

A discussion between the Board and Mr. Quinn ensued with referral to the site plan. Chairman Stevenson asked Mr. McGloin to come up and help him understand what the line is. Discussion then continued.

Mr. McGloin advised that the further we go "this way" (indication to an area on the site plan), the more we are trying to buck the grade. If we stay here (indication on the site plan), there is a minimal amount of grading and maybe a 2 ft. high retaining wall. He went on to say that the further they push towards Main St., the deeper the house will have to go in ground which could yield an 8 ft. foundation in front of the parking lot.

Mr. McGloin then remarked that he was brought into this project after it was previously hashed out with the Planning Board and that this is the only plan I have seen. He felt that if someone has a better way to do this project, Mr. Houston would certainly be happy to entertain their ideas. Chairman Stevenson advised that another way would be to cut down the number of units. Mr. Pressberg advised that Mr. Houston is going by the Code and is allowed to do this project, without the variance. He also suggested that we look at paragraph 1 of the RM Zone. Chairman Stevenson then advised that it depends on how you interpret the Code.

Member Shehab then advised the Board to look at page 98-5 which defines dwelling. Mr. Pressberg advised that there is a difference between dwelling and dwelling unit. John Orr then advised that, in his opinion, we should be looking at the RS and checking under the RM as part of the RS code. It is mimicking all of the requirements, and, I feel, that there may be an error. It appears that the rear yard was brought over in addition to the building height and number of stories. Chairman Stevenson advised that there may be other requirements that need to be met that we are not aware of. Mr. Orr advised that he would say that the rear yard should be 30 ft. just like the rest of the RS. Therefore if you are utilizing the first paragraph under RM, you would still need a rear yard variance.

Chairman Stevenson asked Mr. Pressberg if he could provide us a summary of what goes on paperwork easements if it is not in the deed. Mr. Pressberg advised, his recall was that if the location of the easement is not specified in the deed, then the owner of the subservient parcel has a right to make reasonable relocations of the easement provided he still provides the width required by the deed.

Chairman Stevenson asked if there would be legal recourse if the tenants begin to park where they are not supposed to. Mr. Pressberg advised that if the easement is violated, then there is recourse. He went on to say that apparently the location of the easement in Mr. Quinn's deed is not specified. Mr. Quinn advised that the location is marked and that Mr. Houston recognize the location when he asked me to sign off of it. He asked if they mean metes and bounds and if so, without metes and bounds, it can be moved. Mr. Pressberg advised that it could, reasonably. Mr. Quinn then advised that it is very possible that it could create a hardship because he feels that sharing with 4 families is a hardship.

Mr. McGloin advised that they could move this project 13 ft. forward but it would cause grading issues. Mr. Orr then advised that everything is doable at a cost; let's be clear about that. We have the preliminary plans, and if they come back and say that it could cost hundreds of thousands of dollars to move it 13 ft., then the Board would have to address it at a hearing.

Mr. Pressberg advised that he doesn't need a variance and he would have to, simply, adjust the site plan. He went on to advise that it is not necessarily a cost issue but a physical issue. Member Gorman asked about having 2 2-family dwellings or 1 3-family dwelling. Mr. Houston advised that it is already zoned for 2 dwellings, 4 units, and 2 dwellings. Mr. Pressberg also advised that it is also zoned for multiple dwellings; see page 98: 57 – section: sub section 3, paragraph B. (Mr. Pressberg read the section out loud.)

Chairman Stevenson advised that he is not as concerned about the variance as he is about the easement. Mr. Pressberg advised that it is not an issue for this Board. Mr. Quinn asked if creating a hardship for the neighbors is. Mr. Pressberg advised that if the granting of a 13 ft. easement creates a hardship for you then that's a consideration. Chairman Stevenson advised that the hardship of the easement is something that the Planning Board would have to address.

Mr. Quinn then advised that he doesn't feel that this is the kind of building that we want to see in historic Chester. At this point, he then advised that he was done.

Mr. McGloin addressed the Board and advised that they are applying for a variance from 30 ft. to 17 ft. due to grading issues and building height. We are here for 1 variance and that is it.

Member Shehab then asked Mr. Quinn if the variance is granted, would it be a detriment to you. Whether the variance is granted or not, the project can still go up, and you are saying that the detriment is the project itself. Mr. Quinn advised that what he is looking at here, we negatively affect my property.

Chairman Stevenson asked why they are building the project upgrade as opposed to making it flat. Mr. McGloin advised that part of the idea was not to disturb anything near the wall. Chairman Stevenson asked if the barn, that was previously there, was bumped up against the wall. Mr. McGloin advised that their engineer advised that there wasn't a lot of loading on the wall itself; removing the structure, did not hurt the wall.

Mr. Orr advised that the Planning Board looked at a very sketched plan as this is. The engineers are not done yet. (A lot of discussion ensued between a lot of people about the plans).

Chairman Stevenson asked Mr. Pressberg if the Board is allowed to confer with him privately. Mr. Pressberg asked if they want to close the Public Hearing or leave it open. Chairman Stevenson decided he wanted to leave it open. ***MOTION** was made by Member Gordon Shehab, second by Daniel Gorman to leave the Public Hearing open. ***MOTION** passed 5-0. Chairman Stevenson asked if this is considered Executive Session and Mr. Pressberg advised that it is.

The Board, Mr. Pressberg and Missy Sosler, Zoning Board Secretary, went into Executive Session. The aforementioned exited Executive Session and Mr. Pressberg advised Secretary Missy Sosler to let the record reflect that we went into Executive Session but we should not be in Executive Session.

Chairman Stevenson asked Mr. Pressberg if the Board wants to make a few comments to each other out loud, should he reopen the Public Hearing. Mr. Pressberg advised that the Board should discuss how they feel about it in front of the public. Chairman Stevenson then advised that he would like to reopen the Public Hearing to solicit any last minute comments. ***MOTION** was made by Daniel Gorman to reopen Public Hearing, second by Keith Brideweser. ***MOTION** passed 5-0. There were no further comments by the public or the Board.

REGULAR MEETING – 8:45PM

Chairman Stevenson opened the Regular Meeting at 8:45PM.

1. MINUTES

Review Draft of January 2014 Zoning Board Minutes

***MOTION** was made by Member Daniel Gorman, second by Gordon Shehab, TO ACCEPT THE JANUARY 2014 MEETING MINUTES AS DRAFTED. Motion passed 5-0

2. CORRESPONDENCE

Review reply from the OCDP regarding: 2 Vadala Road.

3. Projects for Review

Project #ZBA-14-01

Applicant/Owner:

Location:

Re:

Project Name: 2 Vadala Rd.

N2O Enterprises

2 Vadala Rd.

**Seeking variances to build (2) duplexes on property.
Front and rear yard distances need to be addressed.**

***MOTION** was made by Member Gordon Shehab, second by Daniel Gorman to classify as Type II for SEQRA. ***MOTION** passed 5-0.

Chairman Stevenson began the regular meeting by advising that his hunch is that by granting the 13 ft. rear variance, it would allow Mr. Houston to proceed with the project, but it will not address the issues raised by the neighbors. He felt that the better forum for addressing those issues would be the Planning Board when it gets to that state. The site plan will go back to the Planning Board and will require a Public Hearing. His suggestion is that is the better venue for raising these issues. The core issue here is the easement. Hopefully, you will gain satisfaction through the Planning Board.

Mr. Pressberg then advised that he felt that the Board should look at the variance and determine whether it would have an additional cost. Member Shehab advised that his concerns are that of the neighbor's concerns that this project would be a detriment and have a negative impact on them. Mr. Pressberg then advised that you have to determine whether the character of the neighborhood will change if you give them 13 ft. on the rear yard.

Chairman Stevenson then advised that he doesn't feel that the 13 ft. variance can be the "kill switch". The project is not green lighted, and it has to the Planning Board and to a Public Hearing.

Chairman Stevenson went on to say that the Code does allow him to put the 4 units on there. Mr. Orr then advised that the variance and neighbor issues very often come up regarding the dividing line between zones. He is in a RS Zone.

Chairman Stevenson then stated that he has an issue as to whether all of the different possibilities have been exhausted.

Mr. Houston then advised that Mr. Quinn is planning on putting rentals into his house building, and he just wants to nix this project. Mr. Pressberg then stated that the question is; is there some other way to achieve the benefit.

Chairman Stevenson then stated that even if you took out the wall and put in a brand new one, moved it all back, there would still be a parking lot in the middle, and the neighbor feels that it will infringe on him.

Mr. Pressberg again advised that the issue in front of the Zoning Board is: have you weighed all of the criteria. He went on to say that the owner of the property, not the owner of the easement, has the right to make reasonable adjustments.

Chairman Stevenson then stated that he does not believe that the pursuit of a variance has an adverse effect on the neighbors. Mr. Pressberg asked if this Board thinks that this project would be a detriment to the neighborhood. Chairman Stevenson advised that he does not feel it is. He felt it is an improvement over what was there. If it would mean that we would give a different kind of variance so that, at least, the project could proceed.

Member Gorman advised that he does not feel that everything has been looked at. Chairman Stevenson advised that all we have to look at is a 13 ft. variance. Mr. Pressberg advised that we can put this off until we draft a resolution. Chairman Stevenson then asked what the resolution would be. Mr. Pressberg advised that he would try to draft a resolution from the stand point that granting a variance with a record behind it.

***MOTION** by Member Daniel Gorman, second by Gordon Shehab to request that the attorney draft a resolution to grant a variance. ***MOTION** passed 5-0.

Chairman Stevenson asked if anyone has anything else to discuss and there were no other comments, ***MOTION** was made by Member Daniel Gorman, second by Member Gordon Shehab, to ADJOURN THE MEETING. Motion passed 5-0. Meeting was adjourned at 9:25 PM.

Respectfully Submitted,

Missy Sosler
Planning and Zoning Board Secretary