

MINUTES
VILLAGE OF CHESTER ZONING BOARD OF APPEALS
SEPTEMBER 17, 2014

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

PUBLIC HEARING 7:04 PM (Tabled at 08/18/14 ZBA Mtg – Continuation of Public Hearing at 09/17/14 ZBA Mtg):

Project: #ZBA-14-02 **Project Name: Meadow Hill Apts.**
Applicant/Owner: **John Sorrentino**
Location: **NYS Route 94 – SBL 102-1-1.2 Zone - RM**
Re: **Variances for increasing percent of 2 bedroom units and building height**
Presented By: **Mark Siemers**

Chairman Stevenson opened the meeting by advising this is a continuation of the previous month's Public Hearing.

Mark Siemers began by introducing Jay Myrow, attorney for the applicant. Mr. Myrow advised that he was not at the prior meeting. He stated that the question is whether this application is to be considered as a request for a use variance or an area variance. Chairman Stevenson advised the Board considers it an area variance application. Mr. Myrow asked if he was speaking of a variance from Section 98-18 in regards to the ratio of one bedroom to two bedroom apartments. Chairman Stevenson reaffirmed that they are not considering it a use variance.

Mark Siemers advised they are requesting three area variances. They provided a package to the Zoning Board via email earlier today, which included the Applicant Narrative for Requested Area Variance Consideration. The narrative listed each of the requested variances and supplied information for the five considerations that weigh the benefit to the applicant versus the health, safety and welfare of the neighborhood and community.

The area variances are being requested because the applicant believes the variances will create a more desirable, marketable and aesthetically pleasing project. Since its conception, this project was proposed as a 108 unit apartment complex; a requested variance is for 36 - one bedroom and 72 – two bedroom apartments. The Code states that apartment buildings (dwellings) can contain two or more bedroom units, but the multi-bedrooms units should not exceed 50%. The requested variance seeks 66.7% two bedroom apartments or a variance of 16.7%.

Mark Seimers addressed the (3) three requested variances:

Requested Area Variance 1: (Bedroom Ratio)

- 1) There will be no undesirable change to the neighborhood; it will remain the mixture that it currently is.
- 2) Whether the benefit sought by the applicant is feasible by some other means. Maybe you can consider a second way to get to the same outcome but if not, the area variance is the only way.
- 3) Whether the requested area variance is substantial; the answer is "no," it will result in an additional 18 bedrooms. The Code allows 8 units per acre for 1 and 2 bedroom units which equals 126 units which equals 189 bedrooms (50-50) split. We are proposing 180 bedrooms which is less than what is allowed by Code.
- 4) The project included 36 – 1 bedroom and 72 – 2 bedroom. It was reviewed under the SEQRA Law by the Village Board and was given a negative declaration.
- 5) From the beginning, the applicant proposed this bedroom ratio as per the Bulk Tables in the Zoning Code.

Requested Area Variance 2: (Signage)

- 1) Mark Siemers advised that the last time he appeared before this Board, we proposed a sign which was
- 2) 8' wide x 5' high. We have taken ½' off of the height. (He provided pictures to show what the sign was modeled after.) It is a total of 72 sf, including both faces.
- 3) The actual plaques indicating the apartment complex name and two others are proposed to be 18sf on one face of the sign which equals 36sf on both faces.
- 4) The sign will not produce any undesirable change or detriment.
- 5) The sign will enhance the project and the area.
- 6) There is no need for a variance; it is up to the Zoning Board to interpret.
- 7) There will be no physical impact to the neighborhood; no negative effect on the site distance.
- 8) The decorative sign was requested by the Planning Board.

Requested Area Variance 3: Schedule of District Regulations

- 1) The maximum building height allowed by the Zoning Code is 35' and or (3) stories.
- 2) The proposed building is three stories. The applicant had the architect look over the plans, and the height to the middle of the gable is 36' 6". Originally it was proposed to be 39'.

In conclusion, obtaining these variances will allow the applicant to construct a marketable and desirable project.

Chairman Stevenson asked about the building height in regards to the ceiling height. Mark Siemers advised that each floor is 9 ft., after a closer look by the architect, the measurement for the building height is 36' 6".

Planning Board Chairman Rick Ramsdell advised that one reason the buildings are as tall as they are is because of the 9ft. ceilings. Mark Siemers advised that the applicant wants 9' ceilings and that the original ceilings were 8'. Chairman Stevenson then asked PB Chairman Ramsdell if this is the first time he is hearing about 9ft. ceilings and if the Planning Board gave conditional approval with 9 ft. ceilings. He said that it was the first time he was hearing about 9ft. ceilings. Mark Siemers advised they just received the architectural information on Monday and the Planning Board doesn't review the architecture of the building and he doesn't believe that they said that.

PB Chairman Ramsdell suggested that another thing that could be done would be to increase the grade on the side of the buildings. Mark Siemers advised that the graded buildings are on a flat pad and that the buildings would still stand the same height.

Jay Myrow advised that when this project was Senior Housing, the applicant was granted a 6 ft. height variance. We are now coming in with a request to reduce the variance from 6ft. to 1½ ft. Chairman Stevenson asked if the 6ft. variance still stands since it has been rezoned and the project is new. Harold Pressberg advised that this is an "open question". Member Gorman remarked that the variance was granted when it was for Senior Housing. Attorney Pressberg advised that it was for multiple housing.

Jay Myrow advised the variance was granted for construction of a building in relation to the project. The variance was to allow a structure to be built 6 ft higher than allowed. They want the same building only 1 ½ ft. higher.

Chris Battiato, 17 Kerner Drive, Chester, NY, advised that at the last Village Board meeting it was brought up that the variance was for that project only. Mark Siemers advised that he believed that was in reference to the actual zoning change. The zoning change stated that if the Senior Housing wasn't done then the zoning reverted back to RS. He advised that he doesn't recall the variance discussion coming up in the meeting two weeks ago. Mark Siemers advised that two weeks ago we did not discuss the variance; we discussed whether two bedroom apartments were permitted under the development agreement which was entered into between the developer and the Village Board.

Chairman Stevenson then advised he would agree that 18" doesn't seem like much, but it is along the top of the ridgeline, in terms of ridgeline preservation. Mark Siemers asked if the Village of Chester has a ridgeline regulation, and Chairman Stevenson advised that they do not. Mark Siemers then stated that although he can't answer questions about breaks in the ridgeline, he can advise that two of the buildings will be at the high point.

Mark Siemers then indicated on the grading plan, with cross sections, indicating where the buildings are and where the ridgeline is. (Some conversation ensued between Mark Siemers and the Board members regarding the specific areas he had indicated.)

Member Brideweser remarked that when you have 9ft. ceilings inside bedrooms, there could be the possibility of bunk beds which could accommodate many more people living in that unit. (A discussion ensued between, Member Brideweser, Chairman Stevenson, Jay Myrow and Mark Siemers about the possibility of bunk beds in a room.) Mark Siemers advised the Board that they can't police what happens in the apartments; Chairman Stevenson advised that it doesn't need to get to that point. He advised that the point is that whether the benefit sought by the applicant can be by another method and that would be if there were 8ft. ceilings.

Mark Siemers advised that the benefit sought by the applicant is a building with 9ft. ceilings which would make it a 36 1/2ft. high building. The applicant believes that a building with 9ft. ceilings is more marketable.

John Orr asked Mark Siemers if he was sure that they were 9ft. ceilings or is the additional height needed so that they are able to construct and run duct work and sprinkler systems throughout the units. Mark Siemers advised that he saw 9ft. from the floor to the ceiling.

Jay Myrow advised that if the building is three floors then the typical space may be greater because of the mechanical end of it. John Orr advised that in large buildings, similar to this one, air ducts are usually in the floor and ceilings, but he is not sure of what their architect is attempting to do.

Jay Myrow asked if the prior variance was still in effect. He advised that typically when you have granted a prior variance, especially when it relates to the same project, you should be looking to see if there's a change of circumstance in relation to the original project. This variance is 4 ½ ft less than what was granted the first time.

Harold Pressberg advised that it was zoned RS but, when it was be senior housing, it was an RM use so it had 35 ft height criteria. At that time, the Board granted a 6ft. height variance. He advised that he agrees with Mr. Myrow regarding the previous variance that was granted.

Chris Battaito, 17 Kerner Drive, Chester, NY, stated most of us live in houses with 8 ft ceilings and it is not an issue.

Chairman Stevenson advised that the Board does feel that the sign looks good, but they are questioning the size. Member Shehab asked about reducing the sign from 40sf. to 36sf. Mark Siemers advised that he will be looking for some support from Chairman Ramsdell regarding the size of the sign. Mr. Siemers advised that they had proposed a much smaller sign on the plan. It was requested that the sign be much more decorative. The applicant then found a sign to model his sign to. The sign is now 8'w x 4'h.

Chairman Stevenson then advised that he had heard that Planning Board Member Gene Winters brought up the consideration of a larger sign. Chairman Ramsdell advised that the case was made that this is a really large project in the context of the Village, as well as being located near a lower speed limit sign, and all of this would make the sign more noticeable. We felt that a sign that was substantial would be a plus for the Village. He stated that he reviewed the drawing of the sign; the blank area was a bit more than 20½ sf. My feeling is that the rest of it is "frame" around the sign.

Member Brideweser advised that he is concerned about the telephone number being on the sign since this could cause drivers to slow done to jot the number down and an accident could possibly occur. Chairman Ramsdell advised he felt that there should be (4) lines of text on the sign as follows:

1. Meadow Hill
2. Apartments
3. Street Address
4. Chester, NY

Attorney Pressberg asked them to consider whether the decorative aspect is really the sign as opposed to the actual lettering area. Mark Siemers advised that they don't have a problem if the telephone number is not on the sign; the question is the actual sign and plaques.

Chairman Stevenson wants to be on the record as stating; "in my interpretation, a sign is the sign and you can't see through the concrete."

Harold Pressberg advised that we have 1st Amendment rights here and, as a government, we have a limit to how much we can limit expression. Chairman Stevenson asked if we are limiting his freedom of speech, and Attorney Pressberg advised that to some extent we are.

Jay Myrow stated that the issue is whether the scale, style and design being presented now versus what was considered by the Planning Board at site plan approval; the Board needs to clarify if all of the above mentioned were considered by the Planning Board; if they were, we are here for size. His assumption is that all of what was mentioned was part of the conditional approval.

Harold Pressberg advised that the Zoning code permits a 5ft. sign so you are trying to decide width and if it will be on legs. John Orr asked the Board the following; "if he didn't have concrete on either side and had a 6x6 post on other side, would this Board consider the posts holding the sign, part of the sign?" Chairman Stevenson replied that he would. John Orr advised that out of all the signs he has looked at and permitted, the intent is to look at the sign and not the mount. John Orr continued and advised that if this was to come across his desk, he would take the area of the letters and not the concrete as the sign.

John Orr asked Mark Siemers if the applicant intends on having another sign at the same location. Mark Siemers advised that he does not. John Orr advised the Board of the following: "Under C1, it states that an applicant can

have two signs on the property for a total of 22 sf by the Code.” He advised that you could look at the 22sf as his total available sign allowance and then consider where he is in comparison.

Harold Pressberg advised that if John has not interpreted this as violating the Code, than a variance may not be needed. John Orr advised that, in his opinion, he would give him 22sf, and he would not send him out to the Zoning Board. John addressed the Board and asked them to consider allowing the telephone number on the property for one year. He advised that we won't want people driving onto the construction site seeking information about the project and the rental information.

Jay Myrow advised that John Orr has deemed that it does not need a variance, and he asked John if it came across your desk with a permanent telephone number, would he allow it. John advised that he would almost have to because he doesn't believe there are any provisions to say no. (Conversation ensued about the pros and cons of telephone numbers on signs.)

Mark Siemers then asked; “so we don't need a sign variance?” John Orr advised if the applicant would propose a sign under 22 sf per side with the top cut off a bit, he would give the sign permit today.

Jay Myrow advised the Board they are withdrawing their request for the sign variance today and that he will convey all of tonight's comments to his client.

Chairman Stevenson asked if anyone had any questions regarding the ratio of 1 to 2 bedroom apartments. Member Brideweser asked for clarification on an area variance versus a use variance as it applies to this project. Harold Pressberg advised that the Board decided the variance needed would be an area variance.

Chairman Stevenson advised that since the project borders three other apartment complexes, he asked the Building Inspector, John Orr, to look into the bedroom ratios and count for those complexes.

John Orr advised the following:

1. Green Meadows – 21 –one bedrooms, 8 two bedrooms, 8 three bedrooms.
2. Chester Heights – No Data.
3. Renee Gardens – 16 Units; 16 –one bedroom apartments with a den.

Mark Siemers advised that he believes that our Code defines a “den” as a “bedroom.” He stated that under the bulk table minimum lot size, a bedroom includes a den or other bonus room that is not a kitchen or living room.

The minimum lot area for one or two bedroom units is up to eight units per acre; for three or more bedrooms, it is six units per acre. Mark advised that a big part of the confusion is in the Zoning Code; he stressed the project, from the beginning, had this bedroom mix when it was presented to the Village Board and the Planning Board. The Code section regarding allowable apartment ratio was found at the very last minute.

John Orr advised that on 15.8 acres you can build eight units per acre. If it is a 50-50 mix, one bedroom versus two bedrooms, there would be 63 units of one bedroom and 63 two bedroom units which would equal a total of 189 bedrooms. Therefore, if you are proposing 36 one bedroom and 72 two bedroom apartment, that would equal 180 bedrooms. The 180 bedroom count would be under what you could build as of right. The only requirement to build 108 units is to have six buildings. The Code states that you can build seven buildings with 126 total units.

John Orr advised that, all along, the applicant was proceeding under the requirements of the District Regulations as shown in the bulk table. It appears that someone read the Code section and found one section which requires a 50-50 ratio mix which he hadn't adhere to.

Mark Siemers advised that his applicant is trying to build a feasible project and reduce the footprint.

John Orr advised that when the applicant came to the Village Board for a zoning change in 2013, they gave us information regarding Chestnut Heights which has 36 units on approximately 12.8 acres which has a density of 2.8 dwellings per acre. Green Meadows has 9.7 units per acre; he only proposed 6.8 units per acre.

Chairman Stevenson asked if those properties were given a variance to be built that way. John Orr advised the following information:

1. Chester Heights predates the zoning code.
2. Green Meadows was started as a larger project and was subdivided, and the back units are condos.
3. Renee Gardens' density is low because the property slopes and much of the property can't be built on.

Chairman Stevenson advised that his understanding is that these three complexes did adhere to ratios in the Code, and they have been able to make a profitable run of it. John Orr advised that Renee Gardens does not adhere; Green Meadows is subsidized so profitability is not pertinent to this discussion; Chester Heights made all of their profit years ago. Member Brideweser asked which of the properties has the greatest density. John advised that it would be Renee Gardens, but with the following two issues: they could not hook into the Village sewer and they were only able to develop to the capability of a septic system being engineered which would take up much of the back property. Therefore, they were not able to build on that area.

Chairman Ramsdell advised Chairman Stevenson that the Village Board has requested that the Planning Board issue a report on the ratio. Harold Pressberg advised that the report has to do with the Village Board changing zoning; it has no effect on what is happening at tonight's meeting.

Member Shehab asked how they came up with 13 children as the school impact number. Mark Siemers advised that they utilized a popular Rutgers study; the report was given to all of the Board Members for review. This study breaks down the projected total number of school children per unit based on the unit monthly rental price.

Mark Siemers advised the section they are referring to would involve "5+" units of one and two bedroom units. He advised that early on his client proposed a target rental to the Village Board and the Planning Board of \$1200.00 per month. He continued by stating that the one bedroom apartments, with a rental of greater than \$1000.00, produce an average of .08 school age children and "5+" units for bedroom apartments with a rental greater than \$1100.00 produce an average of .23 school age children. Finally, that number of school age children is taken and multiplied by the number of units supplied and then reduced by 1/3 due to specific rentals to seniors. Mark advised that this is a 2006 New York study which was done as a comparison between single families versus apartments.

Member Shehab advised that he felt the problem with the numbers presented is that they are in theory because reality says there are a lot more children than that.

Jay Myrow advised that the applicant has demonstrated to this Board that we under developed by 20% the number of bedrooms that could produce school age children. He also advised that part of the SEQRA process is the impact on schools, and it was given a negative declaration. (A discussion then ensued between Member Brideweser, Gordon Shehab and Jay Myrow regarding the number of bedrooms equaling the number of children).

Mark Siemers advised that all of the ground floor units will be offered to the seniors first, which will total 36 units. They will be offered for 45 days to the seniors, and after the 45 days, they will be offered to the general public. Harold Pressberg added that one and two bedroom units will be offered to the seniors.

Harold Pressberg advised that the application for the variance is for 36 one bedroom to 72 two bedroom units.

Harold Pressberg advised that the Village has a planner, and we asked her opinion on the issue regarding the number of school children. Her opinion was as follows: from 31 children at 50-50 to 36 children at 36-72. This conclusion was made without taking into account that seniors have the right of first refusal; therefore there should not be a significant increase in the number of children. Harold Pressberg advised that her analysis appears to yield five additional school children.

Member Shehab asked if any research has been done to ascertain whether the seniors can afford \$1000.00 to \$1200.00 month. Mark Siemers advised that he assumes that his client looked into that aspect.

Chris Battiato, 17 Kerner Drive, advised that the property started off as RS and was changed to put senior housing in and now they are back for another change. Harold Pressberg advised that they did not change the zoning for senior housing; it was permitted. Chris Battiato advised that the developer needs to readjust to our codes and not us to them. He feels that greed may have a part in all of this.

Jay Myrow advised that the designed project is 20% underutilized. He then asked Chairman Ramsdell if there was any concern about "greed" being a factor during the consideration of the project by the Planning Board. Chairman Ramsdell advised that he was not aware of any.

Jay Myrow advised that he has heard the word "hardship" mentioned at last two times. Hardship has nothing to do with the criteria to be applied to this matter. The only criteria test is whether the benefit to the applicant is outweighed by any potential detriment to the community. Chairman Stevenson advised that his understanding of hardship is one of criterion but cannot be sole criteria; not hardships but self-created. Jay Myrow advised that the

variance presumes that there is a benefit to the applicant. The criterion is whether a demonstrated harm to the public good outweighs that benefit. Jay advised that it is dangerous for the Board to start considering hardships.

Chairman Stevenson advised he has yet to see a developer come in and not ask for the maximum or more to be developed. He is curious as to what the reason would be that an applicant would not want to max out. Jay Myrow advised it was probably a better design not to max out. Chairman Ramsdell advised that the understanding he had from Mark Siemers and John Sorrentino was that the size of the development was less because of the large amount of site work that would need to be done. Mark Siemers advised that he was not in 100% agreement with that.

Harold Pressberg advised that we need to focus on making a decision; if the tradeoff benefit to the applicant is a detriment to the community, which would have to be an articulated detriment specifically to the community. Chairman Stevenson asked how specific the detriment has to be. Harold Pressberg advised that you have to specifically identify the detriment and weigh the detriment versus the benefit to the applicant. There is no detriment to either the environment or the neighborhood; those impacts were determined by the Planning Board.

Chris Battiato, 17 Kerner Drive, said it is his understanding that if a builder comes in and it is beneficial to him, the ZBA then has to prove that there is a detriment to the Village. Harold Pressberg advised the ZBA has to determine whether the benefit to the builder is outweighed by some detriment to the community. He advised that the ZBA has to consider each individual project and if the benefit to the applicant is outweighed by the detriment to the community; what this Board does is written into law. The ZBA has to articulate a detriment to the community.

Harold Pressberg then advised Chairman Stevenson that unless there are more comments from the public, you can close the Public Hearing. You do have a quorum but you are missing the 5th Board Member who could break a tie. You can decide to wait till next month when you have a full board to vote. You can close the Public Hearing or if the Board decides it wants more time to consider everything, you have the right to do that. Chairman Stevenson asked the Board if they want to vote tonight on the two variances. Member Brideweser advised that he wants to review all of the numbers again.

MOTION made by Member Gorman, seconded by Member Brideweser to keep the Public Hearing open.
MOTION passed 4-0.

REGULAR MEETING – 9:15 PM

Chairman Stevenson opened the Regular Meeting at 9:15 PM

1. MINUTES

MOTION by Member Daniel Gorman, seconded by Gordon Shehab to ACCEPT THE JULY 17, 2014 MEETING MINUTES AS DRAFTED. ***MOTION*** passed 4-0.

2. CORRESPONDENCE

None

3. Projects for Review

Project #ZBA 14-02

Applicant/Owner:

Location:

Re:

Presented By:

Project Name: Meadow Hill Apts.

John Sorrentino

SBL 102-1-1.2 Zone - RM

Variances for increasing percent of 2 bedroom units and building height

Mark Siemers

There was no project discussion because the Public Hearing was kept open.

***MOTION** by Member Gorman, seconded by Member Brideweser to **ADJOURN THE MEETING AT 9:30PM.**
***MOTION** passed 4-0.

Respectfully Submitted,

Missy Sosler

Planning and Zoning Board Secretary