

MINUTES

VILLAGE of CHESTER ZONING BOARD OF APPEALS

JANUARY 28, 2010

PUBLIC HEARINGS AND REGULAR MEETING

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

PUBLIC HEARING:

C&S Wholesale Grocers

ZBA # 09-08

Location: 1 Elizabeth Drive, Chester

M1 Zone

SBL: 118-1-9.2

Owner: Chester Logistics LLC

Applicant: C&S Wholesale Grocers, Inc.

Re: Area Variance - Fence Height

Chris Fisher of Cuddy & Feder representing

Greg DeMinico, Wes Humphrey, Rick Wolfe attending

Zoning Board of Appeals (ZBA) Secretary Susan Marino read the Public Hearing Notice which appeared in the January 15, 2010 edition of 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, January 28, 2010 at 7:00 P.M., or as soon thereafter as the matter can be heard, concerning the application of C&S Wholesale Grocers. The applicant is requesting area variances from the Village Code 98-14.D1 and D2 - Fence and Wall Height and 98-14.F1A - Materials and Composition. The requested variances would accommodate the installation of an 8 ft. tall chain link fence with barbed wire.

The property is located in the Village of Chester, New York at 1 Elizabeth Drive and is listed on the Village Tax Map as Section 118, Block 1, Lot 9.2 in an M1 Zone.

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

Chairman Rappa opened the Public Hearing.

Proof of mailings was presented by Attorney Chris Fisher. Mr. Fisher said that this project relates to a 300,000 sq. ft. expansion of C&S, and has been approved by the Planning Board and also by the Town of Chester Planning Board. The applicant is requesting to install an 8 ft. tall black vinyl clad chain link fence with 3 strands of barbed wire around the perimeter. Mr. Fisher presented a photo of nearby Pep Boys, which had a similar fence. He stated

that the applicant does not think that there will be any impact on any adjacent parcels as they are all in an industrial park.

Chairman Rappa asked if any Board members have any issues with this matter. He said that it is in an industrial park, and the Board did this previously with Pep Boys. There were no issues.

Chairman Rappa opened the meeting to the public for comment or questions. There were none.

When asked about the purpose of the fence, Mr. Fisher stated that it is to secure the actual property and the storage of trailers onsite. There is nothing stored outside the fence.

Chairman Rappa asked if there had been any problems, or if the applicant is just being proactive.

Mr. Fisher said that nothing has happened; this is proactive.

Code Enforcement Officer John Orr said that right now you can drive up Leone Lane to the loading dock. This is not secure. The Village Code regarding fences in the M1 Zone is lax, and the Code should be rewritten. This should be addressed. I ask that the applicant leave a 10 ft. right-of-way. We'll talk about it during the planning process.

Mr. Rick Wolfe, Engineer, stated that the plan shows that the fence is totally on C&S property. It is not in any Town or Village property at all.

Mr. Greg DeMinico, Engineer, provided a more revised plan.

Member Stevenson asked if there was a sliding door or gate.

Mr. Wolfe replied that all gates along Leone Lane are sliding. The truck entrance has a swing gate, which swings into the property. The truck and car entrance is normally open. The other gates are for emergency access.

Member Shehab asked if there were security posts to be maintained.

Mr. DeMinico said that there is 1 security post which will be maintained.

Chairman Rappa made a Motion to close the Public Hearing. The Motion was seconded by Member Stevenson. All in favor, none opposed. Motion carries.

PUBLIC HEARING:

Allan's Falafel

Location: 115 Main Street, Chester

SBL: 111-2-42

Owner: Sam Perriello

Applicant: Tatyana Abbad

Re: Area Variance - Parking Requirements

David Hoover of Ostrer Rosenwasser representing

Tatyana Abbad attending

ZBA # 09-07

B1 Zone

ZBA Secretary Susan Marino read the Public Hearing Notice which appeared in the January 15, 2010 edition of 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, January 28, 2010 at 7:15 P.M., or as soon thereafter as the matter can be heard, concerning the application of Allan's Falafel. The applicant is requesting area variances from the Village Schedule of District Regulations for a B1 Zone, Column 9, Off Street Parking. The requested variance would accommodate additional restaurant seating where limited off street parking is available.

The property is located in the Village of Chester, New York at 115 Main Street and is listed on the Village Tax Map as Section 111, Block 2, Lot 42 in a B1 Zone.

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

Chairman Rappa opened the Public Hearing.

Proof of mailings was presented by Attorney David Hoover. Mr. Hoover stated that, according to procedure, 35 notices had been mailed. He said that the applicant is seeking an area variance related to parking as well as to seating. Mr. Hoover said that it needs to be stressed that the 2 businesses immediately adjacent to Allan's Falafel are not operating at this time. There is no significant pedestrian or parking traffic at this point. There is no impact, and no substantial change on the character of the neighborhood. We are not aware of any complaints regarding parking at this time.

Chairman Rappa inquired about the hours of operation of the restaurant.

Mr. Hoover said that someone is usually there by 9:00 A.M. but that the restaurant opens at 11:30 A.M. The applicant has the full support of the building owner and landlord.

Chairman Rappa asked if this issue is directed to the property, the landlord, or the occupants.

Attorney Harold Pressberg said that upon Site Plan Approval, 25 parking spaces were permitted. The issue is that once the other 2 facilities are used, additional parking spaces will be needed.

CEO John Orr said that it is like a moving target.

Mr. Pressberg said that the application is really on behalf of the landlord.

Member Stevenson asked if this is in reference to off-street parking or parking along Main Street.

Mr. Orr replied that it is the parking lot behind the building. He said that sometime in 2007, the owner went through the Site Plan approval process and brought a parking lot calculation to the Planning Board. The total number of required spaces was 25 and he was only able to supply 19 spaces. There has always been retail on the first floor. The owner at the time applied for a pizzeria with only take-out food, so no parking was calculated for that use. The applicant tonight wants a sit-down restaurant, so there is an additional need for parking on the property.

Member Stevenson asked if there is a written arrangement with the owner regarding the number of spaces allowed per business.

Mr. Orr said that it is not possible to do that. Parking spaces are needed for all uses. He said that the parking lot calculation approved by the Planning Board was for 2,700 sq. ft. of services. Now there is only 1,600 sq. ft. - 30 seems to be the total number of required spaces at this time. The Board needs to look at the entire use of the building to determine the number of spaces required or needed for all uses.

Mr. Pressberg asked how many spaces are needed.

Mr. Orr replied 30 spaces for apartments, retail services, and 2 restaurants.

Chairman Rappa said that regarding people renting apartments above, it's covered. So we need a variance of 5 spaces.

Mr. Pressberg said that's correct. They need 11 spaces - 6 are pre-existing by the Planning Board. He asked Mr. Hoover to clarify the advantages to his client.

Mr. Hoover said that his client wants a minimal amount of sit-down places. These additional spaces are necessary to meet the applicant's needs. There will be no substantial change to the neighborhood.

Member Stevenson asked if the variance is tied to the entire building, not just to the restaurant.

Chairman Rappa said yes. 5 seats per 2 cars seems conservative.

Chairman Rappa opened the hearing to the public for comment and questions. There are none.

Chairman Rappa requested a Motion to close the Public Hearing. A Motion was made by Alternate Gorman, seconded by Member Stevenson. All in favor, none opposed. Motion carries.

Continuation of Public Hearing:

Contorino 101-1-6

ZBA # 09-05

Location: Garden Street, Chester

RS Zone

Owner/Applicant: Lisa Contorino

Re: Area and Use Variances

James Dillin, PLS and Terrence Seeley, Esq. representing

ZBA Secretary Susan Marino read the Public Hearing Notice which appeared in the January 15, 2010 edition of the Times Herald Record:

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Village of Chester, New York will hold a Continuation of the August 27, 2009 Public Hearing at the Village Hall, 47 Main Street, Chester, New York on Thursday, January 28, 2010 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 authorization to apply RA Zone Regulations to the parcel. 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.

Chairman Rappa opened the Public Hearing.

Proof of mailings was presented by Attorney Terrence Seeley.

Mr. James Dillin, Surveyor, distributed maps of the property to the ZBA Members. Mr. Dillin stated that the reason that the application is being made is because we believe that there is no permitted use for this building or property that we can economically use and improve.

Mr. Dillin distributed a document to the ZBA Members, the ZBA Attorney, and to the Code Enforcement Officer. The document is attached at the end of the Minutes.

Mr. Dillin said that in regard to this property location in an RS Zone, there are only 2 Permitted Uses: 1) A single family dwelling not to exceed 1 dwelling per lot and 2) A prefabricated and modular dwelling, not to exceed 1 dwelling per lot. This is the same use, but a different type of construction.

Mr. Dillin stated that an existing workshop, an existing warehouse, and an existing office are currently on this 4,400 sq. ft. property. He presented a photo of the building which showed large overhead doors for trucks as well as loading docks. This is all commercial type construction. The building was basically built for farm use: farm storage, storing onions, packing, and storing equipment and tractors.

Mr. Dillin stated that the building can't really be converted to a single family dwelling. If we want to do that, we really have to knock it down. There was general discussion regarding the costs of demolishing the buildings, building a single family home, and the value of the lot. (See Mr. Dillin's document for estimated costs and values).

Attorney Pressberg inquired about the history of the building.

Mr. Dillin said that it was created as a farm building in the black dirt area. Over the years, there have been different uses of the building: a bottled water company, a printing company.

Mr. Pressberg asked what the use of the building was when it was zoned in 1971.

Attorney Terrence Seeley said that it was for agriculture. He said that the zoning split Mr. Contorino's property - the right side was zoned as RS and the left side as RA.

Mr. Pressberg said that there are 2 different lots. There has been change of uses without getting Site Plan approval.

Mr. Dillin said that's right. Mario's father just rented it to different people.

Mr. Pressberg asked if the building had been expanded since 1971.

Mr. Dillin replied no, but that it has been remodeled. There is aluminum siding on the building.

Code Enforcement Officer John Orr said that the building has not been used for agricultural use for over 3 years.

Chairman Rappa said that you went through the pain of getting the prices of tearing down the building. He asked if the applicant has had an architect in to say that they cannot convert this building to a single family dwelling. Do you have any budgetary numbers that say it costs this much to convert this building to a single family house?

Mr. Dillin said that we talked about that.

Chairman Rappa asked but did you do it?

Mr. Dillin replied no. This is a farm building, a farm structure.

Chairman Rappa said you're not an architect.

Mr. Dillin replied you're 100% right.

Chairman Rappa said that it's obvious that you'll take a loss by tearing the building down. I know it costs money but you're not proving that option to change it to me. I thought you would have something to speak to that.

Mr. Dillin said that he can provide the Board with that information.

Chairman Rappa said that comments from an architect would be more concrete. I would supply that to the Board.

Member Stevenson and Alternate Gorman agreed with Chairman Rappa.

Mr. Dillin said that if the Board wishes, we can do this.

Attorney Terrence Seeley said that there are issues to discuss. This is a question of whether or not this is unique to the area. This is the definition of unique. The neighborhood has always been the same. There is no substantial impact. I'm not sure why it was zoned the way it was but it is inherited property, outside of Mr. Contorino's control.

Chairman Rappa opened the hearing to public comment. He asked that people state their name and address, and stay focused on this particular property.

Ms. Mary Altobelli of 4 Garden Street: The current use of the building is for mechanical purposes. It operates all hours of the night and noise can be heard throughout my neighborhood. It wakes me up from a sound sleep. I have several photos of the cars. This operates 7 days per week.

Ms. Altobelli stated that there has been a devaluation of my property of \$20,000.00 based on Mr. Contorino's activities on his property. I'd rather see the building demolished and put up a single family home. It is a bad neighborhood - but Mr. Contorino created the bad neighborhood. It's about time to stop using this building illegally, without any regard to zoning and the ordinances of this Village and the people who live in it.

Mr. Daniel Jonas of 7 Garden Street: There are vehicles revving and peelouts. There is a safety concern. I like the cars, but there are noise and safety issues. I don't like the way that they are being done.

Mr. Seeley said that with this application there would be a Site Plan which there hasn't been. There would be some sort of compliance.

Mr. Pressberg said that regarding the use they've applied for - no hot rods would be allowed.

Ms. Altobelli called the police at 11:00 last night. She asked why the mechanics are still going on in the building. This speaks to my issue of trusting Mr. Contorino to do the right thing for his neighborhood. He's not abiding by the law of our Village.

Mr. Orr said that he had hoped that the Contorinos would be here tonight. He presented a letter to Mr. Seeley to give to the applicant. At the last meeting, the Board was told that the car business was stopped. You were told to clean up your act and that no variance would be considered until that was done. I am giving the Contorinos until February 26, 2010 to get rid of the unregistered vehicles and partially dismantled vehicles, to cease the operation of the auto dismantling business, and to apply for Site Plan approval for the other warehouse which is next on the agenda. The Board has told you for at least 6 months that they can go to the Planning Board and the ZBA, but this has not happened. This has been going on for 20 years or better. I cannot let this continue any further.

Mr. Jonas said that there are problems with the sound and with fumes - the way that the exhaust is aimed.

Mr. Seeley said that under the use we're asking for, there would be no construction. We're talking more about a warehouse facility. I'm assuming there would be fewer muscle cars in the warehouse. So far as the noise and revving of cars, the applicant could go anywhere on his property and there would be noise. This has nothing to do with the facility. I was told and believed that this car use was discontinued. We can't rent the facility.

Chairman Rappa said that Section 5 limits them. It slams the door on hot rods and 500 horsepower motors. I can understand the frustrations of the residents. The applicant is just saying that I'm doing what I want to do.

Mr. Peter DeFalco of 15 Meadow: I was talking with some people about matters and they said that you can get away with it in Chester. Nothing is being done.

Chairman Rappa said that Mr. DeFalco needs to understand one thing: We are not the police. We live here just as you live here.

Mr. DeFalco said that he's just frustrated. The situation has been going on and on, and it is not being addressed.

Chairman Rappa asked Ms. Altobelli if she's gone before the Village Board and filed complaints.

Ms. Altobelli replied yes, she's spoken before the Village Board. She spoke with the current Mayor who doesn't want to get involved by taking sides. I have to constantly be my own advocate. I've been fighting this for 20 years.

Chairman Rappa said that we'll try to straighten it out. I think that they're hearing you loud and clear. We said to clean it up. We'll table this again and try to get an architect involved.

Mr. Seeley said that we'll provide an architect's report for the next Board meeting.

Chairman Rappa requested a Motion to adjourn this Public Hearing until the next ZBA meeting. A Motion was made by Alternate Gorman, seconded by Member Stevenson. All in favor, none opposed. Motion carries.

Continuation of Public Hearing:

Contorino 101-1-9

ZBA # 09-06

Location: 3 Contorino Way, Chester

RA Zone

Owner/Applicant: Mario and Lisa Contorino

Re: Area Variances

James Dillin, PLS and Terrence Seeley, Esq. representing

ZBA Secretary Susan Marino read the Public Hearing Notice which appeared in the January 15, 2010 edition of the Times Herald Record:

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Village of Chester, New York will hold a Continuation of the August 27, 2009 Public Hearing at the Village Hall, 47 Main Street, Chester, New York on Thursday, January 28, 2010 at 7:45 P.M., or as soon thereafter as the matter can be heard, concerning the application of Mario & Lisa Contorino.

The applicant is requesting area variances from the Village Schedule of District Regulations for an RA Zone, Column 6, for 1) 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.

Attorney Terrence Seeley stated that it appears to me that the construction of the building and the area variances associated with that were authorized by the ZBA on January 23, 1984. I'm not sure if I need to withdraw or if the Board just needs to acknowledge that the variances were granted. Then we would be in

a position to proceed to Site Plan with the Planning Board knowing that no variances are needed.

Chairman Rappa asked CEO John Orr if the applicant met the conditions.

Mr. Orr replied no. A row of evergreen trees wasn't planted.

Attorney Harold Pressberg stated that it doesn't change their variance. It just means that they're not in compliance with the conditions of the variance.

Mr. Seeley said but we're in partial compliance. It depends upon how you define...I mean, trees were put there. Whether they need to be exact dimensions or the exact offset that was set forth at the meeting is open for debate, I guess. The trees are clearly there across that one line - whether it's 100 ft., I didn't have the opportunity to measure it.

Attorney Pressberg said that they are not asking us to change anything in the 1984 resolution. If they were, that's another issue. The applicant should withdraw and go to the Planning Board.

Mr. Seeley said that so the fact that we have 25 ft. trees and now having 6 ft. trees? (laughs)

Chairman Rappa said that obviously they wanted to buffer what was going on.

Mr. Seeley said 25 years ago, they did. (laughs)

Chairman Rappa said that the resolution is forever, right?

Mr. Seeley said no, I don't think we have to keep the trees at 6 ft. forever.

Chairman Rappa said then why would we make this sort of planting? It doesn't make sense to me. Alright, so they're just going to withdraw? We'll leave it up to John.

Mr. Pressberg said that they have to go to the Planning Board.

Mr. Seeley said that as he understands the letter from Mr. Orr, a Site Plan has to be followed and the process has to begin. Mr. Seeley asked the ZBA to withdraw the application for the variances set forth for SBL 101-1-9.

Chairman Rappa acknowledges the withdrawal.

REGULAR MEETING:

1. MINUTES:

Chairman Rappa opened the Regular Meeting. He made a Motion to accept the August 2009 ZBA Meeting Minutes as drafted. Member Kadala seconded the Motion. All in favor, none opposed. Motion carries.

2. C&S Wholesale Grocers

Location: 1 Elizabeth Drive, Chester
SBL: 118-1-9.2
Owner: Chester Logistics LLC
Applicant: C&S Wholesale Grocers, Inc.
Re: Area Variance - Fence Height

ZBA # 09-08

M1 Zone

Chairman Rappa made a Motion to type this application as an Unlisted Action under SEQRA with no potentially significant environmental impact. Motion was seconded by Member Stevenson. All in favor, none opposed. Motion carries.

Chairman Rappa made a Motion to grant a 5 ft. front yard and 3 ft. side yard variance on fence height, allowing barbed wire. Variances will allow the construction of an 8 ft. high chain link fence with 3 rows of barbed wire on the top. Motion was seconded by Member Stevenson. All in favor, none opposed. Motion carries.

3. Allan's Falafel

ZBA # 09-07

Location: 115 Main Street, Chester

B1 Zone

SBL: 111-2-42

Owner: Sam Perriello

Applicant: Tatyana Abbad

Re: Area Variance - Parking Requirements

Attorney Harold Pressberg said that the Planning Board has an application for an area variance permitting the site to have uses which require 11 more parking spaces than provided by the existing on-site parking.

Chairman Rappa made a Motion to type this application as an Unlisted Action with no potentially significant environmental impact. Motion is seconded by Member Kadala. All in favor, none opposed. Motion carries.

Chairman Rappa made a Motion to allow an area variance permitting the Perriello property site to have uses requiring an additional 11 parking spaces in addition to the 19 provided on-site by the Perriello property, thus allowing the property uses that require up to 30 spaces. Motion was seconded by Member Stevenson. All in favor, none opposed. Motion carries.

Chairman Rappa made a Motion to adjourn the meeting. Motion was seconded by Member Stevenson. All in favor, none opposed. Motion carries. Meeting adjourned at 8:45 P.M.

Respectfully Submitted,

Susan Marino
Zoning Board Secretary
February 3, 2010