

MINUTES

VILLAGE OF CHESTER

ZONING BOARD OF APPEALS

FEBRUARY 28, 2018

PRESENT: David STEVENSON, Chairman
Colleen COLLINS, Member
Daniel GORMAN, Member
Gordon SHEHAB, Member

ALSO PRESENT: John ORR, Code Enforcement Officer
Harold PRESSBERG, Attorney

NOT PRESENT: Keith BRIDEWESER, Member

PUBLIC HEARING 7:05 PM

Chairman Stevenson opened the Lutjens application Public Hearing at 7:05 PM. The Public Hearing Notice was read into the record (copy attached). Chairman Stevenson requested and was given Proof of Mailings from the Applicant.

Project # ZBA-17-03 Project Name: Lutjens Interpretation / Area Variances
Applicant/Owner: Betty J. Lutjens
Location: 5 Lutjens Alley / 5 Elm Street (SBL: 108-5-3, 108-5-2 / RS Zone)
Re: Interpret § 98-10(A); Area variances § 98-6 Schedule of District Regulations – “Minimum Lot Width”, “Minimum Yard Setback Dimensions – Side Yard” and “Minimum Lot Area”

Applicant’s representative Okey Barrett presented the project, describing 2 properties – Parcel A (the main dwelling) and Parcel B (a garage with an apartment above it). He advised there are 2 properties on the tax map; both owned by Betty Lutjens, one is the apartment and one is her main dwelling on 5 Elm Street. When the survey was completed, there was .04 foot encroachment on the garage side of that back apartment on the alley. For that reason, we went to the Planning Board and they advised we have to obtain a boundary change because they’re non-conforming. The surveyor changed the boundary lines between those 2 properties and, in order to do that, we need variances, so that’s why we’re here. The lot line change is so they would be considered 2 separate properties for zoning.

Chairman Stevenson asked if the ZBA members had any questions/comments. General discussion was held regarding:

- It was noted the parcels are currently non-conforming in the RS Zone;
- There is currently a deck attached to the main dwelling which encroaches on the apartment / garage property. Code Enforcement Officer John Orr advised this is not a matter for the ZBA, but a civil matter between property owners;
- Parcel A and Parcel B are not considered one lot for tax purposes, but since both lots are owned by the same person, they are considered one lot for zoning purposes;
- The applicant is seeking a lot line change to avoid an encroachment and an interpretation for relief from § 98-10(A) to make them 2 separate lots for zoning purposes and so they can sell Parcel B;
- Parcel A has municipal water and sewer and Parcel B has a septic system, which is located on Parcel B.
- CEO John Orr advised the Board is granting variances, not granting future project approval.
- Zoning Board Attorney Harold Pressberg advised if they were to remove the structure and wanted to build a new structure that doesn’t conform with side yard requirements for pre-existing parcels which are less than 100’ wide, they would have to come back to the Zoning Board since the side yard variances for Parcel B only apply to accessory uses.
- The variances they are seeking would strictly address if the 2 lots are allowed to exist for zoning purposes. As to what is going to be going on them, we are not addressing. Per ZBA Attorney Harold Pressberg, we would be doing two things; one is granting an area variance so they can, in effect, sell one of the lots and keep one lot as opposed to treating it as just one lot. In effect, the Zoning Code, §98-10(A) erases the lot line that is pre-existing. The second is granting side-yard lot line variances to permit the changes to the lot line to remove the encroachments. This is re-instating the lot line and then granting the area variances that they require for that.

Chairman Stevenson opened the hearing to the public for comments:

- Clarification on how to access Parcel B. The applicant advised the property could be accessed with a driveway from Elm Street, Walnut Street or Davis Way, with a note that Davis Way is a private road. The existing house on Parcel A has a driveway that is shared between 3 and 5 Elm Street.
- Edward Szulwach – 9 Elm Street: Advised he has no issue with this request.

Chairman Stevenson read through the five conditions/discussion points required for granting an Area Variance with the applicant:

- 1) If this variance would produce an undesirable change in the character of the neighborhood or a detriment to the nearby properties will be created?
Applicant: It wouldn't change any of the look of the neighborhood. It would allow the current owners to remain intact and someone else to pay taxes on that property. Most of the lots in that area are already only 50' wide.
- 2) If the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance? It was apparent that there was no other feasible method.
- 3) Whether the requested area variance is substantial? It was apparent that the variances were required to make the lots conforming.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? As reflected in response to issue 1, above, there will be no adverse impacts.
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance. The lots were subdivided prior to the enactment of zoning.

Chairman Stevenson confirmed that, should another person buy this lot and is interested in putting something on the lot which doesn't comply with the setbacks as revised, these question need to be asked again.

As there were no other questions from the members of the Zoning Board or the public in attendance, ***MOTION** was made by Member Gorman, second by Member Collins to **CLOSE THE PUBLIC HEARING**. Motion passed 4-0.

REGULAR MEETING

Chairman Stevenson opened the Regular Meeting.

1. Minutes

***MOTION** was made by Member Gorman, second by Member Shehab, to **ACCEPT THE MAY 2017 AND NOVEMBER 2017 MINUTES AS DRAFTED**. Motion passed 4-0.

2. Correspondence

Orange County Department of Planning referral reply was reviewed. The County Recommended Local Determination with a note that the development is existing and the lots are existing and that the adjustment of the parcels boundaries actually does lessen the degree of nonconformity for all existing development (copy attached).

3. Projects for Review

Project #	ZBA-17-03	Project Name:	Lutjens Interpretation / Area Variances
Applicant/Owner:	Betty J. Lutjens		
Location:	5 Lutjens Alley / 5 Elm Street (SBL: 108-5-3, 108-5-2 / RS Zone)		
Re:	Interpret § 98-10(A); Area variances § 98-6 Schedule of District Regulations – “Minimum Lot Width”, “Minimum Yard Setback Dimensions – Side Yard” and “Minimum Lot Area”		

***MOTION** was made by Member Shehab, second by Member Collins, to **DECLARE THIS A TYPE II ACTION UNDER SEQRA**. Motion passed 4-0.

The Board reviewed the 5 criteria for area variances previously discussed:

- 1) If this variance would produce an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the granting of the area variance
- 2) If the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- 3) Whether the requested area variance is substantial;
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

Chairman Stevenson advised he feels the project satisfies all the requirements and doesn't pose a problem to the neighborhood. The Board members in attendance agreed with the chairman.

Chairman Stevenson asked ZBA members if they had any additional comments on the Lutjens application. None were given.

***MOTION** was made by Member Gorman, second by Member Shehab, to **GRANT THE AREA VARIANCES AS SHOWN IN THE FOLLOWING TABLE TO ACCOMMODATE THE LOT LINE CHANGE FOR LOTS WITH EXISTING STRUCTURES WHICH WILL PERMIT THE APPLICANT TO TREAT THE TWO LOTS AS PRE-EXISTING 50' WIDE LOTS FOR ZONING PURPOSES.** Motion passed 4-0.

	REQUIRED	CURRENT	VARIANCE GRANTED
Parcel A – Minimum Lot Width	100 feet	50 feet	50 feet
Parcel A – Minimum Lot Area	12,500 square feet	7,500 square feet	5,000 square feet
Parcel A – Side Yard	20 feet	9.4 feet	10.6 feet
Parcel A – Side Yard	15 feet	2.7 feet	14.3 feet
Parcel B – Minimum Lot Width	100 feet	50 feet	50 feet
Parcel B – Minimum Lot Area	12,500 square feet	7,500 square feet	5,000 square feet
Parcel B – Side Yard – Accessory Use	15 feet	3.3 feet	11.7 feet
Parcel B – Side Yard – Accessory Use	15 feet	3.2 feet	11.8 feet
Parcel B – Rear Yard – Accessory Use	15 feet	10 feet	5 feet

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

Respectfully Submitted,



Sandra VanRiper
Zoning Board of Appeals Secretary

ZONING BOARD OF APPEALS
VILLAGE OF CHESTER, NEW YORK
PUBLIC HEARING
FEBRUARY 28, 2018 AT 7:00 PM

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 February 28, 2018, at 7:00 PM, or as soon thereafter as the matter can be heard, concerning the application of Betty Lutjens. The applicant is requesting:

- (a) An interpretation of Village Code Section 98-10(A) to determine whether that provision precludes the sale of adjacent lots which lots have less than the prescribed lot widths, or in the alternative
- (b) Area variances from the Village Code Section 98-6 Schedule of District Regulations – “Minimum Lot Width”, “Minimum Yard Setback Dimensions – Side Yard” and “Minimum Lot Area” to accommodate two pre-existing, non-conforming lots.

The property is located in the Village of Chester, New York, at 5 Lutjens Alley and is listed on the Village Tax Map as Section 108, Block 5, Lots 2 and 3 in a 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.

BY: ORDER OF THE ZONING BOARD OF APPEALS
VILLAGE OF CHESTER, NEW YORK

DAVID STEVENSON, CHAIRMAN



Steven M. Neuhaus
County Executive

Orange County Department of Planning

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David E. Church, AICP
Commissioner

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County Reply – Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-l, m, &n

Local Referring Board: Village of Chester ZBA

Applicant: Betty Lutjens

Project Name: Lutjens Area Variance

Proposed Action: Area Variance for side yard setbacks for existing development on existing lots with recently adjusted boundaries

Reason for County Review: Within 500 feet of NYS Route 94

Date of Full Statement: January 3, 2018

Referral ID #: CHV 01-18M

Tax Map #: 108-5-3

Local File #: none provided

Comments:

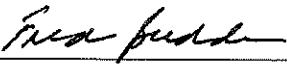
The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the board finds that granting relief is warranted in this matter.

We note that the development is existing, and the lots are existing, and that the adjustment of the parcels boundaries actually does lessen the degree of nonconformity for all existing development.

County Recommendation: **Local Determination**

Date: January 10, 2018

Prepared by: Megan Tennermann, AICP, Planner



David Church, AICP
Commissioner of Planning

As per NYS General Municipal Law 239-m & n, within 30 days of municipal final action on the above referred project, the referring board must file a report of the final action taken with the County Planning Department. For such filing, please use the final action report form attached to this review or available on-line at www.orangecountygov.com/planning.

