

MINUTES
VILLAGE OF CHESTER
ZONING BOARD OF APPEALS

JULY 16, 2019

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

ALSO PRESENT: John ORR, Code Enforcement Officer
 David MACCARTNEY, Attorney

PUBLIC HEARING

***MOTION** was made by Member Gorman, second by Member Collins to **OPEN THE PDJ PUBLIC HEARING**. Motion passed 5-0.

1. **Project # ZB-19-02** **Project Name: PDJ Components / Area Variances**
 Applicant/Owner: PDJ Components / 35 Brookside Avenue LLC
 Location: 33-35 Brookside Avenue (SBL: 114-1-17; 10.1 / B2 Zone)
 Re: Use variance from §98, Zoning, Schedule of District Regulations, Principal Permitted Uses in B-2 District.

The Public Hearing Notice was read into the record (copy attached). Chairman Stevenson requested and was given Proof of Mailings from the Applicant. Chairman Stevenson confirmed a response was received from Orange County Department of Planning.

Jim Dillin, Jr., PLS, provided an overview of the project:

- The applicant purchased the property on October 18, 2018;
- The applicant erected a concrete slab on SBL 114-1-17, which also encroached on SBL 114-1-10.1 without permission from the Village of Chester's Building Department;
- Code Enforcement Officer John Orr issued a violation for the work done without a permit;
- The applicant appeared at a Planning Board Work Session and was advised the remedy was to apply to the Zoning Board of Appeals for a use variance and lot line change;
- The applicant would either move or eliminate the lot line between the two properties;
- The applicant reviewed the zoning maps found on the County website and the Village's website and understood the property to be in the M-2 Zone;
- The applicant is aware the Village Board granted a zone change in 2010;
- Jim Dillin provided the Board with a printout of the property sheets for both properties. The printouts show 114-1-10.1 in a M2 Zone and 114-1-17 in a B2M2 Zone;
- The applicant does not want a variance and would like the property to stay / go back to the M2 Zone so that if/when he does future expansions, he does not have to return to the Zoning Board of Appeals for a variance.

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

- Member Gorman asked if the applicant went to the Code Enforcement Officer before he started work, would he be before the Zoning Board of Appeals?
 - Code Enforcement Officer John Orr advised the applicant would not be before the Zoning Board of Appeals if he came to the Village prior to starting work;
- Member Shehab asked for clarification on what zone the property is officially in;

- Jim Dillin advised the property was granted a zone change from M-2 to B-2 at a Public Hearing on September 13, 2010;
- Chairman Stevenson asked the Code Enforcement Officer and Village Attorney if there is one official source for what zone a property is in as the Orange County maps are notoriously out of date;
 - Code Enforcement Officer John Orr advised the Building Department records are the best source and he doesn't believe a title search was done when this property was purchased;
- Chairman Stevenson asked the Code Enforcement Officer and Village Attorney if the previous owner requested the zone change;
 - Code Enforcement Officer John Orr confirmed the previous owner had 3 parcels rezoned for commercial benefits;
 - Chairman Stevenson asked if the previous owner disclosed the zone change to the new owner;
 - ZBA Attorney David MacCartney commented that typically an owner is not asked or, if asked, refuses to make representations as to the zoning, violations – it's sold as and it's up to the purchaser to do their due diligence to ascertain exactly what the zoning was;
- ZBA Attorney David MacCartney commented that in a typical transaction a title search is done with an inquiry to the Building Department, which includes a report with the zoning;
- Chairman Stevenson asked if zones are noted on the deed to a property;
 - ZBA Attorney David MacCartney advised they are not recorded on a deed.
- Member Brideweser – but with that, for the title search, you're not going to the County map, you're not going to a map that's on the website, correct? They're going to....;
 - Code Enforcement Officer John Orr advised he gets inquiries all the time from national companies that do information research on properties, for example, PEP Boys just went through one and I had to give them a zoning letter that stated the zoning is X, they're able to do what they're doing there, etc. When we do them from time to time on commercial properties, it's when a company purchasing is trying to do their due diligence. On this one, no information was requested from our department on a title search.
 - Member Gorman: So, that's not to say a title search wasn't done
 - Code Enforcement Officer John Orr: No, a title search may have been done, but they didn't obtain any information from the building department.
 - Member Shehab: Would a title search normally ask or find out the zoning or would they just be looking at who transferred ownership?
 - Code Enforcement Officer John Orr: I don't know that. Sometimes they want a zoning letter and sometimes they don't. More and more with commercial properties they request some type of zoning letter or verification of zoning.
- Member Brideweser: You indicated there's a major economic difference between it being zoned one way or another in this case;
 - Code Enforcement Officer John Orr commented the owner at the time felt that the property would be more valuable and that he could go elsewhere – I know for a fact he had looked at moving out of the state actually and then all of a sudden the business sold, so I'm not quite sure what happened there, but his idea was that with the commercial and, especially things that are going on outside our town, that the piece of property would have a better investment for the ground than the use;
- ZBA Attorney David MacCartney advised that if there's an outstanding question, it would be a legitimate line of inquiry if you were interested to ask the applicant if they did, in fact, conduct a title search and if they're willing to share the results and if there was a title report issued to them.
 - Jim Dillin said he could easily give a title report, but title reports usually don't track zoning, but municipal reports do. A title report tracks all deeds of record, easements, but very rarely touches on zoning.
 - CEO John Orr advised that there's a part of a title search that asks for a municipal record, so it's a municipal search as part of a title search.
 - Jim Dillin guaranteed the Board that the applicant had a title search done because you have to in order to clear title.
- The applicant wouldn't have purchased the property / business if he knew it wasn't in the right zone because it would be a pre-existing, non-conforming and he's ready to make trusses. And the thing that led him astray was really everything that the Village of Chester has on record that you can go to is not accurate. Even the dance studio today is not accurate – that's still listed as M2.

- ZBA Attorney David MacCartney put this part of the inquiry into perspective for the Board members in regard to use variances. I think you're aware that I gave you the printout of what the use variance standards are in regard to Village Law. So, I think where this fits in is one of the several factors that the Board is to consider in regard to use variances, actually the last factor, which is whether the difficulty / unique hardship was self-created. And the self-created nature of a hardship is different when it comes to use variances than it is when it comes to area variances. In an area variance, which is probably more often what you're seeing before the Board, if I'm guessing correctly. If a hardship is self-created, that's one factor, but it's not determinative. With a use variance, that standard is a little bit different in that regard in that if you find that it is a self-created hardship, then that is the death now to the application. You cannot grant it under New York State Village Law. So, it's an important issue. I think the applicant is raising a legitimate point in regard to the maps not showing what the zoning is. On the other hand, there's some case law that talks about you taking title, you're bound to do your due diligence to ascertain that which was publicly available had you asked. And, if it was available through some publicly available means, then you're charged with the knowledge of what that zoning is. So, we're in a little bit of a strange grey area where the law really isn't.... I've not seen a case quite like this one as of yet, I haven't done the research on it, but that's where this – just to kind of put this part of the discussion into perspective. Hopefully that helps you.
- Code Enforcement Officer John Orr asked if the new owner, 35 Brookside Avenue LLC, purchase all 3 parcels
 - Jim Dillin confirmed they purchased all 3 properties.
 - Code Enforcement Officer John Orr asked if the owner is in the truss business somewhere else?
 - Jim Dillin advised he doesn't think so, but he'll check
 - Code Enforcement Officer John Orr: Just to your point of he wouldn't have purchased if he knew. Is this a new venture for this owner? The new owner purchased the lots and PDJ business?
 - Jim Dillin advised he did purchase the lots and the business.
 - Code Enforcement Officer John Orr confirmed the sale went through in October of 2018
 - Jim Dillin confirmed it went through in October 13, 2018
 - Code Enforcement Officer John Orr asked Jim Dillin if he knew the owner prior to him purchasing
 - Jim Dillin advised he did a few jobs for him but he's not a long-time client
 - Code Enforcement Officer John Orr asked Jim Dillin if he did the site plan for the dance studio
 - Jim Dillin advised he did the site plan for the dance studio and that he was directed to put on that site plan that the property was in a B2 by the Code Enforcement Officer
 - Code Enforcement Officer John Orr commented that Jim Dillin can't really say that the applicant wouldn't have purchased the property and the applicant isn't here to ask questions to. It's his opinion that the applicant didn't do his due diligence when purchasing the lots and the business.
- Jim Dillin advised they don't really want a use variance, they'd like to get the zoning straightened out;
- ZBA Attorney David MacCartney asked if they've requested a zone change from the Village Board;
 - Jim Dillin advised they attended the Planning Board Work Session and were advised they had to submit an applicant to the Zoning Board of Appeals because they were under violation, but after looking at everything they decided they want to clarify the zoning before obtaining a use variance;
- ZBA Attorney David MacCartney just wants to bring the Board back to the legal requirements – like the inquiry about did they do due diligence or not do due diligence, was it enough, was it on the map or not on the map. My point of bringing that up was that it all goes to the 4th factor – was it self created. If you were to find it's not self-created, it wasn't on the map – it's still your job to look at the other factors as well. All this does is that if you resolve this in favor of the applicant, it doesn't mean you need to grant the relief, it means that you now have the ability to grant the relief if you so choose. And if he satisfies all the other elements in the test and the one that most zoning boards spend a lot of time on when it comes to use variance applications is the 1st one which is the applicant has to show that he cannot realize a reasonable return provided that's substantial as demonstrated by competent financial evidence. And what the law requires is that they have to show that for each and every use that's permitted in the B-2 District – they cannot realize a reasonable return and they have to prove that to you by competent financial proof. That's typically a line of inquiry and I want to make sure you're focused on the different factors and understand what you might be asking him and what's a relevant ground of inquiry.
- Member Shehab asked if the business is currently manufacturing trusses

- Jim Dillin: Yes, it's an existing business. So, it's not a new use, it's just an expansion of it. It's not a new use where we would have to prove everything on his property.
- Member Shehab: You're saying new use because you want to have that extended concrete slab
- CEO John Orr: What it says in our code – when the prior owner asked for this property to be re-zoned, he created a pre-existing, non-conforming use. A pre-existing, non-conforming use can remain in effect forever. They can be re-established if destroyed by fire or other circumstance, but they cannot be enlarged or extended. This came under an enlargement.
- Member Shehab: In the application it talks about that it's located adjacent to a sensitive archeological site and endangered species. Is that anything that's going to impact what we have to deal with here?
- CEO John Orr: What happens with the new SEQRA forms and the system that New York State has put in place, there's a checklist you put your zip code. Because of our zip code, no matter where it is in 10918, it flags those items. There are some wetlands to the rear of this property adjacent to 17, but very minimal.
- ZBA Attorney David MacCartney: In regard to SEQRA, typically when you're dealing with area variance applications for 1 and 2 family homes and other things, they're Type II actions and you simply declare it as a Type II and you move on because you don't have to conduct an environmental review. Use variances don't fall into the category of Type II, so it's either Unlisted or Type I. In this particular case, I don't see any factor that would render this a Type I, so I think it's probably an Unlisted action, so the overview of what you would have to do in regard to SEQRA. There is potentially another involved agency, which is the Planning Board because they would have site plan approval and approval for the lot line change that they're proposing. So, you could either conduct a coordinated review or, in my view, the better way to go would be uncoordinated review where you don't have to circulate notice of lead agency, you could just each board can independently do their SEQRA review. Your SEQRA review would be simply, you would declare it as an Unlisted Action and you would review the short form EAF that the applicant's provided and, at the appropriate time, make a determination on the significance or lack of significance on the application or action that you would be taking, which would be an approval or disapproval.

Chairman Stevenson asked if the ZBA members had any additional questions/comments. As they did not, he opened the hearing to the public for comments:

- Mary Altobelli, 4 Garden Street, Chester, NY: If the applicant started building without permits, is there a fine for that to dissuade people from doing that?
 - CEO John Orr: There are no fines in place for that, but the property owner has to go through the expense of a Planning and or Zoning application. If the applicant applies for a building permit, the fee will be doubled for first working without a permit and the applicant could be ordered to remove what he'd built already..
 - Mary Altobelli commented that there should be some way to reprimand a property owner for doing work without a permit.
 - CEO John Orr: If the property owner hasn't submitted an application within 30 days, they are issued a court appearance and fines can be issued there.
- Member Gorman: Is this the first business the applicant has bought? You can't just build because you own the property. As a business owner, he should ask questions before work is done and show up at Board meetings to answer questions.
 - Jim Dillin advised he knows the applicant's father, who built Sugarloaf Creamery Pond, so they know a little bit about commercial properties.
- Chairman Stevenson: But the permit isn't the only part, it's also the due diligence to confirm what the zoning is. I understand what you're saying about the map being a bit confusing, but the fact that these say B2M2, that should be a big flag that indicates something isn't quite right here and we need to dig deeper to find out.
- Member Brideweser: My concern is that – I understand this is another representation of some information, some data, but where the basis of the information is held and where they go for any other legal justification is not there – it's in the records. Is that correct?
 - Jim Dillin: It's in the record, but also in the resolution, if I may read the bottom of it. Resolution that the Mayor and Village Clerk are hereby authorized to take action necessary to effectuate this resolution. And that means that you have to, and I'm not a lawyer, but I think you have to publicly

show that this has changed. And that's why you have a zoning map. And I'm not sure if this has to be filed in Albany.

- Member Brideweser: I think it's a reference, but for specific information you should go to the legal documents and not the maps.
 - Jim Dillin noted there's a Village certification on the zoning map which has not been signed
- Member Brideweser: When a title search is requested, what documents are used?
 - CEO John Orr: The building file and county website
 - ZBA Attorney David MacCartney: Is the resolution in the Building file?
 - CEO John Orr: Yes and the file is open and FOILable.
- Mustafa Sahiner, 7 Garden Street, Chester, NY: Will there be problems with future zoning maps?
 - Chairman Stevenson: The Zoning Code is the zoning, but the maps have not been updated.
 - CEO John Orr: This isn't a widespread issue.
- Jim Dillin: Could we put a stay on the application to confirm the zoning?
- ZBA Attorney David MacCartney: There are 2 options. Option 1 – if the applicant has more information to present to the Board, then the Public Hearing could be kept open. Option 2 – the Board could close the Public Hearing and have 62 days to render a decision or extend the time with the applicant's concession.
- Chairman Stevenson: Considering all that's going on in the Route 17M corridor and all that's going on around the Village, it's possible the property could be more valuable as a B2. Would be confusing to keep changing the zoning.
- ZBA Attorney David MacCartney suggested the Board keep the Public Hearing open and schedule another meeting to allow the applicant to bring in additional information.
- Jim Dillin would like the Public Hearing to remain open so he can review the case with this client and come back to the Board.

The Public Hearing for this application will be continued to Thursday, August 15, 2019 at 7:00 PM.

***MOTION** was made by Member Gorman, second by Member Shehab to **OPEN THE ADAMS PUBLIC HEARING**. Motion passed 5-0.

2. Project # ZB-19-03 Project Name: Adams / Area and Use Variances

Applicant/Owner: Michael Adams / Lisa Contorino
 Location: High Street (SBL: 101-1-6 / RS Zone)
 Re: Use variance from §98, Zoning, Schedule of District Regulations, Principal Permitted Uses in RS District; Area variances from §98, Zoning, Schedule of District Regulations for an RS Zone, Column 6

The Public Hearing Notice was read into the record (copy attached). Chairman Stevenson requested and was given Proof of Mailings from the Applicant. Chairman Stevenson confirmed a response was received from Orange County Department of Planning.

CEO John Orr commented that he believes there were some errors on the Village on the actual required variances for side yards.

Jim Dillin, Jr., PLS, provided an overview of the project:

- The property owner is Lisa Contorino;
- Applicant is a Mike Adams / 3 Contorino Way LLC;
- Mike Adams purchased the adjacent property at 3 Contorino Way and would like to purchase this property as well, but wants to make sure he can do what he's planning to do;
- The applicant isn't proposing any new construction, only renovations;
- The property is on High Street and is accessed through an easement on Meadow Avenue;
- The applicant would like to expand the existing apartment to a 3-bedroom, single-family dwelling and keep the other existing building for office / warehouse use as it's currently used for;
- The current footprint of the property would remain the same and the applicant would have to go to the Planning Board for site plan approval;
- Jim Dillin handed out a time line of the uses of the property from 1967 to the present;

- The property was used from 1977 to 1984 as a continuation of farm use / vegetables;
- The applicant is looking for either a use variance or a ZBA determination that this is pre-existing, non-conforming;
- The applicant is currently operating a contracting company from the property, which provides off-site services;
- The applicant would like to utilize the warehouse for his business with the potential to rent it out in the future. He would also like to rent the warehouse and single-family dwelling separately;
- The applicant will be decreasing the non-conformance by renovating to a single-family dwelling;
- Deliveries are made early in the morning and items unused on the job are returned to the warehouse;

Chairman Stevenson opened the hearing to the public for comments:

- Mary Altobelli, 4 Garden Street, Chester, NY: This is the best neighbor for this space. Her hesitation is with the future use of the property and how the community can be protected from issues they had with previous tenants, like lighting, trucks, chop shop, etc.
- Nancy Hom, Village Resident: Are there flammable chemicals being stored on the property?
 - Applicant Mike Adams advised there are some minor flammable items stored on site, but not self-combustible. There's paint and diesel, which is locked up.
- Mary Altobelli, 4 Garden Street, Chester, NY: Would the property be cleaned up?
 - Applicant Mike Adams advised the property is owned by the Contorino's and he would like it cleaned up prior to taking ownership;
- Nancy Hom, Village Resident: will the changes impact traffic?;
 - Applicant Mike Adams advised the changes won't increase the traffic and he's asked his employees not to drive up the hill. He's also asked his delivery trucks not to use the hill as an entrance or exit;
- Hours of operation were discussed;
- Mary Altobelli, 4 Garden Street, Chester, NY: Again, noted the neighborhood would like assurances about future renters.
 - CEO John Orr advised the Zoning Board of Appeals can stipulate their approval.
- Discussion was held regarding access to the property;
- Mary Altobelli, 4 Garden Street, Chester, NY: Still concerned about lighting and want assurances that there will be no more lights installed.
 - Applicant Mike Adams advised he has screened the existing lighting and will look into additional screening if it's not sufficient.
 - Discussion held regarding lighting.
- Discussion held regarding approval restriction / conditions / stipulations.

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 5-0.

REGULAR MEETING

MINUTES

***MOTION** was made by Member Gorman, second by Member Shehab, to **ACCEPT THE FEBRUARY 2018 MINUTES AS DRAFTED**. Motion passed 5-0.

CORRESPONDENCE

Correspondence address during Public Hearings

PROJECTS FOR REVIEW

2. **Project # ZB-19-02** **Project Name: PDJ Components / Area Variances**
 Applicant/Owner: PDJ Components / 35 Brookside Avenue LLC
 Location: 33-35 Brookside Avenue (SBL: 114-1-17; 10.1 / B2 Zone)
 Re: Use variance from §98, Zoning, Schedule of District Regulations, Principal Permitted Uses in B-2 District.

No discussion regarding PDJ during the regular meeting.

- 3. Project # ZB-19-03 Project Name: Adams / Area and Use Variances**
 Applicant/Owner: Michael Adams / Lisa Contorino
 Location: High Street (SBL: 101-1-6 / RS Zone)
 Re: Use variance from §98, Zoning, Schedule of District Regulations, Principal Permitted Uses in RS District; Area variances from §98, Zoning, Schedule of District Regulations for an RS Zone, Column 6

- Chairman Stevenson clarified the requested variances;
 - Area Variances for side yard even though pre-existing, non-conforming just make it official;
 - ZBA Attorney David MacCartney: Right, if you're inclined to grant the use variance with conditions, the code would also require you, if there's existing non-conformities as to bulk, it would require you to grant variances to legalize those existing non-conformities even though they're not expanding it.
- Applicant Mike Adams is agreeable to removing the 40-foot storage container / shed currently on the side of the building;
- Stipulations discussed and agreed that ZBA Attorney David MacCartney would draft a resolution to be reviewed at the next meeting;
 - Warehouse rental – how many uses and how many tenants, but strictly used as a warehouse and not distribution site;
 - Hours of operation;

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

***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**. Motion passed 4-0.

CEO John Orr asked if, procedurally, the Board could be polled for availability for the meeting and approximately 30 days after in case an additional meeting is needed.

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
JULY 16, 2019 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 July 16, 2019, at 7:00 PM, or as soon thereafter as the matter can be heard, concerning the application of PDJ Components. The he applicant is requesting:

- (a) A use variance from the Village Code Section §98, Zoning, Schedule of District Regulations, Principal Permitted Uses in B-2 District to permit expansion of an existing manufacturing use, which is not an allowable use in the B-2 Zone.

The property is located in the Village of Chester, New York, at 35 Brookside Avenue and is listed on the Village Tax Map as Section 114, Block 1, Lot 17 in a B-2 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

ZONING BOARD OF APPEALS
VILLAGE OF CHESTER, NEW YORK
PUBLIC HEARING
JULY 16, 2019 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 July 16, 2019, at 7:00 PM, or as soon thereafter as the matter can be heard, concerning the application of Michael Adams. The applicant is requesting:

- (a) A use variance from the Village Code Section §98, Zoning, Schedule of District Regulations, Principal Permitted Uses in RS District to permit renovation of an existing warehouse and associated office space, which is not an allowable use in the RS Zone.
- (b) 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.

The property is located in the Village of Chester, New York, at High Street and is listed on the Village Tax Map as Section 101, Block 1, Lot 6 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