

MINUTESVILLAGE OF CHESTERZONING BOARD OF APPEALSAUGUST 15, 2019

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

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

**NOT PRESENT:** Keith BRIDEWESER, Member

**PUBLIC HEARING CONTINUED**

Chairman Stevenson opened the Public Hearing at 7:10 PM

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.

Jim Dillin, Jr., PLS, provided an overview:

- The applicant would like the ability to expand in the future;
- The project was started without a permit and was built over the property line;
- Their current options are to get a use variance and a lot line change or lot line removal;
- Jim Dillin spoke with Zoning Board of Appeals Attorney David MacCartney to advise he does not believe the property is correctly zoned;
  - Jim Dillin stated he does not believe the zone change was properly done and, therefore, it is not legally changed from M2 to B2 and he is asking the Village to confirm it was done;
  - Zoning Board of Appeals Chair David Stevenson asked what new evidence Jim Dillin had;
  - Zoning Board of Appeals Attorney David MacCartney advised that, despite the resolution, there are steps that need to be taken to legally change the zone and recommends the ZBA continue the Public Hearing for 30 days to give the Village time to look into how the zone change was handled.
- The applicant does not want to keep the property zoned B1;
- The applicant owns a large lumber company in Rockland County.

The Public Hearing for this application will be continued to Tuesday, September 17, 2019 at 7:00 PM.

**REGULAR MEETING**

Chairman Stevenson opened the regular meeting at 7:20 PM

**MINUTES**

The minutes were held over to the next meeting to give the members a chance to review them.

**CORRESPONDENCE**

None

**PROJECTS FOR REVIEW**

**1. 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 draft Resolution was reviewed, and portions read into the record (copy attached):
  - The first two pages of the draft resolution are a summary of the history of the property, an overview of the variance requested, Public Hearing and that it was an Unlisted action under SEQRA.
  - The findings and conclusions were read into the record by Chairman Stevenson:
    - ✓ Use variance and area variance portions were read into the record.
    - ✓ It was confirmed the property has a High Street address – it’s accessed off of Garden Street but is listed on the County website as an unnumbered High Street address. The High Street address doesn’t matter as long as the Section-Block-Lot is correct and items are filed under the correct Section-Block-Lot.
    - ✓ Code Enforcement Officer John Orr noted that under condition #13, Section 38-10 might not be correct as the Village recently merged their Building Construction / Fire Prevention Codes. The gist of the condition is in-tact, just need to cite the correct Code. The ZBA can leave out the specific code and add the wording “as contemplated and/or defined by the Village of Chester Village Code”

**\*MOTION** was made by Member Gorman, second by Member Shehab, to **ACCEPT THE RESOLUTION AS DRAFTED.** Motion passed 4-0.

**\*MOTION** was made by Member Gorman, second by Member Shehab, to **DECLARE A NEGATIVE DECLARATION UNDER SEQR AS THE ACTION WILL NOT RESULT IN ANY POTENTIALLY SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT.** Motion passed 4-0.

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

**Roll Call:**

<b>Member Daniel Gorman</b>	<b>Yes</b>
<b>Member Gordon Shehab</b>	<b>Yes</b>
<b>Member Colleen Collins</b>	<b>Yes</b>
<b>Member Keith Brideweser</b>	<b>Absent</b>
<b>Chairman David Stevenson</b>	<b>Yes</b>

- Jim Dillin asked if Code Enforcement Officer John Orr wanted the amended items on the site plan;
  - Code Enforcement Officer John Orr advised Jim Dillin to submit the hours of operation, tank removal, etc. when the applicant submits the plans for renovations on the house.
  - Jim Dillin will put all the resolutions on the map.

**\*MOTION** was made by Member Gorman, second by Chairman Stevenson, to **ACCEPT THE JULY 2018 MINUTES AS DRAFTED.** Motion passed 4-0.

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

Respectfully Submitted,



**Sandra VanRiper**  
**Zoning Board of Appeals Secretary**

VILLAGE OF CHESTER: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

-----X  
*In the Matter of the Application of*

MICHAEL ADAMS

**RESOLUTION/DECISION**

*For Use and Area Variances on Existing Premises  
Located on High Street, Chester, New York.*

-----X  
**Relief Sought**

The applicant is the prospective purchaser of the subject premises and seeks to renovate a portion of the pre-existing, nonconforming building into a single-family three-bedroom dwelling, to narrow and define the pre-existing non-conforming use of the remainder of the said building as Warehouse space, and to allow renovation and use of an existing 540 ft.<sup>2</sup> office space to be used as an accessory Office to the existing Warehouse space. The changes proposed require a use variance, and also require area variances in regard to the pre-existing nonconforming side yard and rear yard bulk on the existing building.

The lands affected by this application are located on High Street in the Village of Chester and shown generally on the tax map of the Village of Chester as Section 101, Block 1, Lot 6.

**Public Hearing**

A public hearing was conducted on July 16, 2019. The hearing was properly noticed as required by Code and was duly closed at the conclusion thereof.

**SEQRA**

This is an Unlisted Action under SEQRA. The Board has reviewed Part 1 of the Short Form EAF provided by the applicant, has identified and taken a hard look at all relevant areas of environmental concern. The Board has completed and hereby adopts the Short Form EAF Parts 2 and 3 attached hereto and incorporated herein by reference. The Board finds that the proposed action will not result in any significant adverse environmental impacts.

**Findings and Conclusions**

The Village of Chester Zoning Board of Appeals has examined the written documentation and reviewed the testimony with respect to the applicant's variance application, and hereby adopts the following findings and conclusions in that regard:

The applicant is the prospective purchaser of the subject property and makes the current application with the written consent of the owner/seller. The property is currently improved with a primarily commercial building with a portion of that building designated and used as an apartment for residential use. The property is located entirely in the RS zone, in which only single family residential use is permitted. The building significantly predates the current zoning code and certain nonresidential uses on the property may be considered pre-existing, nonconforming as it relates to the current code. The applicant presented a timeline of uses to which the property has been put since 1967. As set forth on that document submitted by the applicant, the various commercial and other industrial uses to which the property has been put since 1967, before and after the enactment of the current code, have changed in various ways over the years. Presently, the commercial space is used as collector car storage, a workshop for cars, trucks, and farm tractors, as well as storage and office space for parts connected with that operation, stored for resale on Ebay. As testified to by various neighbors, the shifting and at times intensive industrial and other commercial uses have been problematic for the residential properties nearby, although some form of commercial activity has been ongoing since the building's construction pre-Code. To date, there has been no clear delineation as to what uses, if any, are actually legally permitted on this pre-existing, nonconforming property, but suffice to say there have been many and they have at times been a nuisance to this residential neighborhood.

The applicant, as prospective purchaser, is seeking to clarify and legalize a less intense and more code conforming use by way of the current application. More specifically, the applicant is proposing to convert a large portion of the building into a single family, three-bedroom dwelling, thereby bringing that portion of the property into direct compliance with the zoning restrictions in this RS zone. In regard to the remaining portions of the building, the applicant proposes to use the vast majority of that remaining space, totaling approximately 2680 ft.<sup>2</sup>, as Warehouse Space. He also proposes to renovate an existing portion of the nonresidential space into a 540 ft.<sup>2</sup> office space that could be used as an accessory to the Warehouse. The applicant's plans are as set forth in the document submitted with the application entitled "Site Plan for 3 Contorino Way LLC" dated May 28, 2019.

The applicant proposes no changes to the footprint or exterior configuration of the building or appurtenances. However, the existing building is also nonconforming in regard to the two side yards and the rear yard. The eastern side yard measures 4.5 feet from the property line and the western side yard measures 12.5 feet from the property line. The current code requires a minimum of 15 feet for each side. A variance is therefore required for those side yards as well as for the total side yard (35 feet total are required but just 17 feet total are provided). Additionally, the rear yard on the south side of the property measures 28.4 feet, whereas 30 feet are required by the current code. Again, the applicant is not seeking to build anything new, as the foregoing dimensions are pre-existing conditions, but an area variance would nevertheless be required to grant the applicant the full relief sought given the renovations and change of use requested herein.

Comments were offered by several nearby property owners and all such comments and testimony were given due and full consideration by the Board. Most of the comments related to

the burden placed upon the surrounding residential community over the past years by some of the prior, intense commercial and industrial uses to which this nonconforming building have been put. While the building and certain commercial uses do pre-exist the code, the Board is quite aware of and concerned with the conflict created between industrial-type uses in the middle of a residential neighborhood and zone. Accordingly, a robust discussion was had with the applicant and the directly affected property owners in regard to conditions to be imposed to mitigate the negative impact of a continued commercial use on this property. In the Board's view, the conditions imposed herein will substantially mitigate any negative impacts, and the applicant agreed. The relief granted and conditions imposed will serve to narrow and define the permitted use as only Warehouse with accessory Office for the benefit of both the property owner and the surrounding residential properties. It is the Board's expectation and determination that the conditions imposed herein shall be strictly construed against the property owner and enforced diligently by the Code Enforcement Officer. The Code Enforcement Officer shall inspect the premises for compliance with the terms and conditions of this Resolution at least annually, and upon receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities on site fail to comply with the terms and conditions stated herein.

#### USE VARIANCE

In reviewing the facts presented, the Board has considered the four factors set forth in New York State Village Law §7-712-B(2)(b).

(1) On the conditions stated herein, the applicant has demonstrated that he cannot realize a reasonable return in the absence of the relief sought. A strict application of the Code, given the meandering and changing heavy commercial and industrial uses over the years since the zoning code was adopted, could well result in there being no permissible commercial use to the property presently given that the pre-existing use at the time of code adoption may well have been abandoned in favor of the current arguably impermissible use. If so, then no permissible non-residential use would be allowed, and the property is not otherwise independently economically viable solely as a residential property. The use variance requested herein would permit a now specific and narrowly defined single use as a Warehouse for the commercial part of the building, legalize that use and only that use, with the sole exception of also permitting an accessory Office space of 540 ft.<sup>2</sup> connected to the said Warehouse space. This will allow a reasonable return in the form of a viable and stable income stream for that portion of the property, coupled with the diversified income stream from the newly renovated and Code-conforming rental residential single family home on the other part of the building.

(2) The alleged hardship is certainly unique given this property's unique history, use, location, and zoning, and does not apply to a substantial portion of the district or neighborhood.

(3) On the conditions imposed herein, the requested use variance will not alter the essential character of the neighborhood, particular given the long-standing intense various industrial and commercial uses to which this property has been put since at least 1967. To the contrary, if the use variance is granted, it will bring the property further into compliance with

existing zoning, by expanding the permitted residential use, and it will restrict the available pre-existing nonconforming commercial uses of the remainder of the property to solely a Warehouse with an accessory 540 ft.<sup>2</sup> office, which will enhance the current character of the property and community compared with current conditions.

(4) The alleged difficulty was not self-created; it is a product of the unique history and configuration of the property and the applicant's desire to bring the property further into zoning compliance than it has ever been since the zoning was enacted.

### AREA VARIANCES

In regard to the area variances, as set forth above, the eastern and western side yards measure 4.5 feet and 12.5 feet, respectively. The current Code requires a minimum of 15 feet for each side and a total side yard of 35 feet. Additionally, the rear yard on the south side of the property measures 28.4 feet, whereas 30 feet are required by the current code. These are all pre-existing, non-conforming conditions.

Pursuant to the requirements of New York State Village Law §7-712-B(3)(b), this Board hereby finds that on the conditions stated herein, the benefit to the applicant if the area variances are granted outweighs any detriment to the health, safety and welfare of the neighborhood or community by such a grant, and has made the following findings and conclusions in that regard:

- (1) There is no evidence presented that the proposed variance would produce any undesirable change in the character of the neighborhood or a detriment to any nearby properties.
- (2) There is no evidence presented to this Board that the benefits sought could be achieved through any other means, given the unique circumstances as set forth above.
- (3) The variances sought are substantial, but there are mitigating circumstances as set forth above.
- (4) There is no evidence before this Board of any adverse effect or impact on the physical or environmental conditions in the neighborhood or district, on the conditions set forth herein.
- (5) The alleged difficulty was not self-created.

The Zoning Board of Appeals therefore hereby grants an area variance of (1) 10.5 feet on the eastern side, (2) 2.5 feet on the westerly side, (3) 30.5 feet for the total side yard, and (4) 1.6 feet for the rear yard, all as set forth specifically on the submitted plans dated May 28, 2019

### CONDITIONS

Pursuant to New York State Village Law §7-712-B(4), the Board imposes the following conditions and restrictions on the grant of the use and area variances sought herein; the said conditions are consistent with the spirit and intent of the Village Zoning Code, and are imposed for the purpose of minimizing any adverse impact such variances may have on the neighborhood or community:

1. The applicant shall remove the existing storage shed near the westerly property line adjacent to the current warehouse space, along with the oil tanks in the same area.
2. The configuration and use of the property shall be as set forth in the Site Plan submitted dated May 28, 2019 and as more particularly narrowed herein.
3. The portion of the building shown and labeled on the said May 28, 2019 Site Plan as "Warehouse" shall be 2,680 ft.<sup>2</sup> and shall be used strictly for Warehouse Use only (no use for distribution, fabrication or assembly/disassembly of materials or products, nor any other retail, industrial, or manufacturing use of any kind shall be permitted).
4. The portion of the building shown and labeled on the said May 28, 2019 Site Plan as "Office" shall be 540 ft.<sup>2</sup> and shall only be used as an accessory Office space to the Warehouse use (no use for distribution, fabrication or assembly/disassembly of materials or products, nor any other retail, industrial, or manufacturing use of any kind shall be permitted).
5. The portion of the building shown and labeled on the said May 28, 2019 Site Plan as "Proposed Single-Family 3 Bedroom Dwelling" shall be used only for one single family, three-bedroom dwelling and no other use.
6. No uses shall be permitted on the property other than the foregoing, unless it is to conform the Warehouse and/or Office space to conforming, residential use.
7. A maximum of two total tenants/entities may occupy and use the Warehouse and Office space.
8. The hours of operation of the Warehouse and Office space shall be strictly limited to 6:00 a.m. to 6:00 p.m. Monday through Saturday.
9. It is the Board's intention that the lighting shall be consistent with the residential zone in which it is situated, and therefore places the following conditions and restrictions on the lighting on the premises: (a) No light shall be directed in whole or in part toward a street, road, highway, or adjoining property; (b) Lights must be fully shielded from neighboring properties and must be directed downwards; (c) Lights attached to buildings must be mounted no higher than 12 feet above the ground level surface directly below the light; (d) Exterior lights shall be equipped with motion sensors so that they illuminate at night only when there is motion and turn off reasonably promptly after the motion stops; (e) The Code Enforcement Officer is responsible for conducting post-installation nighttime inspection to verify compliance with the provisions of this section and, if appropriate, to require remedial action; and (f) Lighting fixtures shall be maintained so that they always meet the requirements of this section.
10. All flammable materials used or stored in connection with the Warehouse and Office use shall be handled and stored safely with the utmost consideration for the safety of all persons present on or about the premises as well as neighboring properties and people, and there shall be strict compliance with all applicable New York State Building and Fire Safety Codes.
11. There shall be a One Hour Fire-Rated Separation between the residential portion of the premises and any non-residential uses.
12. No warehousing, storage, or handling of Hazardous Materials or Waste as defined and regulated by the laws and regulations administered by the U.S. Environmental Protection Agency (EPA) [see 40 Code of Federal Regulations (CFR) 355], the U.S. Occupational Safety and Health Administration (OSHA) [see 29 CFR 1910.1200], the

U.S. Department of Transportation (DOT) [see 49 CFR 100-199], and the U.S. Nuclear Regulatory Commission (NRC) [see 10 CFR 20], shall be permitted on the premises.

13. The variances granted herein shall not in any way be deemed to constitute an Operating Permit as contemplated and/or defined by the Village of Chester Village Code § 38-10.
14. The property shall be maintained in strict compliance with the Property Maintenance Code of the State of New York, 19 NYCRR §1226.
15. The Code Enforcement Officer shall inspect the premises for compliance with the terms and conditions of this Resolution at least annually, and upon receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities on site fail to comply with the terms and conditions stated herein.
16. The applicant shall pay all due fees and expenses prior to the issuance of any building permit or certificate of use/occupancy.
17. The applicant shall comply with all other applicable laws, rules and regulations.

The variance(s) granted on the conditions imposed herein are the minimum necessary and adequate while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community.

By roll call a motion to adopt the foregoing Resolution/Decision was made, seconded, and voted upon as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
David Stevenson, Chair	—	—	—	—
Daniel Gorman	—	—	—	—
Gordon Shehab	—	—	—	—
Colleen Collins	—	—	—	—
Keith Brideweser	—	—	—	—

Dated:

\_\_\_\_\_  
 David Stevenson, Chair  
 Village of Chester ZBA



STATE OF NEW YORK    )  
  )ss:  
COUNTY OF ORANGE    )

I, SANDRA VanRIPER, Building, Planning and Zoning Board Secretary of the Village of Chester, do hereby certify that the foregoing is a true and exact copy of a Resolution/Decision maintained in the office of the Village of Chester Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on \_\_\_\_\_ 2019.

\_\_\_\_\_  
SANDRA VanRIPER, Planning and Zoning Board  
Secretary of the Village of Chester

I, REBECCA RIVERA, Clerk of the Village of Chester, do hereby certify that the foregoing Decision was filed in the Office of the Village Clerk on \_\_\_\_\_ 2019.

\_\_\_\_\_  
REBECCA RIVERA, Clerk  
Village of Chester