

MINUTES
VILLAGE OF CHESTER
ZONING BOARD OF APPEALS
JUNE 11, 2020

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 7:05 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.

CEO John Orr provided an overview:

- Property is zoned B2.
- The applicant constructed a concrete pad without a building permit.
- The applicant would like to expand the business as he is losing money. The business has an increased number of customers, but they need to enclose the outdoor space to increase their work area for improved productivity.
- The proposed future expansion would be a 15% enlargement of the building.
- The proposed future expansion would not increase the intensity or change the use of the existing business. Some of the existing process is currently done outside, but they cannot work outside during inclement weather or during the cold months.
- Applicant estimates they are losing 10% of their business due to their inability to work outside.
- The applicant will submit a dollar amount of the loss.
- With the proposed expansion, even if the applicant is still within the property setbacks, they will still need a variance.

The Board held discussion regarding:

- Member Shehab again requested the applicant provide financial documentation to prove the hardship is not self-created.
- Member Gorman expressed concern that the applicant would follow the Code of the Village of Chester as the applicant has already started the project without a building permit and has shown a lack of due diligence when purchasing the property and existing business.
- CEO John Orr recommended the applicant be referred to the Village of Chester Planning Board for a Site Plan Amendment approval and to address the lot line.
- The Board expressed considerable concern with:

- The applicant not providing financial documentation to prove the hardship is not self-created.
- The applicant's inability to realize a reasonable return.
- Is the applicant's hardship self-created?
- Chair David Stevenson discussed the other parts of the use variance test
 - Point # 2 says that the hardship is unique and does not apply to a substantial portion of the district or neighborhood. In that case, I personally believe that it is unique because he's tucked way back there in that industrial section there. And there are no other lumber – building component yards around there. There are some other industrial things like LP Propane, but I think that the challenges that are facing this particular property are unique.
 - As far as the condition about whether the requested variance will alter the essential character of the neighborhood. That's something that I was sort of leading into with the Comprehensive Plan comment because it seems like a mixed-use area down there. We have Cumberland Farms, a Gulf station, but then there's also some houses down in that general vicinity. There's a funeral parlor, there's a gymnastics gym, a liquor store, there's all sorts of things there. All he's looking to do is expand a use that has already been there – he's already been a neighbor. But it is an area that the Village has sort of earmarked to try to change – sort of change the face of it to make it look a little more appealing and perhaps get different kinds of commercial businesses in there.
 - Jim Dillin commented that this is the only property in the Village that has a railroad side, which can be used for unloading.
 - Chair David Stevenson continued with the question of whether the alleged hardship is self-created or not. I'm trying to establish whether the hardship is the loss of the inventory to the weather or the ability to expand. I think he's trying to address something that is really forces of nature acting against him.
 - Member Gorman commented that relatively speaking, this winter was mild, so I don't know how much weather played a part in it snow wise and stuff like that, but they've been operating like that for years.
- Zoning Board of Appeals Attorney David MacCartney stated the issue of a self-created hardship in this context is usually talked about in terms of the zoning, so in that respect it does come back to the zoning issue that we're passed, but there are some unique factors here that the applicant brought up at the last hearing, which is that the zoning map didn't change. One could argue that you should have gone to the file and you would have seen a resolution that would have put you on notice, but the applicant says they relied on the map and the map didn't show the zone and so usually the question comes down to self-created hardship whether the person took with full knowledge that this was the restriction and then just for their own benefit just decided to go try to get more and they knew they couldn't do it when they bought it. Here, an argument could be made that they should have known, but they're saying I didn't know and I have a reasonable reason to say that I didn't know because the zoning map didn't show it. And so, it's a grey area. I think it's a factor that could go in either direction depending upon how the Board looks at it.
 - Jim Dillin advised the applicant might not have purchased the property had he known the zoning was incorrect.
 - Zoning Board of Appeals Attorney David MacCartney advised the self-created hardship when it comes to a use variance is far more important to the calculation here than it is with what you're usually looking at with an area variance. With an area variance, it's just one of the other factors and even if you find it is self-created, it doesn't govern. In a use variance, if you find that it's self-created, that's the end of the story – that's it – it's like the silver bullet to a use variance application, so it's really important and, again, reasonable people, I think, from a legal standpoint could draw different conclusions on that.

- CEO John Orr stated the use is not changing – only the area the applicant is utilizing for use. The business isn't expanding, they just want to enclose what they're already using.
- Zoning Board of Appeals Attorney David MacCartney confirmed, the law is that, under these circumstances, it's considered a use variance based on his research.
- CEO John Orr advised Mr. Dillin that it's up to the applicant to provide the requested paperwork to the Zoning Board.
- Chair David Stevenson requested feedback from the other Board members so the attorney can draft the resolution that is worded tightly so that a variance in this whole B2/M2 situation doesn't give future applicants the leeway to site this as reason to expand their manufacturing business. I think we need to be very careful to word the resolution tightly. That would be in David MacCartney's court, but I don't want to send him off to word something unless we kind of have a vague idea of.... I still have a lot of issues with it. Setting the financial aside or if the financials can be proven, are you amenable to granting it?
- Member Collins asked if flooding was an issue on the property.
- CEO John Orr advised the property is low marsh land, so there are some issues with mud.
- SEQRA discussion:
 - Would it be ok to type the action at this point? I'm assuming that it's going to be an Unlisted Action, which means we would need to do a SEQRA form, which we could do while Jim Dillin is pulling together the financial information.
 - Zoning Board of Appeals Attorney David MacCartney advised he thinks this would be considered an Unlisted Action and I would recommend that tonight you could entertain a motion to declare it an Unlisted Action and I would recommend that you conduct an Uncoordinated Review as the applicant has to go back to the Planning Board anyway – you both could conduct your own independent environmental review that's not binding on each other. That would be my recommendation.
 - Chair David Stevenson said to Jim Dillin that before the Board
- Chair David Stevenson remarked to Jim Dillin that he noticed in the EAF there was some listing of various species and there were some wetlands somewhere nearby. I was just wanted to know if you had any comments on that because it is a low-lying area like John Orr said. It's kind of marshy.
 - Jim Dillin advised the DEA form automatically pre-checks that on the EAF. They are not destroying any wetlands – just expanding the business.

***MOTION** was made by Member Shehab, second by Member Gorman, to **DECLARE THIS AN UNLISTED ACTION UNDER SEQRA AND CONDUCTING AN UNCOORDINATED REVIEW OF SEQRA.** Motion passed 4-0.

Roll Call:

Chairman David Stevenson	Yes
Member Keith Brideweser	Absent
Member Colleen Collins	Yes
Member Daniel Gorman	Yes
Member Gordon Shehab	Yes

While Jim Dillin is collecting the financial information from Eli, I would like us to try to figure out where we're headed so David MacCartney can draft a resolution that protects the Village.

- Member Collins questioned whether the lot line would be changed or dissolved.
 - Jim Dillin advised the applicant wants to dissolve it, but Jim Dillin wants to reconfigure around the building in the front as it would make more sense.
- Member Gorman commented that the applicant has been doing this – either inside or outside – it's been done for years, so the work hasn't changed, he's just putting a roof over it. Just goes back to the applicant should have started with a permit.

- Member Shehab asked if the applicant is putting up walls or just roof and the concrete slab.
 - CEO John Orr confirmed there will be walls to keep the heat in.
 - Member Shehab stated his only issue he has at this point is the financial hardship.
- Member Gorman suggested if the applicant is planning on moving the lot line, let's do it once.
- Member Shehab commented he wouldn't want him to remove the lot line in the middle completely because then you have a problem with the business, which is the dance studio, up front. Then that puts that in violation, so the applicant should just move it the way they're proposing to move it if they're gonna move the lot line just that way and then that's it.
- Chair David Stevenson commented being down at that end of the Village – if they dissolve the lot, that would be a giant commercial lot. I was wondering why the applicant doesn't want – the property is probably more valuable as a B2 than it is as an M2.
 - CEO John Orr commented that it's not more valuable with that rail siding, but he has the potential to develop the front of it as B2 and leave this operation in back. The applicant receives more lumber by rail than by truck.
- Chair David Stevenson and Zoning Board of Appeals Attorney David MacCartney agreed to work together on the resolution and confirmed to Jim Dillin that the resolution will not be voted on until the applicant provides more concrete financial figures.
 - Jim Dillin confirmed the financial figures needed to be submitted in written form.
 - Chair David Stevenson and Zoning Board of Appeals Attorney David MacCartney will complete the SEQRA form as well.

The Public Hearing for this application will be held open for the applicant to provide the financial figures.

The Public Hearing for this application will be continued to Tuesday, September 17, 2020 at 7:00 PM.

REGULAR MEETING

Chairman Stevenson opened the regular meeting at 7:50 PM

MINUTES

***MOTION** was made by Member Gorman, second by Member Shehab, to **ACCEPT THE AUGUST 15, 2019 MINUTES AS DRAFTED.** Motion passed 4-0.

Roll Call:

Chairman David Stevenson	Yes
Member Keith Brideweser	Absent
Member Colleen Collins	Yes
Member Daniel Gorman	Yes
Member Gordon Shehab	Yes

CORRESPONDENCE

None

PROJECTS FOR REVIEW

PDJ Components / Area Variances was discussed during the Public Hearing, so no additional review done.

GENERAL DISCUSSION

CEO John Orr provided an overview of the following potential projects:

- Steris, 2 Nucifora Boulevard:

- Proposed addition to the new building that actually doubles the size of that building, which was originally planned when the first phase came in.
- They showed the Board the total layout of the expansion.
- The issue is with the height of the building. The Village has a 40-foot height maximum in that district. The current building is around 32 - 34-feet. Part of the addition will need to be 44-feet to accommodate installation of 2 processors, which can handle sterilization of a full pallet of product.
- In the current building, they sterilize one product or case of product at a time on a conveyor, so they can recess a lot of their equipment into the floor.
- The middle section of the building is going to be roughly 4-feet higher than our zone allows. It's approximately 25% of the overall roof will be above the Village's requirement.
- Besko Sign
 - Applicant is proposing a billboard on the Railroad unrelated to the PDJ applicant.
 - Location is in the area behind PDJ – somewhat in the area right behind Brady's Repair, but on the other side of the railroad tracks.
 - The proposed billboard will be on Railroad property, but the billboard would go high enough to be seen from Route 17.
 - Route 17 is elevated in that area, so the sign pole is going to be quite high.
 - A few issues come in and this is why they're at ZBA:
 - The Village has always maintained a 20-foot maximum height for signs.
 - In the Village Code, it says that a billboard may not be seen from any street in the Village, so they actually flew a temporary banner at the height they want while they were still in the permit application process. Pictures were taken from 3 or 4 different locations in the Village and was able to see the temporary banner. Note that there were leaves on the trees when the temporary banner was displayed, so it'll probably be worse in the fall and winter.
 - The building permit was denied for those two reasons.
 - The other thing of concern is – and, unfortunately, we don't have a Code issue with it, but a personal issue with it – they want to construct the sign on Railroad property. The Railroad property is taxed at a reduced rate compared to other commercial or residential properties. CEO John Orr has an issue with them using the Railroad property in a commercial venture.

Those are the two applicants that need to come before the Board. They were delayed with COVID, but now that we're doing meetings via zoom and, hopefully, we can be in person again soon.

Chair Stevenson noted the Steris application has already been to the Planning Board and, since he attends those meetings, he requested the applicant provide a 3-D model for the Board to see what the proposed building will look like from street level.

Zoning Board of Appeals Attorney David MacCartney asked – on the railroad application – are they asking for an interpretation or an appeal of your determination about the height and whether it applies to the billboard or not or is that a non-issue and it's just a straight height variance? CEO John Orr answered that there is a sign company making the application, and not so much a professional one, going for variances. We have a hand-written note that's asking for I believe it's an interpretation on the issue of it being seen by a street in the Village because what they've said to me is that the couple of roads that I quoted them were not owned by the Village – they're State roads, which he responded with that's fine, but they're in the Village

Zoning Board of Appeals Attorney David MacCartney commented that both of these issues, it sounds like it's going to be an interpretation that they're looking for an appeal.

Chair David Stevenson – in that second one, the applicant is the sign company – it's not the property owner.

CEO John Orr: Correct

Chair Stevenson: Is the property owner the Railroad company?

CEO John Orr: Yes, it's Middletown & NJ Railroad, LLC

Discussion was held on scheduling the next ZBA meeting. The next meetings were scheduled for July 7, 2020 at 7:00 PM to hear the applications for PDJ and Steris and July 23, 2020 at 7:00 PM.

Discussion was held regarding future meetings:

Does the Board want to hold an initial informational meeting (or two) to ensure the application is in order before scheduling the Public Hearing?

Zoning Board of Appeals Attorney noted that other municipalities that he works with schedule their meetings like this so that the Public Hearing isn't open for an extended amount of time while the applicant addresses any issues that arise.

CEO John Orr suggested that, if the Board wants to schedule initial informational meetings and subsequent Public Hearings, they may want to consider scheduling monthly meetings.

ADJOURNMENT

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.

Roll Call:

Chairman David Stevenson	Yes
Member Keith Brideweser	Absent
Member Colleen Collins	Yes
Member Daniel Gorman	Yes
Member Gordon Shehab	Yes

Respectfully Submitted,

Sandra VanRiper
Zoning Board of Appeals Secretary