

TOWN OF CHESTER: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

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In the Matter of the Application of

193 BMD, LLC

DECISION

For an area variance as follows:

- *(1) Grant of a variance allowing a side yard setback of 70.4 feet where 90 feet is required and*
- *(2) an area variance for the existing front yard which is 86.6 feet where the code requires a minimum of 100 feet; and*
- *(3) an area variance granting relief from the minimum parking spaces required of 120 and the request is for 69 spaces*

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Introduction

- 193 BMD, LLC seeks area variances as follows: (1) *Grant of a variance allowing a side yard setback of 70.4 feet where 90 feet is required and (2) an area variance for the existing front yard which is 86.6 feet where the code requires a minimum of 100 feet; and (3) an area variance granting relief from the minimum parking spaces required of 120 to allow for 69 spaces.*

The property is a parcel located at 193 Black Meadow Road in the Industrial Park (IP) Zoning District and is identified on the Town of Chester tax maps as Section 6, Block 1, Lot 100. The property is currently used to receive, package, and to warehouse household products. The proposal involves construction of a new 25,000 sf addition to the existing building to be used for the same and current purposes.

A public hearing was opened on February 10, 2022 and continued to March

10, 2022 on which date the hearing was closed. Notice of said meeting was published in the Times Herald Record and mailed to adjoining property owners as required by Code.

Law

Town Zoning Code § 98-7 (Schedule of Use and Area Requirements) provides that for wholesale operations of a light industry nature/fully enclosed warehouse distribution centers that the minimum front yard is 100 feet, and the minimum side yard is 90 feet for one side. The existing front yard is 86.6 feet, and the proposed side yard is 70.4 feet.

In addition, Town Zoning Code § 98-22(C)(1)(b) requires for this project 120 parking spaces and the applicant proposes 69 spaces, including one handicap space.

Background

The property concerned is a light industrial use consisting of receipt, packaging and warehousing imported products. The applicants contend that based upon their current use that there is not a high demand for parking spaces because the warehousing industry is becoming automated and does not require the number of employees that were contemplated by such a use when the zoning code was adopted; and, that they do not have a high demand for visitor parking.

The existing building has a front yard setback of 86.6 feet. That yard is not being increased nor increased by the proposed addition which is to be at the rear of the existing building.

Findings of Fact

After receiving all the materials presented by the applicant's counsel and engineer, the comments from members of the public who appeared and gave testimony, and the comments from the Village of Chester Water Commissioner at the

public hearing held before the Zoning Board of Appeals on February 10 and March 10, 2022, the Board makes the following findings of fact:

1. The applicant is the owner of an approximated 5.9 acre parcel (tax parcel 6-1-100) located at 193 Black Meadow Road.
2. The lot is currently in use by the applicant for warehousing operations and the applicant proposes construction of a 25,000-sf addition to the rear of the existing building with an existing front yard setback of 86.6 feet, and a proposed side yard setback of 70.4 feet rather than 100 feet and 90 feet, respectively, which are required by the bulk requirements of the Town Zoning Ordinance.
3. The applicants' proposal is set forth on a set of plans prepared by Civil Tec Engineering & Surveying, PC. Those plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
4. 193 BMD, LLC appeals from a referral letter from the Town Planning Board dated June 8, 2021.
5. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

| Bulk Requirement | Allowance | Required | Proposed | Variance | Percentage |
|--------------------|-----------|----------|-----------|-----------|------------|
| Front Yard Setback | | 100 | 86.6 feet | 3.4feet | 3.78% |
| Side Yard Setback | | 90 | 70.4 feet | 19.6 feet | 21.78% |
| Parking Spaces | | 120 | 69 | 51 | 42.5% |

6. The Village of Chester Water Commissioner was heard with respect to the concern of proximity of the project to the Village well on near-by property. There were no other members of the public heard during the hearing.
7. That the applicant has indicated that the current operation involves 10 office employees and another 10 warehouse employees. They envision that with the addition they will add an additional 10 warehouse employees. They project that for their operation the number of employees will not exceed 60 employees.

After hearing the testimony at the public hearing and considering the materials received by the Board, the Board decides as follows:

SEQRA

The parking area variance constitutes an Unlisted Type action under the State Environmental Quality Review Act. The area variances are Type II actions.

On January 13, 2022, the Board declared itself Lead Agency and typed the parking area variance as Unlisted. A determination was made to conduct an uncoordinated review.

On March 10, 2022, the Board reviewed the short form Environmental Assessment Form and after taking a hard-look at the possible environmental consequences if the variance was granted resolved to issue a Negative Declaration of Environmental Significance for the parking area variance. The Board was cognizant that further environmental review will be undertaken by the Planning Board as part of its site plan review of the project.

GML 239 Referral

This application was not required to be referred to the Orange County Planning

Department for review.

Findings

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Village Law Section 7-712-b. Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

(1) Undesirable Change—Detriment to Nearby Properties

No undesirable change in the character of this neighborhood or detriment to the neighbors in that neighborhood will result if the requested variances are granted because the neighboring properties are industrial in nature and there is already a building in place which is conducting the same business as that within the proposed addition and there will be no additional detriment to nearby properties resulting from the variances if granted and the addition, if constructed, because the addition will be no closer to the front boundary or side boundary than the existing building and therefore neighbors will not be detrimentally affected.

(2) Need for Variance

The Board determined that due to the requirements of the applicant for expansion of the existing building to accommodate growth in its business that the variances are necessary otherwise the building and business may need to be relocated at substantial cost and inconvenience to the applicant. In addition, the lot size and confines of the wetland areas constrict the location of the addition and trigger the need for the variances.

(3) Substantial Nature of Variances Requested

The Board determined that the variances requested for side and front yard are not substantial numerically. And, though the parking variance is numerically substantial the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the nature of the variances requested does not prohibit us from granting the application because there will be no material degradation of the neighborhood resulting from the grant of the variances.

(4) Adverse Physical & Environmental Effects

The variance will not adversely impact the physical or environmental conditions in this neighborhood. The property fronts upon an existing and active town road and the new addition at the rear of the existing structure will not adversely affect the environment. The new building with less than the required number of parking spaces will be a positive improvement to the area and not a negative because there will be less impermeable surface being created.

(5) Self-Created Difficulty

The need for this variance is clearly self-created, however, the board believes, under the circumstances presented, that the self-created nature of the need for the variance requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of the side yard variance.

Decision

In employing the balancing tests set forth in Town Law Section 267-b(3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the variances as described herein and in conformity and as shown on the application materials presented subject to and specifically conditioned upon the

following:

1. That the parking variance herein granted shall become null and void in the event the number of employees at any one time working within the warehouse exceeds 60 employees.

Information Note: Town of Chester Code Section 98-38.1 provides that: "Unless construction is commenced and diligently pursued within six months of the date of the granting of a variance, such variance shall become null and void."

Dated: April 14, 2022


Gregg Feigelson, Chairman
Town of Chester ZBA

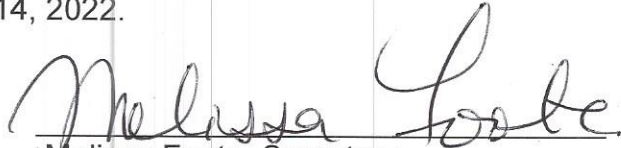
By roll call a motion to adopt the decision was voted as follows:

| MEMBER | AYE | NAY | ABSTAIN | ABSENT |
|-----------------------------|-----|-----|---------|--------|
| Gregg Feigelson – Chairman | X | | | |
| Julie Bell | X | | | |
| Dan Doellinger | | | | X |
| Walter Popailo | | | | X |
| Tom Atkin | X | | | |
| Giuseppe Cassara, Alternate | | | | X |

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

I, Melissa Foote, Secretary to the Zoning Board of Appeals of the Town of Chester, do hereby certify that the foregoing is a true and exact copy of a Decision maintained in the office of the Town of Chester Zoning Board of

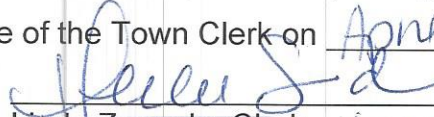
Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on April 14, 2022.



Melissa Foote, Secretary
Town of Chester Zoning Board of Appeals

Heidi Schmid Deputy

I, ~~Linda Zappala~~, Clerk of the Town of Chester, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on April 21, 2022



Linda Zappala, Clerk
TOWN OF CHESTER

*Heidi Schmid,
Deputy clerk*

HEIDI SCHMID
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SC6285472
Qualified in Orange County
My Commission Expires July 08, 2025