

**ZONING BOARD OF APPEALS
TOWN OF CHESTER**

1786 Kings Highway
Chester, New York 10918
November 12, 2020

PRESENT: Gregg FEIGELSON, Chairman
Julie BELL, Member
Dan Doellinger, Member
Tom Atkin, Member

ALSO PRESENT: Julie TILLER, Secretary
Rob Dickover, Counsel
Alexa BURCHIANTI, Building Inspector

ABSENT: Bob Favara, Member
Walter Popailo, Member

Chairman Feigelson called the meeting called to order at 7:05 PM with the Pledge of Allegiance

Chairman Feigelson makes a motion to adopt the August 27th and September 24th meeting minutes

Member BELL: 2nd the motion

Member ATKIN: Yes

Member Doellinger: Recused himself

August 27th and September 24th meeting minutes adopted

Chairman Feigelson: We have 3 items on the agenda tonight and first one is the **FLOWER/SANDSTROM 73 Dug Rd** application. We covered this one over the past couple of meetings so I don't want to spend too much time on it. The application is complete and just as a refresher this was a permit denial from the building inspector for a deck on the side yard of the house with a minimum set back requirement of 30 feet in that zone and the deck is already built and is about 20 feet 9 inches so looking for a variance to permit side yard of 9 feet 3 inches where 30 feet is required. I will note before we start voting that Dan Doellinger will be recusing himself from this vote. Do we have any questions from the board before we move forward to review the 5 factors?

Member BELL: Yes, what is the actual size of the variance?

Chairman Feigelson: It's to permit a side yard of 9 feet 3 inches where 30 feet is required

Member BELL: So this a very substantial variance they are asking for

Counsel DICKOVER: Mr. Chairman I would like to say a few things if I may, when the board was hearing this matter there were some questions about the variance that is required. If the board members have the ability to look at the bulk table for the AR3 district you'll see the minimum lot area for single family dwellings is 3 acres, however if you go to 98-9A, B & C you'll see an exception there for residential lots which are less than the minimum required in the zone of 3 acres. This property is 1.7 acres so if you look at the bulk area 98-9 you'll see another bulk table there that applies to minimum yard setbacks for lot areas that are below

10,000; below 10,000 in 1.5 acres and so on. This property would seem to fall into the 10,000 to 19,000 square foot area in which the side yard requirement.....

Alexa: No Rob, an acre is 43,560 square feet so if it's 1.7 acres it's over 43,560 square feet so you have to divide the .7 into 43,560 to get the remainder of the square footage for the lot size and add that to the 43,560 and that will give you the square footage for the exception to district regulations table

Counsel DICKOVER: So the side yard requirement then is still the 30 feet

Alexa: Yes

Counsel DICKOVER: Okay got it. Then if you drop down to subdivision C it talks about accessory structures may be located in any required yard which in this case would be the 30 feet and there's an exception for subdivision 3 unroofed patios or terraces no closer than 15 feet to the street or 10 feet to any side or rear lot line. The question discussed when the board was looking at his before was whether or not this deck was considered to be an unroofed patio or terrace and if it be that the setback requirement would be 10 feet. I don't know if the board ever resolved this question, I believe it was going to be reviewed by the building inspector.

Alexa: There's no roof however a patio is defined as basically on grade so a deck that's not on grade but requires footings is not considered a patio. A terrace is more like a Juliette balcony where it would be outside a sliding glass door on a landing and that would be a terrace

Counsel DICKOVER: Okay very good, so when the board would be considering a variance to the 30 foot side yard requirement from the drawing presented to this board the deck is 9 feet 3 inches away from the side yard now and that's the variance being considered.

Chairman Feigelson: Okay thank you Rob, so if the board has no more questions or comments we can move ahead to review the area variance 5 factors

- #1 Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created

Member ATKIN: Yes

Chairman Feigelson: Yes

Member BELL: Yes

- #2 Whether the applicant can achieve his goals by reasonable alternative which does not involve the necessity of an area variance

Member ATKIN: No

Chairman Feigelson: Yes

Member BELL: Yes

- #3 Whether the variance is substantial

Member ATKIN: Yes

Chairman Feigelson: Yes

Member BELL: Yes

- #4 Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district

Member ATKIN: No

Chairman Feigelson: No

Member BELL: No

- #5 Whether there has been any self-created difficulty

Member ATKIN: Yes

Chairman Feigelson: Yes

Member BELL: Yes

Chairman Feigelson: So that completes the 5 questions and I would like to now make a motion that the board vote on whether or not to grant the variance which is to permit a side

yard of 9 feet 3 inches where 30 feet is required and direct counsel to prepare a written decision based on our findings for my signature. Can I get a second?

Member BELL: I'll 2nd that motion

Chairman Feigelson: Thank you. So a yes vote would be to grant the variance and a no vote would be to deny the variance

Member ATKIN: No

Chairman Feigelson: No

Member BELL: No

Chairman Feigelson: That makes a majority no vote, so the board has voted to **deny the variance** and counsel will prepare the formal decision. To the applicants, I realize this is a disappointment and not the outcome you were hoping for. I recommend you follow up with the building inspector on your next steps and thank you for your patience while we worked through this application

Michael Flower: How do I appeal this ruling?

Chairman Feigelson: We can discuss that off line if that's the path you want to take

Michael Flower: Yes that's the path I want to take, it cost me \$27,000 on that deck and it's going to cost me \$20,000 to rip it down

Chairman Feigelson: Yes, understood. Again thank you very much.

Okay next on the agenda is **GERMANO 464 Pine Hill Rd** application. So let's review, this was reviewed at the last meeting and is a building inspector permit denial for rear set back in the AR3 district 3.4 acres. The application is complete, we have the short EAF, we have the county referral which is the 239 and it's a local determination, I don't believe we had a SEQRA determination at the last meeting

Counsel DICKOVER: For purposes of the record, included in the EAF this will be a type II action so no further environmental review will be required

Chairman Feigelson: Yes indeed, thank you. The applicant wants to build a new house on the property to replace the existing one, there's a rear yard setback requirement of 100 feet and the applicant seeks a 60 foot variance. So Mr. Germano do you have anything to add at this time?

Steve Germano: I would like to say that the portion of the home that would encroach the state land, which is why we're asking for this 60 foot variance is less than 5% of the home. It's literally the corner which is the tip of the right side of the home

Alexa: Steve, it's not encroaching on the state land, it's just encroaching on the set back

Steve Germano: Okay yes, I was thinking the rear yard setback was state land

Alexa: That's still your property it's just there's a setback from the rear line to your house which is 100 foot

Chairman Feigelson: Did the board members have a chance to look at the property? It's a very steep cliff so this is really the only spot you could build it

Member ATKIN: What's behind you on the state land?

Steve Germano: Nothing, no houses nothing just state land and mountains

Member BELL: Is this state land or county land?

Alexa: County

Chairman Feigelson: We have a public hearing scheduled for this application, if anyone is here to speak on behalf of this public hearing please use the chat feature and let yourself be known. In the meantime, I'll make a motion to open the public hearing and can I get a second?

Member DOELLINGER: I'll 2nd

Member ATKIN: Yes

Member BELL: Yes

Chairman Feigelson: Alright the public hearing is officially opened. I don't see anyone here to speak but we'll wait a few more minutes, okay there is no one here to speak so I'll make a motion to close the public hearing.

Member BELL: I'll 2nd

Member DOELLINGER: Yes

Member ATKIN: Yes

Chairman Feigelson: And yes for me. Public hearing is officially closed and we will move ahead to review the 5 factors

- #1 Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created

Member DOELLINGER: No

Member ATKINS: No

Chairman Feigelson: No

Member BELL: No

- #2 Whether the applicant can achieve his goals by a reasonable alternative which would not involve the necessity of an area variance

Member DOELLINGER: Yes

Member ATKINS: Yes

Chairman Feigelson: Yes

Member BELL: Yes

- #3 Whether the variance is substantial

Member DOELLINGER: No

Member ATKINS: No

Chairman Feigelson: No

Member BELL: No

- #4 Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district

Member DOELLINGER: No

Member ATKINS: No

Chairman Feigelson: No

Member BELL: No

- #5 Whether there has been any self-created difficulty

Member DOELLINGER: No

Member ATKINS: No

Chairman Feigelson: No

Member BELL: Yes

Chairman Feigelson: Okay so unless there are any further comments, I'll make a motion for the board to vote on whether or not to grant the variance sought to permit a 40 foot rear yard setback through the site plan where 100 feet is required and to direct counsel to prepare a written decision based on our findings. If you answer yes then you are voting to grant the variance and if you answer no then you are voting to deny it.

Member DOELLINGER: Yes

Member ATKINS: Yes

Chairman Feigelson: Yes

Member BELL: Yes

Chairman Feigelson: Alright so the **variance is granted**. Congratulations and you can follow up with Julie T next week. Thank you and good luck

Steve Germano: Thank you very much to you all, I really appreciate it. Have a good night.

Chairman Feigelson: Last on the agenda for tonight is **PAL 15 Davis Hill Rd** new application being represented by Mike McGovern. Seeking an area variance 98:8 front and side yard setback and 98:9 and this was prompted by a building permit denial. If the board recalls there was an application from PAL earlier this year regarding turning an accessory building into a second dwelling which was not granted. In terms of documentation, we have a complete application, a completed EAF form and a county referral is needed. I just have a question on the EAF; the box was checked for archaeological sensitive area. Can you please clarify that?

Mike McGovern: The applicant filled this out but I did notice that as well and I'll look into it. Good Evening everyone, I'm with LAN Associates representing Mr. Pal. The property was purchased in 2017; its 1.3 acres in the AR3 district and believe it's a type II action. We are seeking an area variance specifically for the setback requirements to repurpose an existing non-conforming accessory two story barn. We are looking to connect the existing single family residential dwelling to the barn with a 67 foot by 5 foot wide enclosed link to physically connect the two buildings to make one large one family dwelling and that would allow the PAL family to reside together in a larger residence and it fosters the applicant to apply for a variance. We have two drawings that were submitted, one drawing shows the existing conditions of the accessory structure and the second sheet shows the proposed connect of the accessory to the main dwelling. So that's the proposed plan that we have right now

Member BELL: How long did you say the connector was going to be from the barn to the house?

Mike McGovern: 67.3 feet long by 5 feet wide

Member BELL: Will this be a heated corridor?

Mike McGovern: Yes it will be climate controlled. Basically because of the topography, the house is lower than the barn so the connection will be to the 2nd level of the house

Member ATKINS: So the deck is going to up about 8 feet from the house back to grade at the garage?

Mike McGovern: Yes. We don't actually show the elevation but in this particular image this would be the front of the barn and the structure on the right hand side would be the connector which is connecting to the grade of the barn structure and connected to the 2nd level of the dwelling.

Member BELL: We would need to see what it's going to look like

Mike McGovern: We can revise the drawing to give you more information; it would basically be an enclosed corridor with windows and have the same style as the barn.

Member ATKIN: If it's going to the 2nd floor then it's going to be a wood deck, correct?

Mike McGovern: Would be wood in concrete than graduate into a wood frame

Member ATKIN: Would be better it was concrete on natural grade rather than up in the air, might look ugly

Mike McGovern: Can be done either way and we can discuss more about how to make two structures into one but we can't build anything with the front and side yard setbacks

Member BELL: I don't think I can vote on something until I see what it's going to look like

Mike McGovern: We just emphasizing the connection and the size on what we wanted to do but I can see it's also important to show the aesthetics of it so I can do that

Member BELL: Yes that would help

Chairman Feigelson: So did you articulate in the beginning the exact nature of the variance you're looking for?

Mike McGovern: We were looking for connecting the two structures into one but we can't do anything due to the front and side yard setbacks

Chairman Feigelson: Your taking a preexisting non-conforming and by connecting them your making a giant dwelling which is non-conforming so according to the 98:8 you need a variance. Dan do you have any questions?

Member DOELLINGER: No but I do also agree that we need some kind of drawing showing the elevations.

Member ATKINS: I don't see why they don't build a 12 foot breezeway next to the house and it would probably pass because it would be right next to the house but this is 67 feet away and up in the air would be ugly. I'd be more inclined to vote yes on that then this and that's all I got to say.

Chairman Feigelson: Thank you Tom, there's nothing in the code that dictates the size so we have an unusual situation, sounds like we are looking to add this to the Dec.10th agenda.

Mike McGovern: Yes I can revise the drawings to show more detail on the look and elevations and I just want to say it's much more environmental friendly to repurpose the barn than to take it down

Chairman Feigelson: Okay so we will get some more renderings from you and get back to us for the Dec. 10th meeting

Mike McGovern: Okay thank you for your time

Chairman Feigelson: Okay and thank you. Any last questions before we close the meeting? Alright then I'll make a motion to adjourn

Member BELL: I'll 2nd

Member DOLLINGER: Yes

Member ATKINS: Yes

Chairman Feigelson: Yes

Meeting closed at 7:52 pm

Respectfully submitted,

Julie Tiller
Zoning Board of Appeals Secretary