

**ZONING BOARD OF APPEALS
TOWN OF CHESTER**

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

PRESENT: Gregg FEIGELSON, Chairman
Tom ATKIN, Member
Dan DOELLINGER, Member
Walter POPAILO, Member
Julie BELL, Member
Bob FAVARA, Member

ALSO PRESENT: Robert DICKOVER Esq., Dickover, Donnelly, Donovan & Biaggi LLP
Julie TILLER, Secretary
Alexa BURCHIANTI, Building Inspector

Chairman Feigelson called the meeting called to order at 7:01 PM with the Pledge of Allegiance

Chairman Feigelson welcomes Julie Tiller to the board

Chairman Feigelson states the January meeting minutes need to be adopted
Also correction to be noted on February 13, 2020 draft minutes it states there was not a January meeting which is incorrect.

Member DOELLINGER states an additional error on the January minutes that Alexa mentioned and was never corrected that 49 Gibson Hill Rd is listed as a two family.

Alexa spoke to Russ to confirm and was confirmed it is a one family dwelling.

MOTION was made by Member Popailo, second by Member BELL to **ADOPT THE MINUTES OF JANUARY 9, 2020 AS DRAFTED AND FEBRUARY 13, 2020**. Motion passed 6-0

Chairman Feigelson welcomes Dave Niemotko back to the ZBA
Recap: Applicant requested to withdraw public hearing that was scheduled to take place.
Alexa uncovered this board had rejected the use variance for the exact same use to a different owner. That's what has occurred since the last meeting.
At last meeting sympathy was expressed at what the PAL's were trying to do here and also for the preservation of the barn. In addition went over (5) factors & substantial amount of time on the most vexing of them and that is to show the financial threshold in dollars & cents that have to be met. In return you (Dave Niemotko) have come back with information for us and the board is anxious to hear you walk us through.

DISCUSSION

YOGESH & ARADHNA – AREA AND USE VARIANCE

15 Davis Hill Rd

S/B/L 7-1-51

Zone AR-3

Convert barn into 2nd dwelling unit

Dave Niemotko, Architect, approaches the board:

Happy to be back in front of the board

Of course the use variance application & use variance criteria,

#1 Applicant cannot realize a reasonable return provided that the lack of return is substantial as demonstrated by competent financial evidence was the dominating theme of our last meeting. In so doing, we have done some research since last month & provided you with additional information to help make our case towards that.

The first was some real estate listings in the Town of Chester that included accessory apartments both of those listing, one was \$50k more & other was \$100k more than what the PAL's paid for their house which was \$290,000

We offer some discussion regarding (3) points of the financial return and basically to answer the question the only return that the PAL's will see is zero or less because no matter what they do they are not expecting any return which I mentioned in the last visitation. This is not commercial this is a residential project, it's within a family & no rent will be collected so whatever work is done will not be realized. So if they spend \$50k renovating the barn those costs will never be recouped or if they move to another place and have to renovate that even with the (2) listings that money will never be recouped, the only realization they are going to see for their efforts is emotional & family related services. It's a noble thing that the son wants to take care of his parents, there's again no financial gain that would be associated with your allowing this variance to occur.

Then in real terms of conditions even with in the world adult care facilities would cost \$15k a month for a couple, a husband & wife, those costs again would never be realized back. That would be spending that type of money, \$180k a year to take care of elderly parents that again finances would never be recouped and so the gains or whatever reasonable term that can be realized is zero or less than zero. Jokingly everything within a family will never be realized, I don't know how much I've spent on my son that I'll never get back (laughs) That's off the record. (laughs)

Again there is the existing house, there is the existing barn that has been existed for over 100 years. There is no reason why, in my opinion of course, the board could not see their way clear to granting this variance and making this a conditional approval & tie it to the owner of the house or tie to owner of premises.

The other (3) categories or criteria associated with the use variance

- Is the alleged hardship is unique? Yes, we do believe the hardship remains unique because it proposes a change to an existing barn that has been in the property for decades.
- Will the use variance alter the essential character of the neighborhood? No, actually they are the typical essence of the neighborhood, the house & the barn has been there for how long, in fact the neighborhood probably evolved around that and other such properties in the area.

- Is the alleged hardship self-created? Well yes, it is, and purposely. The son wants to take care of his parents and again I think the law would allow that it could see their way clear to allow this to occur. In this environment & time we are living in and financial problems of the world I think it's a very noble and honorable thing that's being proposed. It's cultural to them also, not that it's a factor within zoning laws but is not only is it driven by the culture of the family & their religion so I think it provides a basis for the board to consider it favorable.

Chairman Feigelson asks board of any comments or questions to add before he adds his own comments

Member POPAILO asks: So this a detached barn that's just a barn right now?

Dave Niemotko replies: Yes, there's an existing house and an existing barn detached about 50' away from each other and they are located on the same property and we are asking for the barn to be become an apartment, use as living space

Member POPAILO asks: Living space for the son to live in or the parents to live in?

Dave Niemotko replies: I talked to the owner actually the comment was well taken by me from the board & we realized a few certain things about the conditions, so the parents would stay in the house and the son would move into the barn

Member POPAILO replies: I did not remember this one.

Member DOELLINGER comments: I understand what you're trying to do with the comparing of the other properties but you're comparing the house without apartment to 2 houses with apartments so it would only stand to reason they would be valued more because they have something more than the PAL's property

Dave Nietmotko replies: Yes. We are answering the question about realizing a reasonable return so that would do under that umbrella under that premise

Member POPAILO asks: So what you're saying if you spend \$50k or \$100k the whole value of the property would go up?

Dave Niemotko replies: It could, depending on the market

Chairman Feigelson comments: Really appreciate the detailed exercise you did, it does point out how complicated the 5 factors particularly financial one. In my view, under the current use which is a single family dwelling you have to make the case that you need to change it to another use in order to just realize the fundamental value of the property. So for example they bought the property for \$290,000 and I did a Zillow search which current value is at \$339,000 estimated so I would argue they actually increased value in its current use so in order for you to argue that we make an exception for use, you have to pull counter to that particular argument, and I'll refer to counsel if I've misinterpreted.

Counsel DICKOVER replies: No, I don't believe so

Dave Niemotko replies: That's not apples to apples, if they were to add \$40k or \$30k that you stated they are still in the debit to renovate existing & create additional living space

Chairman Feigelson replies: Right, that would point to the self-inflicted hardship

Dave Niemotko replies: Which they acknowledge

Chairman Feigelson replies: Course of rule, the buyer doesn't think though the future use, the courts don't want to be bothered so to speak not their problem to be blunt so it's a really tough decision and this is why it was rejected 10 years ago. The board is completely empathic of the situation.

Dave Niemotko replies: You can grant variance, we are asking you grant the variance. It is a variance of the existing zoning code, first 5 factors have been answered for area variance.

Member POPAILO asks: In essence this is a house that has a barn and they want to convert a barn into an apartment?

Chairman Feigelson replies: Well no, yes that is true but the better way to say it is that it's a single family asking for 2 dwellings on a single lot which is not permitted in the zoning district

Member POPAILO replies: Right, okay so the barn would be another living dwelling. My only thing is, are we setting a precedent if we do this? Do we set the precedent anyone who comes in that has a barn and wants to put family in the barn is allowed.

Chairman Feigelson replies: That's another important factor. Is it unique to the property?

Dave Niemotko replies: It doesn't set a precedent because each case is evaluated on its own merits. All different criteria associated with each project.

Member DOELLINGER comments: That's a segway on my notes to question #2, which is hardship unique for this property? Not sure that it is because don't think any of the other properties there have accessory apartments and they would all possibly desire to have apartments in accessory buildings so I'm not sure how this property is unique compared to any other property in the same zone.

Dave Niemotko replies: In the whole town of Chester how many properties are left that have a barn on them? Not many. The nature of that type of scenario has decreased so much

Member DOELLINGER replies: There's a significant amount of properties that have detached garages that could potentially be able to support an apartment in an upstairs loft area so it may not be a barn but detached garages.

Member ATKINS comments: I think they could put an addition alongside the house and then they could live in that and then you would have no problem it would be one building on one lot. You say there's not enough room but I think there's enough room.

Dave Niemotko asks: I gave that a lot of thought, would the ZBA allow that because you are furthering a pre-existing non-conforming condition

Member ATKINS replies: You would have to back to the planning board and see. I think it would be allowed if you put a 20' or 30' addition along the side of the house it would only be one building.

Dave Niemotko replies: I think we would back here in front of the zoning board asking for that variance, not for use variance but for area variance.

Member POPAILO comments: I think we are answering questions we shouldn't be answering right now about what he could do in lieu of rather than to decide if he can do this or not.

Member BELL comments: He came in to talk about what he can do, for this meeting

Member POPAILO asks: Is this a work session?

Chairman FEIGELSON replies: No. Technically it's a continuation of the work session, kind of a review session.

Counsel DICKOVER states: It's regular meeting of the board, it's not a public hearing. It's simply regular meeting of the board for an introduction or further introduction of the project. I ask you this question, you say it's a non-conforming building now we are talking about the existing dwelling, its non-conforming because it's too close to the street? The set back?

Dave Niemotko replies: Yes. And also there are 2 structures on the front yard

Counsel DICKOVER replies: That's a pre-existing non-conforming, if you were to build on to the existing dwelling the existence of the barns non-conforming would be before this board. Is that the only bulk area that's violated in the front yard?

Dave Niemotko replies: Correct, there would be no area variance, no lot coverage issue

Counsel DICKOVER replies: This board does have various jurisdictions over that kind of request. That would be an area variance & not a use variance, the criteria is quite different. Standard of obtaining it would be less.

Member POPAILO asks: Is the barn on front yard or side?

Building Inspector ALEXA answers: Considered the front yard because it's so close

Member POPAILO asks: What are we doing tonight?

Dave Niemotko replies: Wasn't prepared to go down the area variance scenario tonight but another issue would be it's a 2 acre lot within a 3 acre zone which is another factor, which makes the use variance more palatable.

Chairman FEIGELSON comments: Walter you asked what the purpose of this discussion is? So you can help decide, now that you've heard some new arguments and can crystallize your thoughts as to whether this is an appropriate variance to grant from your prospective.

Member POPAILO replies: I feel for the applicant, just afraid of anyone in town that has a barn will want to turn into a dwelling for family.

Chairman FEIGELSON asks **Counsel DICKOVER**: Do you have a sense of where this board is driving?

Counsel DICKOVER replies: Applicant entitled to pursue this application to a public hearing, cannot decide on absence of public hearing or unless it's withdrawn & no decision would be necessary. It's your call at this point, you have the right to a public hearing, request the board to schedule a public hearing and it will. You've also heard the comments back to you on your presentation, you need to now make the decision if you want to move forward with the public hearing process or maybe reconsider and withdraw the application but we can't do that for you, can't dismiss this case, need to make a decision but only after public hearing.

Dave Niemotko replies: I understand completely, we would definitely want tomorrow to talk it over with the owner and let him know the thoughts of the board. I can get back to Julie by Monday.

Counsel DICKOVER replies: That's where we were last month, you scheduled a public hearing then you asked us to withdraw. We would have to come back next month and I don't know why we would come back unless you want a public hearing. So do you want this board to schedule a public hearing?

Dave Niemotko replies: Schedule a public hearing and I can get to Alexa by Monday to see if we will proceed with it

Counsel DICKOVER replies: Notice of public hearing needs to be published and mailed has time restrictions

Building Inspector ALEXA replies: April 9th is your next meeting, his list is done. Julie look in the file I may have sent the 239 out the first time and we never received a response. 239 referral was sent 1/27/20 to Meg with ZBA application never got response.

Counsel DICKOVER advises to let ZBA office know by Wednesday April 18th if want to proceed with public hearing.

Chairman FEIGELSON requests a motion to schedule public hearing

Member POPAILO makes motion to schedule public hearing

Member DOELLINGER 2nd the motion

All in favor- YES 6-0

Dave Niemotko replies: Thank you to board, hopes we meet again next month.

Chairman FEIGELSON requests motion to make Member DOELLINGER acting chair for next meeting in his absence.

Member POPAILO makes motion

Member BELL 2nd the motion

All in favor- YES 6-0

Chairman FEIGELSON requests motion to close the meeting

Member POPAILO makes the motion

Member BELL 2nd the motion

All in favor- YES 6-0

Meeting closed at 7:31 pm