

**ZONING BOARD OF APPEALS
TOWN OF CHESTER**

1786 Kings Highway
Chester, New York 10918
July 23, 2020

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

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

ABSENT: Bob Favara

Chairman Feigelson called the meeting called to order at 7:00 PM with the Pledge of Allegiance

Chairman Feigelson states the June 11th meeting minutes need to be adopted

MOTION was made by Member BELL, second by Member POPAILO to **ADOPT THE MINUTES OF June 11, 2020 AS DRAFTED**

Motion passed 5-0

Chairman Feigelson: We have two public hearings & an application review this evening. First up is the use & area variance for PAL 15 Davis Hill Rd and before we go towards the public hearing we have some business to take care of, 1st order of business is confirmation by Julie T that the mailings & publications are all in order and all the information we need for that.

Julie Tiller: Yes, we received everything all good

Chairman Feigelson: Excellent. So to refresh everyone's memory, it's been a while since the last meeting, this application is for a 2nd dwelling in an accessory building in an AR3 district which as you all know by now is not permitted. We had two prior meetings where we discussed a lot of details, had a lot of questions for the applicants & their representative Mr. Niemothko. We also went through the four criteria which are necessary in order to grant a use variance and talked about how strict they were, we talked about how the highest on the bar in the four criteria were to show dollars & cents in ability to get a reasonable return on the investment. We also noted that a prior owner of this property also appeared in front of this board in order to get the same use variance for the same reason and was denied. I believe we also made a SEQRA determination that this was a Type 1 unlisted action and we declared ourselves, The Zoning board as the lead agency. Acknowledge that we have received the county referral back from the county and it was a local determination, which is pretty typical.

I'd also like to acknowledge the receipt of (7) emails received in support of the applicant. We are not going to read them into the record but they will become part of the record, they have been distributed to all board members for review. So the board has reviewed those emails of support and they will go into the record as part of the public comments.

Julie have we received any other form of public comments or communication since the last time we met?

Julie Tiller: No we haven't, those emails are the last ones I got prior to the June 11th meeting

Chairman Feigelson: Excellent, thank you. So we will open the public hearing in just a few moments and at this point I would like to give Mr. Niemotko a chance to make any comments or for board to ask questions. Before we do that I'd like to tell everyone who is here on this Zoom meeting for the PAL public hearing please use your chat feature and state your name & let your intentions be known and we will allow you to speak.

Dave Niemotko: Hello, good to see everyone. It's been a while since we've seen each other. As mentioned in past meetings, Yogesh & Aradhna Pal are the parents that own the property, they want to remain in the existing house. Maneesh Pal, their son, wants to move into the secondary structure, the barn, to take care of them as they are getting older in age. We did address the 4 criteria as associated with the use variance, most important the reasonable return and I want to stress there is 100% lack of return since the monies they are putting into this will be for themselves. Not to collect rent, not to solicit anyone else to live there, Maneesh will live there to take care of his parents so all the money they invest will be at a zero percent return. It's not for financial gain or for any rentable income and I'd like to board to please consider that. Any other additions that are added to the existing house will also require a variance because of the way they are situated on the site. We feel this is the least impact because renovating that existing barn will not impact any structures or the land at all. We determined the foundation does go below the frost line so the existing barn can be upgraded to meet reasonable living code for a habitable area. Again it's a barn that's been in existence for decades so it would not have any adverse impact on the neighborhood or the environment. We believe it is a reasonable request; we are in front of the ZBA for your interpretation of the use and area variances and we feel this request is reasonable and had no adverse comments from the public and the public supports it, so we are asking the board to allow this project to continue.

Chairman Feigelson: Thank you Mr. Niemotko, any comments from the board before we move to public hearing?

Member POPAILO: The only comment I wrote down here is what happens if they are not living there anymore for whatever reason? Does that become a rentable property?

Dave Niemotko: We asked the board to make the condition for the ownership of the land so this would be just for the sole purpose of this family and not to allow it to survive to any other owners.

Member BELL: What about when the parents are gone? Will the son then rent it out?

Dave Niemotko: They agree to never rent outside the family

Maneesh Pal: Thank you very much to the board. There are a couple of things I like to bring up, the question of what was to happen when my parents pass away. My intent is not to rent this structure at all, I want to keep my immediate family on the property. In regards to the area itself, there's one thing I'd like to point out is the reason I'd like to stay in this area is because we have a lot of family that lives here and we are very close nit so for us having to move would breakup our extended family and that's not what we want. I'm happy to pay more taxes to the area as a give back and will uphold the historic value of the structure. When COVID-19 struck, I am a front line worker at Orange Regional and I'm concerned about my

parents health as they are elderly and would like to be living in a separate dwelling to keep them safe.

Chairman Feigelson: Okay thank you very much Maneesh. Any other comments?

Member BELL: Is there a rendering of what this is going to look like?

Dave Niemotko: No there is no rendering yet and I was not asked to provide one

Member ATKIN: One lot, one building I don't see why they can't just do an addition to the house on either side then it would be attached to the house and it would be allowed. If this garage was 15-20 feet away from the house then they could just do an attached garage but the garage is 100' away and it can't be done. But they could still do an addition to the existing house the son could still be away from his parents and live in that addition and it would probably be allowed.

Dave Niemotko: Well we would have to address that but any modification to the existing structure is going to require a variance, you have to realize this. We would need to come before the zoning board in either case unless you want to go on the record right now and grant the variance if we add an addition, that would be an interesting scenario.

Chairman Feigelson: The key point is, area variances are much more discretionary with regard to this boards abilities whereas use variances hold high standards requirements that are set by a higher authority and it's much more challenging.

Dave Niemotko: Yes that is true but it doesn't set a precedent, each project before you is evaluated on its own merits. If the board were to grant this variance under conditions that are agreed to that doesn't need to survive to other projects.

Chairman Feigelson: We are certainly empathic to this application and sympathetic to what they want to do.

Member POPAILO: Excuse me Gregg, I just want to add, do we know if this is the first time this has happened in Chester? Or if this has happened before?

Chairman Feigelson: Well this exact property has requested the same use variance

Member POPAILO: But has anyone else in Chester requested this and gotten approval?

Alexa: Not to my knowledge

Chairman Feigelson: I've been on the board almost 15 years now and I don't think we've had any that I've seen that have gone through. Precedent is an important fact here because everyone that has an accessory building will now be free to go ahead. It's really about the property itself.

Alexa: I have a question for counsel, Rob if the previous owner to this property put in to do the same exact thing and were denied and these owners get approved, is that grounds for any legal backlash?

Counsel DICKOVER: You mean a complaint against the ZBA that their application was denied?

Alexa: Yes

Counsel DICKOVER: It's a good question but it's not an answer that I care to answer on the record at this time.

Alexa: Okay

Dave Niemotko: When was it previously applied for?

Alexa: I believe it was 2010 or 2012

Member POPAILO: Do we know why the previous owners were asking for it?

Alexa: Not exactly sure but it was for an area variance to convert the barn into a dwelling

Member POPAILO: I'm just asking because converting into a dwelling to get rental income is different then what this applicant is looking to do. If it was for a rental then I would say no but the right reasons are being done here and I could see why they want to do it

Alexa: I agree they are good intentions but its semantics really because once it's a dwelling it's a dwelling.

Chairman Feigelson: We have not opened the public hearing yet

Counsel DICKOVER: Mr. Chair, if I may, the prior resolution on this board was on an application from Timothy Uhler seeking the variance at the property for permission to create living space in the accessory building, by a decision dated November 18, 2010 that application was denied.

Dave Niemothko: A lot has happened in 10 years, the code has changed twice the environment has changed dramatically and lifestyles have changed.

Alexa: The one thing that hasn't changed is allowing 2 separate dwellings on 1 property

Chairman Feigelson: Right and the criteria have not changed. So if there's no more discussion necessary I think we can move ahead to open the public hearing. I will need a motion to open the public hearing

Member ATKIN: Motion to open the public hearing

Member POPAILO: 2nd the motion

Chairman Feigelson: Public hearing is now open, if you are interested in speaking for or against the applicant during the public hearing, this is the PAL application please feel free to open a chat. I don't see anyone in the list of attendees that are looking to join but I do see a phone # let's see if we can unmute him

Mantreet: Hello this is Mantreet, I am a resident at 22 Ayr Rd. I've been hearing the complete composition that the counsel is having. I have been a resident to this area for the past 8 -9 years and I don't see a problem if changing that barn into a residence but I see the counsel was saying it's a problem for rental but if the intentions are for it to be used as a residential home then my perspective is it's not a problem.

Chairman Feigelson: Okay thank you very much for your comment. Anybody else? I don't see anyone else to comment so with that I'll make a **motion to close the public hearing**

Member ATKIN: 2nd the motion

Chairman Feigelson: Thank you Tom, the **public hearing is officially closed.**

Counsel DICKOVER: Is it appropriate for us to review the 4 factors at this point?

Counsel DICKOVER: Yes, I believe that would be appropriate.

Chairman Feigelson:

- Factor #1 Applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence.

Member DOLLINGER: So what's the question?

Chairman Feigelson: Good point. We need to understand what's being asked. Its whether you agree with the statement or not, the applicant cannot realize a reasonable return. In its current use, can the applicant realize a reasonable return?

Counsel DICKOVER: Would you like me to try and help? The inquiry on the factor is can the applicant realize a reasonable return on the investment under all the permitted uses in the zoning district. The primary use in this zoning district is single family residence and the question simply is can they realize a reasonable financial return on this single family residential dwelling? If they cannot then they might pass on the 1st criteria but they have to demonstrate using financial proof that they cannot realize a reasonable financial return under all the permitted uses in the zoning district

Chairman Feigelson: So let's be very specific here, if you answer yes to this then you are saying the applicant cannot realize a reasonable return right?

Member DOELLINGER: I understand it and I can tell you how I feel, but I just don't know if I should agree or disagree but I don't get what the actual question is. So in my opinion I think the applicant can recognize a reasonable return with all the permitted uses in the district

Chairman Feigelson: Okay that's clear.

Member DOELLINGER: But I just don't know if that's a yes or a no

Counsel DICKOVER: Again, their task is to prove they cannot realize a reasonable return. So if they have not proven that to you then on this 1st factor they have not met burden of proof.

Chairman Feigelson: Okay so let's use that as the answer, met the burden of proof or have not met the burden of proof

Member BELL: I agree they can realize a reasonable return

Chairman Feigelson: I also agree you can achieve a reasonable return

Member POPAILO: Same thing, can achieve a reasonable return

Member ATKIN: Yes, can achieve a reasonable return

Chairman Feigelson:

- Factor #2 the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. So the question is, Is the hardship unique enough to permit change to the use of this property?

Member DOELLINGER: No, I do not think that the hardship is unique

Member BELL: No

Chairman Feigelson: No

Member POPAILO: No, but COVID-19 in this does play a part but I'm still saying no

Member ATKIN: No

Chairman Feigelson:

- Factor #3 The requested use variance if granted will not alter the essential character of the neighborhood

Member DOELLINGER: No I do not think it would alter the essential character of the neighborhood

Member BELL: No

Chairman Feigelson: No

Member POPAILO: No

Member ATKIN: No

Chairman Feigelson:

- Factor #4 the alleged hardship has not been self-created. You can say if you believe it has been self-created or not might be easier to answer

Member DOELLINGER: I'm going with YES, this hardship is self-created. The property was purchased as a single family home with a barn so that was known when it was bought.

Member BELL: Yes, definitely self-created

Chairman Feigelson: I agree, self-created. It was a known condition when purchased

Member POPAILO: Yes, self-created

Member ATKIN: Same thing, self-created

Chairman Feigelson: Okay those are the 4 items that needed to be considered in the issuing of the use variance. So counsel what's our next move? Are you going to propose some language?

Counsel DICKOVER: It sounds to me that the board has made findings that would lead to a denial of the request for use variance. If the board wants to vote on that this evening you could and I would then reduce that decision into writing for your signature, if the board would make that as part of the resolution. A motion would need to be made to deny the requested use

variance and part of that motion would be to direct counsel to prepare a written decision in which would be signed by chairman.

Chairman Feigelson: Okay can we get a motion to deny?

Member BELL: Motion to deny

Member ATKIN: 2nd the motion

Member DOELLINGER: Yes, to deny

Member BELL: Yes deny

Chairman Feigelson: Yes deny

Member POPOAILO: Yes to deny

Chairman Feigelson: This request for use variance has not passed- DENIED. As the board has expressed, we are sympathetic as to what you are trying to do but the criteria is so high that we had no choice.

Maneesh Pal: Now that the decision has been made I'd like to ask a question and make a comment if that's okay. All of us that are gathered here are a group of people but we are talking in language that we don't understand and about something that isn't going to be personally affecting anybody and only add value to the community. There are groups of people moving into our area that don't pay taxes to the area and that's okay. I understand everything that has been said as far as laws for the districts and whatever that may be but it's just not making sense on a human level and while we sit here and are very proper there's no human factor whatsoever, and the fact that no one has ever requested this in the past 15 years.

Chairman Feigelson: Actually it was requested for this exact property as it turns out and you could argue the fact that there haven't been many requests is because people find out what is allowed in the zoning district before they purchase a property for which they might be interested in doing something like this. I think the point that's being missed here is changing the use of a property in a zone is a very substantial change and unleashes many aspects where other people will request the same, there are many accessory buildings that people may want to turn into residential dwellings and I would argue that most in the town do not want the burden of more cars & more people. And the precedent doesn't differentiate if its family or not.

Alexa: Mr. Pal, I understand exactly what you're saying and this type of stuff comes across my desk every day as the building inspector. When I have an individual that wants to convert a garage into a living space and they are not allowed to do that, I give them the alternatives of what they can do instead. Which is attach it to their house in some way which can be a breezeway or a cat walk of some sort and then it becomes 1 structure and that is something that can be done & something that has been done. However to do 2 completely separate structures is just something that's not done in this zone, and one of the loop holes that's available is to make it one structure by attaching it in some way.

Member ATKIN: That's what I was saying, it could be a separate unit but attached to make it 1 building

Maneesh Pal: Okay thank you. Good night everyone.

Chairman Feigelson: So we will move ahead with the agenda, another public hearing for **ORR-RANDALL** and I believe Mai Randall is here. This is for an area variance at 265 Pine Hill Rd, 3 car garage, putting an accessory building in the front yard in an AR3 district which is not allowed by 98:11, we discussed at last meeting for alternate locations. We also determined the SEQRA was Type II no further action needed, the conclusion was no county referral required. Julie T, did we receive any other communications regarding this application?

Julie Tiller: I did not hear from any neighbors but I did receive all of Mai's information, mailing & publications are all in order.

Chairman Feigelson: Okay so we'll open the public hearing in a few moments, if there's anyone here who would like to speak please use the chat feature.

Mai do you have any comments at this point?

Mai Randall: I think at our last meeting we covered quite a bit, there were lots of questions about alternatives on the placing of the garage, I hope everyone that's on this board understands what we're trying to do so I don't think I have anything else to add.

Member ATKIN: I went by the property and it looks like they could almost attach it to their house

Matthew Orr: Yes we thought about that but in the winter because the sun is on the south with the space between the 2 buildings will allow the sun to come through and melt the ice on driveway. We also didn't want to have 5 bays of garage doors in front of our house and there's a 20' drop off too and that would be an expensive retaining wall that would have to be put in

Chairman Feigelson: Okay would someone like to make a motion to open the public hearing?

Member POPAILO: Motion to open public hearing

Member BELL: 2nd the motion

Chairman Feigelson: Public hearing is now open. I don't see anyone on the list that's here to speak on behalf of this public hearing so I'll take a motion to close the public hearing

Member POPAILO: I'll make a motion to close

Member ATKIN: 2nd the motion

Chairman Feigelson: Ok thank you, so the public hearing is officially closed. At this point we will review the 5 factors for the area variance.

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

Member DOELLINGER: No

Member BELL: No

Chairman Feigelson: No

Member POPAILO: No

Member ATKIN: No

- Factor #2 whether the applicant can achieve his goal via reasonable alternative which does not involve the necessity of an area variance

Member DOELLINGER: No

Member POPAILO: No

Chairman Feigelson: No

Member BELL: No

Member ATKIN: No

- Factor #3 whether the variance is substantial

Member DOELLINGER: No

Chairman Feigelson: Yes

Member POPAILO: Yes

Member BELL: No

Member ATKIN: Yes

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

Member DOELLINGER: No

Member POPAILO: No

Member BELL: No

Chairman Feigelson: No

Member ATKIN: No

- Factor #5 whether there has been any self-created difficulty

Member DOELLINGER: Yes

Member BELL: Yes

Member POPAILO: Yes

Chairman Feigelson: Yes

Member ATKIN: Yes

Counsel DICKOVER: Based on the board's findings I cannot determine whether or not the board wishes to grant the area variance or to deny it. If the board is so inclined they can make a motion to vote and see what the outcome may be.

Member POPAILO: Make a motion to grant to the variance

Member ATKIN: 2nd the motion to grant

Chairman Feigelson: Okay so we will now do a roll call vote to grant the variance

Member DOELLINGER: Yes

Member BELL: Yes

Member POPAILO: Yes

Chairman Feigelson: Yes

Member ATKIN: Yes

Chairman Feigelson: AREA VARIANCE HAS BEEN GRANTED

Okay so my advice to the applicant is to reach out to Julie T. on Tuesday

Thank you

Next on the agenda is **MARRONE- Area Variance**

Welcome Mr. Marrone, thank you for your patience. You are looking for an area variance at 6 Derosé Lane in the AR2 zoning district, we typically allow the applicant to explain what you want to do so please tell the board.

Ryan Marrone: Thank you, we are looking to put a 24' above ground pool in back of the house, previous to us moving in 2 years ago there was a semi-circle retaining wall put in and there was a pool placed in the same spot and I believe that permit was not completed by the previous homeowners but the electric was run and there was a pool up. I believe when the house went into foreclosure the town came & took it down so we are looking to get an area variance of 9.5' to put the pool back in that spot.

Chairman Feigelson: *sharing screen to show the property*, So we are going to need some real numbers and it looks like this property is shaped like a triangle and we can see the retaining wall and all wooded in the back

Member POPAILO: Where is the variance that you need the 9'?

Ryan Marrone: By the tree line, I'm not going to cut any trees down or change the landscape

Alexa: There's no neighbors there but he needs 15' set back in all directions from the property line for a pool. It's just the one direction because he's got 24 and 20 on the other side and 14 to the rear corner point so it's just that left side of the pie that he needs the variances on.

Depending on how & where exactly its placed I would say his drawing is pretty safe as far as footage goes.

Member POPAILO: He has enough room to Lot 47 right?

Alexa: Yes

Chairman Feigelson: Did we resolve the 239? Is this county?

Counsel DICKOVER: The property behind is owned by the town. We do not have the 239 response yet

Alexa: Not sure how we should work it and don't know how you want to combine the variance itself

Member POPAILO: Mr. Marrone the pool is 24 ft, have you considered an 18 or 20 ft pool?

Ryan Marrone: Yes we did but we would still be cutting it close

Member POPAILO: Okay, just an option

Ryan Marrone: I have a picture if you need to see it, I can try to share my screen

Chairman Feigelson: The question is, how do we resolve the circular nature of the pool & the angular nature of the property?

Alexa: Need to be very specific about footage

Counsel DICKOVER: We can't decide what the variance is going to be because we don't know the footage. I recommend an engineer's drawing, hand drawings are not allowed.

Chairman Feigelson: The next step would be to schedule a public hearing and we have to do a 239. Not sure if it's going to work, our next meeting could possibly be August 27th and we need to give the county 30 days for the 239 request. Can we do a quick poll of who is available on August 27th?

Member BELL: Available

Member DOELLINGER: Not available

Member POPAILO: Available

Member ATKIN: Available

Julie Tiller: Available

Counsel DICKOVER: Available

Chairman Feigelson: Okay so can I get a motion to schedule public hearing for August 27th meeting?

Member POPAILO: Motion to schedule public hearing

Member ATKIN: 2nd the motion

All in favor: Yes

Chairman Feigelson: Is there any other business to be addressed at this time?
Okay so can I get a motion to close the meeting?

Member POPAILO: Motion to close

Member ATKIN: 2nd the motion

Member DOELLINGER: Yes

Member BELL: Yes


Member ATKIN: Yes

Member POPAILO: Yes

Motion passed

Meeting closed at 8:18 pm

Respectfully submitted,



Julie Tiller

Zoning Board of Appeals Secretary