

**ZONING BOARD OF APPEALS
TOWN OF CHESTER**

1786 Kings Highway
Chester, New York 10918
August 27, 2020

PRESENT: Gregg FEIGELSON, Chairman
Walter POPAILO, Member
Julie BELL, Member
Tom Atkin, Member

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

ABSENT: Bob Favara
Dan Doellinger

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

Chairman Feigelson states the July 23rd meeting minutes are not ready to be adopted yet and the draft copy should be posted on the website for the time being.

Chairman Feigelson: 1st item on the agenda is Ryan Marrone for public hearing 6 Derosé Lane which is the SR2 zone, Julie can you confirm the mailings and publications in the paper were taken care of

Julie Tiller: Yes, confirmed. Everything was handed in

Chairman Feigelson: Excellent, we have the county referral which we received a response for and as expected its local determination, we also received the short environmental assessment form and I'll remind everyone that we did discuss SEQRA determination last time and this is an area variance so we consider it a type II action since it's involving a one or two family dwelling so no further action. I'll summarize a few other things since our last meeting; this is for a 24 ft above ground pool, there was a building permit denial under 98:16C because zoning requires the pool be 15 ft from the rear or side yard. One side is fine the other side is too close, applicant is looking for approximately 9.5 ft off the rear property line and we established last meeting it's a wooded area so the impact would be low for any neighbors. I'll be opening the public hearing in a few minutes and this will be the only part of the meeting where public speaking will be allowed, please use the chat feature to join in if you are here to speak about this application. So at this time I'll turn it over to Ryan to make any comments or if the board has any questions, I do think we need to nail down the actual dimensions of the variance

Ryan Marrone: I think you covered everything, it's a 24 ft above ground pool, off my neighbor's property I have 22 ft and we need 15 so I'm clear on that side. The other side is 42 ft so clear over there, the area variance I need is off the back of the property which is a wooded area and there's no houses back there, we only have 9.5 ft so requesting 6.5 ft variance. All

electrical work is in, there's a retaining wall from the previous owner that was put in because there was a pool here and as far as being off the house it's about 27 ft so all the requirements are there, we're just requesting the variance off the rear of the property. Like I said it's a wooded area and we are not cutting down any trees or doing any kind of construction that would change the land in any way.

Chairman Feigelson: Okay thank you Ryan, so the actual distance from the pool to the rear is 9.5 ft?

Ryan Marrone: Yes, but the way the property is pie shaped so it is 9.5 ft off the exact rear end of the pool but as you move to the right of the pool its 12.5 ft and as you move to the left it's 11.5 ft

Chairman Feigelson: So for simplicity we are just going to give a variance for the closest point and all of those other points will be covered because of the geometry of the site, so it will be a 5.5 ft variance. Does the board have any questions or would anyone like me to bring up the plan?

Member BELL: Yes, can you please bring the plan up to look at it again

Member ATKIN: Did you build the retaining wall or was it there with the original pool?

Ryan Marrone: That was already there when we moved in, this house was in foreclosure for years and we moved in about two years ago. That retaining wall was previously there and the owners did have a pool but the town came & took it down because of no permit & safety reasons and now we want to put a pool in the same spot but want to have all the approvals on it.

Chairman Feigelson: Alright so the plan is up, the top side is okay and the left side which is the rear. So it's the right side and we'll find the closest point and issue the variance. So if no other questions we can start, Counsel do you have anything to add?

Counsel DICKOVER: I just want to clarify the variance will be 5' 6" so I think that's the only issue and we can open the public hearing and advise the public they can make comments using the chat feature

Chairman Feigelson: Ok so there doesn't appear to be any one on the line and nothing in the chat but let's open the public hearing. I need a motion to open the public hearing

Member BELL: Motion to open public hearing

Member POPAILO: 2nd the motion

Chairman Feigelson: Yes

Member ATKIN: Yes

Chairman Feigelson: Public hearing is officially opened, looks like there are a few people that just joined. Is there anyone here to speak at this public hearing for Marrone 24' above ground pool variance application? If you are, please use the chat feature on Zoom.

It does not appear there is anyone here to speak for or against this application, so can I get a motion to close?

Member POPAILO: Motion to close public hearing

Member ATKIN: 2nd the motion

Member BELL: Yes

Chairman Feigelson: Yes. Public hearing is now closed and we've moved to the point where we can review the 5 factors and then we'll contemplate how to move forward.

Factor #1: Whether a undesirable change will be to the character of the neighborhood or a detriment to nearby properties will be created

Member BELL: No

Chairman Feigelson: No

Member POPAILO: No

Member ATKIN: No

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

Member BELL: Yes

Member POPAILO: No

Chairman Feigelson: No

Member ATKIN: No

Factor #3: Whether the variance is substantial

Member BELL: No

Chairman Feigelson: No

Member POPAILO: No

Member ATKIN: No

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

Member BELL: No

Chairman Feigelson: No

Member POPAILO: No

Member ATKIN: No

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

Member BELL: Yes

Chairman Feigelson: Yes

Member POPAILO: Yes

Member ATKIN: No

Counsel DICKOVER: If I may, just for the record and it should be put in the record the reasons for those respective votes you took, I might suggest with respect to the first one; the undesirable change to the neighborhood, perhaps the reasoning might be that no change in the character of the neighborhood would result if the variance is granted, the board has observed there is a wooded area behind this property and the pool would not be visible to neighbors. In respect to the need for the variance, because of the configuration and the geography it's the only practical place on the property to place it. To the nature of the variance the board has determined it would not be substantial and I would suggest that would be for the same reasons of the wooded area in the rear of the property and the pool would not be visible. The fourth factor is the physical & environmental affect and the board voted no on this, it would not be an adverse effect on the conditions of the neighborhood, this might be because there was previously a pool there and again it won't be visible. The last one, boards vote was saying it is self-created and one vote was no, I would suggest to you that it is a self-created hardship and that the applicant was charged with knowledge of the zoning ordinance when the house was purchased therefore the need for the variance is self-created however that determination alone may not be a reason to deny the variance. So if the board would like to make that part of their findings we can incorporate it into the written decision.

Chairman Feigelson: Yes I think that makes sense unless there are any objections from the board.

Counsel DICKOVER: If the board wants to move forward, you can direct counsel to draft the legal written decision for the Chairman's signature, consistent with the findings that have just been made and granting that such a motion be adopted.

Chairman Feigelson: So we are going to do a roll call vote to grant verbal approval of the variance based on our findings that counsel will capture and will be presented to me for my signature

Counsel DICKOVER: Yes

Chairman Feigelson: Roll call vote to allow counsel to write the variance based on our discussion & findings.

Member POPAILIO: Motion to accept counsel's recommendation

Chairman Feigelson: 2nd the motion

Member BELL: Yes

Member ATKIN: Yes

Chairman Feigelson: **VARIANCE IS GRANTED**

Next on the agenda is **Jason & Kelli MAASS 8 Park Drive area variance** in SR2 zone for a two car garage that was denied from the building department. So this is an application review and gives you a chance to tell us what you need from us and for us to review the details, so the floor is your Mr. Maass

Jason Maass: Thank you very much, when I moved in about 3 years ago I converted the attached garage into living space in the house and now as time goes on we realized we need a garage so we are looking to add a garage back to the property. We got denied on our building permit based on the fact that the maximum coverage allowed is 15% and we would be over that with the garage due to the fact that we have a pool and a shed and that's why we are applying for the variance.

Chairman Feigelson: Okay thank you for the very concise explanation. I've pulled up the site plan & the aerial view for us to look at, a few of my notes is this is an undersized lot in an SR2 zone, 15% of the lot is 22.5 sq. ft and that's from the bulk table for one area standard which is the smallest percent coverage allowed, the proposed garage is 24x24 which is 576 sq.ft and Alexa was kind enough to calculate the variance that's 406.5 ft so that shortage if my math is right is 2.5%. There were some questions that came up regarding setbacks, this is a corner lot, it looks like you have 18 ft on the left side and the right side is 48 ft? Is that correct? And you plan to put 10 ft between the house and the garage, the garage is 24 ft and 14ft from the curb. The setbacks for this non-conforming SR2 are 15 ft on each side so you have 18 ft on one and 48 ft on the other and I believe your front set back is okay at 37 ft so the question has to do with code 98:10 corner lot says the narrowest part of the street facing lot which is the front of your house, so that's 98:10 providing corner lots how you should interpret but then 98:11 accessory building says; such buildings shall meet all front yards set back requirements for corner lots. Some wonder whether that means your side yard should be held to front yard standards so that's something to contemplate.

Jason Maass: Sir, if I may, this is a family home and I purchased from my uncle and my understanding is the garage was originally put on the wrong side and was meant to be put on the other side of the house which is why there's such a large area. I don't know if that factors into anything but just wanted it to be known

Chairman Feigelson: That is interesting and thank you but we have to deal with the issue at hand and for the board to contemplate all the things we need to think about.

Alexa, 98:11 A3 says accessory buildings should not occupy more than 30% of the required side or rear yard. Do you have any thoughts on that?

Member POPAILO: That might be for something like a shed

Alexa: An accessory building regardless is an accessory building whether it's a shed or garage or anything else

Chairman Feigelson: Right. Normally side yards are defined by the distance to the main structure or dwelling

Alexa: Your side yard is the distance from the side of your house to your property line

Chairman Feigelson: So it says required setback which is 15 ft in this case, honestly I don't really understand that requirement because side yards are not typically discussed in terms of area coverage if that's what that means. If it's 30% of the required 15 ft then you could barely build a shed.

Member POPAILO: If he attaches this to his house then there's nothing that needs to be done tonight, right?

Alexa: No, he would still need an area variance for lot coverage but he could also request to have it moved closer to the house and ask for a decrease in the size in between the house & garage, it's not to do anything else for the 30% of the required side or rear.

Member ATKIN: How about the pool?

Alexa: Well the pool comes into account because it's an in ground pool so it's an accessory structure, it doesn't matter if it's living space for lot coverage.

Member POPAILO: Do we know how big of a building he could do without needing a variance?

Alexa: He's over by 406.5 sq.ft with the 24x24 garage. The garage itself is 576 sq. ft

Member ATKIN: This is one of those garages that you can just put up right? It doesn't have to be permanent

Alexa: Yes, it a pre fab can be put on gravel or a slab, I believe we talked about gravel, not permanent but still doesn't help with lot coverage

Member POPAILO: How many square feet is the entire lot?

Alexa: 16,150 sf

Member POPAILO: Alright so that's a quarter

Chairman Feigelson: I'll note the short EAF has been received and the board should consider this SEQRA this is a type II action, single family dwelling area variance so no further action is required. Next order of business would be to schedule public hearing with a tentative date on 9/24/20 and no 239 referral needed. Before we make a motion to schedule public hearing I'd like to give counsel a chance to speak

Counsel DICKOVER: Seems to me there's unanswered questions here, basically normal variances requested are lot coverage. I think the sole question is whether or not the side yard coverage needs to be addressed and whether the definition of the corner lot yards that face the street having to meet the front yard setback requirement which is 35 ft

Alexa: That question was answered; the corner lot was not an issue. The front yard is on Park Drive that's the shortest distance to the road than on Second Court.

Counsel DICKOVER: Let's take them one at a time, so as the building inspector have you determined that the yard on Second Court does not have to be 35 ft?

Alexa: 30 ft, it's a preexisting non-conforming lot so it falls under 98:9 so the side yard would be 30 ft

Counsel DICKOVER: Alright so same question, this garage is proposed to be 13 ft from the curb and it needs to be 30 ft

Alexa: I'm going to have to do a little research on that one because it seems we have some slightly conflicting codes so I want to look at a couple of other things

Counsel DICKOVER: Another question would be the side yard area coverage

Alexa: Yes that's the question that I'm referring to

Chairman Feigelson: That's the difficult part to interpret because setbacks are defined by distance not by area. I read 98-10 corner lots literally to say this is the front and this is the side. 98-11a 4 says such buildings shall meet all front yard setback requirements for corner lots so in some ways it's a bit circular but if you read it literally it basically says you can't put an accessory building in the front yard setback that's defined in 98:10. I think the thing that's

a bit challenging is if you follow the normal requirements for a garage or accessory building you could be as close as 5 ft to Second Court and that obviously wouldn't look very good as you come around the corner over there. I think counsel is trying to make the point that front yard setbacks are supposed to preserve a certain alignment of all the structures and should be a certain distance for aesthetic purposes so there is some logic there but I don't think this code is articulate enough.

Member ATKIN: On Second Court the house across the street looks like that house is only about 10 or 12 feet off the property line, so it seems things were done a little bit different there.

Chairman Feigelson: Counsel do you have any recommendations on how we can resolve some of these, if they can be resolved

Counsel DICKOVER: I think the place to start is for the building inspector to make a determination as to whether or not a further variance is now required, if she determines that it's not required then unless we have someone appealing it the board would list that determination. If she finds that it does apply and the variance is required then the applicant will have to amend his application so the board could consider for the full relief. I'm not suggesting the relief should be granted or not, that's up to the board but at least the question should be asked and considered.

Member POPAILO: Where is the front door on this house?

Alexa: Park Drive is the front of the house

Chairman Feigelson: So we don't have the pressure of the county referral here, we can schedule a public hearing to get it on the calendar.

Alexa: I can have a determination by Monday

Chairman Feigelson: Despite the fact the board may change its position or discover some new things between now and the public hearing we can resolve those before we vote on any decisions. Okay counsel?

Counsel DICKOVER: The legal notice needs to set forth the variances being requested. I don't know how we resolve to hold a public hearing on variance request unless we know what they are. The other thing that's troubling here is we don't have a good survey of this proposal, we have some statements as to what it is but we don't have a formal survey, we have a drawing and a suggestion as to what the distances are. In a case like this I really believe the board should have a survey of this plotted out with dimensions from garage to curb and from garage to the house.

Jason Maass: I would have to have a survey done with the garage plot points, right?

Counsel DICKOVER: Yes I think that's the appropriate thing to do so the board knows exactly what they're considering here by way of the variance

Alexa: If I may, he can't really get an actual survey with the garage if it's not built yet. He would have to have the property re surveyed and then almost do a site plan and have them plot it in and a proposed on it and not an actual. This is the only one we had on file in the building department as far as a survey goes.

Member POPAILO: Do we know how many feet the garage is going to be close to the street on Second?

Alexa: 14 feet

Member POPAILO: Okay 14 feet and we need 30?

Chairman Feigelson: That's the question, and how we interpret 98:11 A4 might be in fact what you need. Sounds to me like counsel is advocating against scheduling the public hearing without getting a formal survey done.

Counsel DICKOVER: My opinion is that it's premature but you are free to do as you want

Member POPAILO: So what's the next step?

Alexa: I have to determine whether this 30% side rear yard coverage is going to come into play

Chairman Feigelson: So it sounds like we need to gather some more information. Does the board have any thoughts about requiring the applicant to have a survey done?

Member POPAILO: Jay, do you have cost for that or can you just have them re do what you already had done?

Jason Maass: I called around to see if I can get a new survey done and most said there was a 6 to 8 week back log and the cost would be approximately \$800

Chairman Feigelson: I think the questions we're trying to answer regarding the 30% coverage and resolving whether or not the front yard setbacks are really critical, because having the actual numbers there may or may not matter. I think we may have to put this on the agenda for the next meeting after we do some more findings; there are just too many unanswered questions.

Alexa: There's no problem in the front and there's no problem in the rear, it's the side yard. Unless this is saying you can't occupy more than 30% of the required side yard.

Member POPAILO: Okay so 30% of 30 feet is 9 feet so that's probably what it's saying, it can't go more than 9 feet

Member ATKIN: Can he go for an area variance for the side?

Alexa: That's what we're going to have to determine, if it's not only going to be a lot coverage area variance but also a side yard. I would say yes just to be on the safe side and do it all in one shot.

Member POPAILO: I think we need to know what the variance is for before we decide to give anything

Chairman Feigelson: Yes so we need to discuss this at a follow up meeting. So we'll see what Alexa finds and we'll do some contemplation, if it appears that you need to get a full blown survey then we'll let you know but it's going to be difficult to move to a public hearing without clarity on what it is.

Jason Maass: So I'm not going to move forward until you let me know. Thank you very much for your time.

Chairman Feigelson: Okay so next is **Flower/Sandstrom 73 Dug Rd area variance** AR3 zone, you have an existing deck in side yard and have a building permit denial; it's a retroactive denial because you already built it. So please tell us a little bit about what's going on and what you need from us

Michael Flower: I'm a disabled veteran and I have a hot tub on my side deck that I use every day. We built the deck and we built the privacy fence because the Town of Chester attorney requested it.

Laurene Sandstrom: They required us to put a fence around our whole yard to keep our dog in, we do have a problem with our neighbor so it needed to be a privacy fence, we didn't get the permits and we are so sorry but we thought the privacy fence because she has multiple cameras all over facing our property. The Chester attorney told us we have to build a fence so we built the whole privacy fence and our deck that includes the hot tub for him because he is a disable vet. We did not get the proper permits and that's our fault, but if we have to cut the deck we have to get rid of the hot tub and then he won't have it to use and we don't have the money to do this. The privacy fence allows her not to film us as much as she does, I'm getting upset I'm sorry. If Dan Doellinger was here right now he knows how many times she has called the police on us and she has multiple cameras on my property filming and taping us all the time, so the privacy fence was so we can have privacy and sit in the hot tub in private.

Michael Flower: Basically we're looking for a variance, from what I understand is you can't put a permanent structure 30 feet off your property and we're 10 feet off my property line

where my deck starts. It's not an eyesore; we put all the good side of the boards facing her house so it looks nice.

Laurene Sandstrom: It's hanging off the fence in the front so the dogs can't get to her house and it's hanging off the chain link that the town attorney required us to have so my dog doesn't go over there

Michael Flower: You can see the hot tub in the corner and if we have to cut it we'll lose the hot tub and lose everything that keeps me walking and able to move around.

Chairman Feigelson: So can I ask, first question is why didn't you get the permit originally?

Michael Flower: Honestly we didn't even think about it, we got sued in court for \$25,000 from my neighbor and the town attorney said we had to build in the front yard and around the whole property. The whole property fence cost me over \$16,000 and the front fence cost about \$5,000. The deck with the privacy fence was done cost me approximately \$26,000 and we wanted to make sure we were in compliance with the town attorney who told us to build these fences to cover our whole property to keep the dogs in. It's one million percent my fault that I didn't even think of a permit

Chairman Feigelson: So when you went to get the fence permit it was noted that you had the deck?

Laurene Sandstrom: No, the town attorney told us we had to build a fence; we didn't know we needed to get a permit. Attorney told us we need a fence and he needs to come out and see it so we don't get in trouble with the law

Michael Flower: And he approved the fence, came out and took pictures and we went to court again, Supreme Court and he approved it, the front fence, the side fence and the privacy fence so everything was covered. We didn't think to get a permit so it's absolutely our fault.

Chairman Feigelson: So you built a fence and a deck at the same time?

Laurene Sandstrom: No the deck came first with the privacy fence and then when the town attorney came out and said it wasn't good enough and we had to cover the whole back yard. And the reason we did that is because we wanted to comply with the law.

Chairman Feigelson: Basically you have a side yard that's 9' 3" is that correct?

Michael Flower: Our deck is 9' 7" off the property line and we're looking for a variance for the deck.

Chairman Feigelson: So the building inspector said the variance you need is 22' 2"

Michael Flower: Yes its 22' 2" or 22' 3" I don't know the exact number. It's not an eye sore we put the good side facing her house.

Chairman Feigelson: Where is the neighbor's house? How far?

Michael Flower: She's about 75 to 80 feet away from my deck, her house, maybe more

Chairman Feigelson: And what's her interest in focusing her cameras on you?

Michael Flower: It's an ongoing thing, we have many problems

Chairman Feigelson: Okay so let's stick to the subject, I want to give the board a chance to ask any questions, it's a large variance we are asking for. I would encourage the board members to go look at this and determine how to handle this variance

Member POPAILO: Even if they get this variance don't they need to get permits for the fence?

Alexa: Yes they put in the application for the other stuff. The chain link fence is okay, he submitted the permits for the other stuff I had violated him on, and the only issue right now is the side decking

Chairman Feigelson: Does anyone on the board object to scheduling a public hearing? We did receive the short EAF form, the board should consider this a SEQRA type II action by definition it's an area variance for a single family dwelling so no action needed there. If we're comfortable we can schedule a public hearing for 9/24/20

Member POPAILO: I'll make a motion to schedule a public hearing

Member ATKIN: 2nd the motion

Member BELL: Yes

Member POPAILO: Yes

Member ATKIN: Yes

Chairman Feigelson: Yes. **Public Hearing scheduled.** Okay so we'll see you on 9/24/20

Counsel DICKOVER: Before we leave I've made a note in my memorandum to the board about the section of the code that's being considered is the building inspectors denial letter refer to 98-9A if I'm correct we can deem the application so amended and the public notice will be prepared in accordance with that. Alexa am I correct with that? 98-9A has the minimum side yard setback requirements?

Alexa: Yes but now you have me re thinking a few things with the whole 30% of the required side yard. It also states under 98-9C unroofed steps, patio or terrace no closer than 15 ft to the street or 10 ft from any side or rear lot line but that does not mention a deck. So I'm going to have to say its 98-9A which is what my original determination was.

Counsel DICKOVER: So let the board deem the application so amended

Laurene Sandstrom: So will this be a Zoom meeting for the public?

Chairman Feigelson: We're not sure yet, you'll get instructions from Julie

Laurene Sandstrom: Okay, thank you

Chairman Feigelson: Okay final item on the agenda; referral from the planning board, **SAPANARO 1351 Kings Hwy LB-SL zone**, looking to put in a 2 family dwelling on an under sized lot. So Mr. Rother please tell us what you would like to do

Kirk Rother: Thank you, so my client owns this land on the west end side of Kings Highway just as you enter the Hamlet of Sugarloaf, just before the property would be the entrance to the Lycian Theatre. It's in the LB-SL zoning district which allows for a mix of commercial/residential uses and also allows for resident single family and 2 family resident uses. There is an approved site plan on this property circa 2008 I believe signed by Chairman Johansen which shows a proposed mixed use building with commercial space on the first floor and residential on the second floor. However my client is concerned with the current economic conditions he may not be able to occupy a commercial space on the first floor and find a tenant for it, so that use can be done with no variances and we were in front of the planning board and the planning board attorney confirmed although it's a 2008 approval it's still valid as there is no expiration date. We are looking to zoning for 2 family use and 2 family use is permitted with the caveat that the minimum lot area be 175% of the lot area required for single family lot, so the single family dwelling lot area is 21,780 SF if you have connection to either water or sewer, we would propose to connect to the sewer that's in the area and the commercial site plan has the approval for the sewer connection shown on it, so if you do 175% of the required 21,780 SF the resulted minimum lot area would be 38,115 SF. We have 22,557 SF so in order to do a 2 family structure on this property we would need an area variance with regard to lot area. The extent of the improvements that is required for a commercial use, this shows a commercial entrance and 8 parking spaces is substantially more disturbance to the lot than a 2 family dwelling with four parking spots, so although we have a higher lot area requirement for a 2 family dwelling we are proposing a lot less impact to the property with a 2 family dwelling.

Member POPAILO: Is this the place where the distillery was originally supposed to go?

Kirk Rother: No, I think the distillery is past The Barnsider, right?

Alexa: It's next to where the Vigro building is, right in front of the PAC theatre

Member POPAILO: Okay so that's a vacant lot

Alexa: Yes. It's a vacant lot

Chairman Feigelson: I attempted to super imposed the Google maps with the property lines and it seems to me in your drawing the structures on the adjoining property are much closer than this shows

Kirk Rother: Looking at that image, it looks like your lot lines are shifted south, so the southern lot line coincides with where the edge of the mowed lawn is on that aerial image. If you shift everything north about 30 to 40 ft that would be about right

Chairman Feigelson: So right now you need 175%, you have only about 104% so you need a variance of 15,558 SF. Any questions or comments from the board?

Member ATKIN: What are the side setbacks in Sugar Loaf?

Alexa: 10, 25 and rear is 30 feet and front is 25 feet

Member BELL: How many parking spaces? 4?

Kirk Rother: Yes, code requires 2 per dwelling unit

Chairman Feigelson: I'll point out this is a SEQRA type II action, area variance for 2 family dwelling

Counsel DICKOVER: While the board members are contemplating, I'd like to just note for the record this matter came to the board on a letter referral from the planning board where they stated it was for an interpretation by the zoning board but that phrase was used in error because this in fact is an application for an area variance and not an interpretation and the records should reflect that.

Member BELL: There wouldn't be an area variance if there was a business underneath?

Kirk Rother: Yes, that's correct. You could have a business with a residence on top without an area variance.

Member BELL: Why would that be? It seems to me you are using the same amount of area whether it's a business or residence

Chairman Feigelson: And that's an important thing to consider when you think about the impact of this.

Member POPAILO: It will be less of an impact if you have 2 residences instead of a business and residence

Chairman Feigelson: Well that depends on the nature of the business, so those are important considerations as to whether or not this is granted.

Kirk Rother: The approved site plan, you can see the impact is substantially more; they have to have a 24 ft wide commercial entrance, it's got 8 parking spaces so it is a significantly larger impact as commercial on the same parcel of land as compared to if it was 2 residences.

Member POPAILO: I have a question for counsel, when the public notices get sent out one of them will be going to the town of Chester because they own the property next door. Who will make that appearance?

Alexa: They normally don't

Counsel DICKOVER: Anyone that the town board might designate. Another question to be answered is why this would require a larger lot area as a 2 family than commercial, so if you think about the reason for zoning; #1 this is a mixed use zone so you have commercial uses allowed and residential uses allowed so I suspect the reasoning for the larger lot for a 2 family is to give greater privacy to the people living in the house. So not as much as to protect the surrounding neighbors but to protect the occupants of the residential 2 family

Member BELL: That makes sense, I didn't think of that

Chairman Feigelson: If the board has no more questions or concerns and if counsel has no more comments, we can make a motion to schedule a public hearing for September 24th meeting

Member POPAILO: I make the motion to schedule public hearing

Member ATKIN: I'll 2nd the motion

Member BELL: Yes

Chairman Feigelson: Yes

Member POPAILO: Yes

Member ATKIN: Yes

Chairman Feigelson: Okay, **public hearing is scheduled for 9/24/20 meeting**. Julie T will be send you instructions. The 239 was submitted today and the EAF was submitted. I'll make a motion to close the meeting.

Member POPAILO: I'll 2nd

Member BELL: Yes

Member ATKIN: Yes

Member POPAILO: Yes

Meeting closed at 8:36 pm

Respectfully submitted,

Julie Tiller
Zoning Board of Appeals Secretary