

**ZONING BOARD OF APPEALS
TOWN OF CHESTER**

1786 Kings Highway
Chester, New York 10918
September 24, 2020

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

ALSO PRESENT: Julie TILLER, Secretary
Alexa BURCHIANTI, Building Inspector

ABSENT: Dan Doellinger
Rob Dickover, Counsel

Chairman Feigelson called the meeting called to order at 7:02 PM with the Pledge of Allegiance

Chairman Feigelson makes a motion to adopt the July 23rd meeting minutes
Member BELL: 2nd the motion
Member POPAILO: Yes
Member FAVARA: Yes
Member ATKIN: Yes
Member Bell: Yes

July 23rd meeting minutes adopted

Chairman Feigelson: 1st item on the agenda is **FLOWER/SANDSTROM 73 Dug Rd** public hearing, AR3 zone, 1.7 acre lot; this is an area variance for a side yard setback for a deck. This is a referral from the building inspector because there was a permit denial, in terms of our documentation we have a complete application, a complete short EAF, and we have done our SEQRA determination as a type II action. I can confirm our publication for public hearing because I saw it in the paper, Julie T can you confirm whether we have all the documents from the mailings?

Julie Tiller: Yes we do, everything was sent and I have all the cards and receipts

Chairman Feigelson: Excellent, thank you. So a summary of the detail, the deck already exists, this is not a variance for a deck that's being planned. As you may recall 98:9C code does not mention decks, the applicant is requesting a variance of 20 feet 9 inches and so before we go onto the public hearing I'd like to see if the board has any questions or concerns for Michael or Laurene.

Member ATKIN: I took a ride over there about 7 o'clock this morning and it's a very, very big deck, there's a hot tub alongside the house but it's an awful big deck. I see the neighbor next door, her living side of her house is completely opposite of where his hot tub is but it's a very big deck.

Member POPAILO: Gregg, what was the math on how much the variance was?

Chairman Feigelson: 20 feet 9 inches so basically the side yard is now 9 feet 3 inches

Member POPAILO: But it should be 30 feet

Chairman Feigelson: Correct

Member FAVARA: It's an already existing deck? Was there a complaint on it?

Chairman Feigelson: There was a building department denial and it was built without a building permit and they are seeking a variance to bring it into compliance. I'm going to bring up and share the plan, so I have a few questions; who actually built this deck? I'm not interested in the actual name but it is a very large deck and appears to have been professionally built. Can you comment on that?

Michael Flower: The deck was built by a licensed contractor who lives in Chester

Chairman Feigelson: When you hired this person did they mention anything about a building permit?

Michael Flower: No sir, he did not

Chairman Feigelson: Okay, that's interesting. Seems that would be something they would know has to be done, most municipalities consider these to be substantial structures and require a permit. So my next question is, had he mentioned it to you would you have done things differently?

Michael Flower: Absolutely, I would have gotten a permit first and applied for a variance back then

Chairman Feigelson: Okay, thank you. Can you now comment on the location of the deck?

Michael Flower: The deck is on the side of my house that's attached to a deck that's underneath that I got a permit for, the top deck is attached to the underneath deck that wraps around. I have a hot tub on it, as a disabled veteran I use it every day because I've been injured more than once. Where they put it in was unusable land, it was a hill and was nothing there but a slope that was degrading so I took a bunch of trees down when I bought the house and the slope was degrading so I put the deck there so I had some usable space on the side of my house.

Chairman Feigelson: Would it have been possible to put this deck on the back of the house?

Laurene Sandstrom: The slope is way too steep

Michael Flower: The building inspector has already been to my house and I invite all of you to come by the house and look at it. It looks very big from the road but it's a good size deck but it's not a monstrosity, it's doesn't look ugly and it's a very well built deck

Laurene Sandstrom: We couldn't do it in the back because it's a total hill and we would have had to fill everything in

Michael Flower: I would have had to get about 200 loads of fill

Chairman Feigelson: Okay thank you for that, any other questions from the board before we open public hearing? Let me just announce to anyone here, if you are here to speak for or against this application please indicate in the chat window that's what you're here for so you can speak when we officially open the public hearing.

Member POPAILO: Is there a complaint in from the neighbors?

Chairman Feigelson: You should have received via email comments from the public; I believe there were 3 of them so you might want to review those

Member FAVARA: So there's not 3 complaints there's 3 letters

Chairman Feigelson: There are 3 letters, I believe 2 are in favor and there is 1 that's in strong opposition.

Member BELL: Is the one in opposition from a Ms. Dana Wilson?

Chairman Feigelson: Yes

Member BELL: Okay then I saw the email, and who were the others from? Were they from neighbors?

Julie Tiller: They came in this afternoon, I don't think they are on the same street but they emailed this afternoon.

Laurene Sandstrom: We have 2 neighbors that are sitting with us right now, they live 2 doors down from us in between Ms. Wilson and they said they would like to speak but they couldn't get on Zoom themselves.

Member FAVARA: Excuse me Gregg, did I just hear that this complaint from the neighbor is not directly adjacent to them?

Chairman Feigelson: No, it is the direct neighbor on the side of the deck and it appears that individual is here to speak so we'll give everyone that opportunity but first I need a motion to open the public hearing

Member POPAILO: I'll make the motion to open public hearing

Member ATKIN: I'll 2nd

Chairman Feigelson: Yes

Member FAVARA: Yes

Member BELL: Yes

Member POPAILO: Yes

Member ATKIN: Yes

Chairman Feigelson: Okay so public hearing is officially open; let me see who we have here for the chat. I've asked that if you're interested in speaking at this public hearing to use the chat feature, I'm looking at the list of attendees and waiting to see.

Michael Flower: I have a neighbor here who would like to speak

Chairman Feigelson: Okay let's start with that in the meantime

Lynn Sheels: Hello, my name is Lynn Sheels I live one door down from Mike & Laurene, as far as the deck it doesn't bother us at all, it's very well done and we have no problems with it, if anything it has enhanced the house. And it is true their whole back is a cliff and they really have done a lot to make the house beautiful so I have no problem with any of it. I'm going to hand you off to my husband now and thank you for your time.

William Sheels: Hi, I'm William Sheels. I was a police officer and we've had several incidents with Dana when I was on the job, she's a lovely person but she loves to complain about everything. But like we said this is a great place and we all just have to get along.

Chairman Feigelson: Okay thank you very much for your input, do you have anyone else there that would like to speak?

Laurene Sandstrom: My neighbor Victor works as an EMT and couldn't be here but he did want to speak they are at 66 Dug

Chairman Feigelson: It looks like there's someone here with an iPhone

Member POPAILO: There's a Dana Wilson here and a Kirk Rother and an iPhone

Chairman Feigelson: iPhone are you here to speak on this application?

iPhone: I think I did this wrong I'm sorry. I'm here to speak about the variance at 464 Pine Hill Rd

Chairman Feigelson: Okay thank you for identifying yourself, that's the next item on the agenda, you can just sit tight until we finish. Thank you. Okay so let's go to Dana Wilson, she's off mute. Dana? Dana are you here to speak about this application? Hello Dana? I don't hear anything, it's off mute. Dana are you here to speak? Hello? Okay well she has submitted a lengthy written commentary about this application so I think we understand her position on this application. It does not appear that there is anyone else here so I'm going to make a **motion to close the public hearing**, can I get a 2nd?

Member BELL: I'll 2nd

Member POPAILO: Yes

Member FAVARA: Yes

Member ATKIN: Yes

Chairman Feigelson: Yes

Member BELL: Yes

Chairman Feigelson: Public hearing is officially closed. Based on the comments I'm going to recommend we wait to vote, we are not obligated to vote on this evening. We have our next meeting in 2 weeks on Oct. 8th and I want to make sure everyone has a chance to review.

Member ATKIN: And Dana Wilson I believe might be Jewish and she may not be able to be on the phone right now because it's a very high religious time for the Jewish people this week and next week with Rosh Hashanah and a couple other holidays so she might not be able to talk

Chairman Feigelson: She was on the call so I don't think there's an issue there but thank you for pointing that out

Member ATKIN: I read the emails with the comments we got from her and they are very substantial

Chairman Feigelson: Yes, I think her position was well represented. So Michael & Laurene we are going to put this off until next meeting so we can make sure the board has had the chance to review all materials.

Michael Flower: Are our friends that live in Chester allowed to send in additional comments?

Chairman Feigelson: No the public hearing is closed at this time. We'll be in touch about being on the agenda for Oct. 8th

Michael Flower: Okay thank you very much to everyone

Chairman Feigelson: Next up is Kirk Rother for **SAPANARO 1351 Kings Hwy** and we will lead up to another public hearing, LB-SL zone and if you recall this is for lot coverage on a 2 family dwelling and was referred by the planning board. As a summary we have the application, we have the short EAF, we've done the SEQRA determination as type II no further action necessary, we received the county referral back as local determination and I saw the publication in the local paper for public hearing. Julie T can you please confirm the mailings were appropriately done

Julie Tiller: Yes, confirmed. All done

Chairman Feigelson: Great, thank you very much. This is a fairly straight forward one; let me give you a summary on what we talked about last time, for a 2 family dwelling in this district requires 175% of the area of a single family from the bulk table for either sewer or water, so the minimum 21,780 SF take 175% of that is 38,115 SF, this lot only has 22,557 SF making it a shortage of 15,558 SF. What we discussed last time was the applicant had previous site plan approval for a multi-use where it was an upper residential and a lower retail proposed, so let me pull up the plan so we can all view. Okay so this is the proposed plan and Kirk I'll turn it over to you now.

Kirk Rother: So far Mr. Chairman you're spot on, I wasn't involved with the initial approval of the site plan but we went to the planning board and the planning board attorney & Chairman Serotta confirmed even though it's around 10 years ago that plan is still valid and we could pull a building permit and perfect it if they wanted to. The applicant is concerned there is very little demand for retail space right now.

Chairman Feigelson: Any comments from the board? I think what we mentioned last time was the original approved plan looks like it's very use intensive of the usable area of the lot, particularly the parking lot. Whereas the proposed 2 family looks like a lot more open space

Kirk Rother: Yes you are absolutely right there is definitely more impact of the land with commercial use

Member ATKIN: Does the town have 2 family square foot requirements?

Alexa: Minimum floor area I believe is approximately 900 SF but there are minimum requirements for 1 bedroom, 2 bedroom, 3 bedroom & studios. I can get the exact numbers tomorrow

Member BELL: How big are these apartments going to be?

Kirk Rother: Roughly 1,500 SF per half and a little bit of common area

Alexa: That will meet the requirements

Member BELL: Can this be flipped back to a store front if the owner decides he wants to make it a business again? Will those original plans still be good?

Member POPAILO: That's a good question Julie, because realistically if Sugar Loaf picks up again he might want to turn it into a business

Kirk Rother: My only comment is if we end up constructing this plan to what we have proposed that would not be conforming to the requirements for commercial use on the first floor so would probably have to go back to planning board and add more parking

Member Bell: So you would have to come back for another variance?

Kirk Rother: No because that's allowed by right so we would have to go back to the planning board for site plan

Member BELL: So that plan would be null & void okay

Member ATKIN: For a 2 family I believe you need 5 parking spots which is 2.5 for each unit, so do you have enough there?

Kirk Rother: The approved plan has 8 parking spots and 1 handicapped so really 9 spots. I believe it's 2 per dwelling

Chairman Feigelson: Okay so if everyone is comfortable with moving forward with the public hearing I'll make a motion to open the public hearing, can I get a 2nd?

Member BELL: I'll 2nd

Member POPAILO: Yes

Member Favara: Yes

Member ATKIN: Yes

Chairman Feigelson: And I say yes, so the public hearing is officially open. If you're here to speak for the public hearing for the Sapanaro application please use the chat feature.

Jeff Sapanaro: Hello, I'm the applicant Jeffrey Sapanaro. Sorry I've been having a ton of trouble trying to get on this Zoom

Chairman Feigelson: No problem, we all have. So it doesn't look like we have anyone here to speak other than those we have already identified so I'm going to make the call no one is here to speak either for or against this application

Member POPAILO: I'll make the motion to close the public hearing

Member FAVARA: I'll 2nd it

Member BELL: Yes

Member ATKIN: Yes

Chairman Feigelson: Yes from me, so the public hearing is officially closed. Is the board is comfortable moving forward with a vote for the proposed variance?

All: YES

Chairman Feigelson: Okay we are now obligated to review the 5 factors before we vote on an area variance, so I'll read the questions and we'll just go down the list

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

Member POPAILO: No

Chairman Feigelson: No

Member FAVARA: No

Member ATKIN: No

Member BELL: NO

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

Member POPAILO: No

Chairman Feigelson: No

Member Favara: No

Member BELL: No

Member ATKIN: No

- #3 Whether the variance is substantial

Member POPAILO: Yes

Chairman Feigelson: Yes

Member FAVARA: Yes

Member ATKIN: Yes

Member BELL: Yes

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

Member POPAILO: No

Chairman Feigelson: No

Member FAVARA: No

Member ATKIN: No

Member BELL: No

- #5 Whether this has been a self-created difficulty

Member POPAILO: Yes

Chairman Feigelson: Yes

Member FAVARA: Yes

Member ATKIN: Yes

Member BELL: Yes

Chairman Feigelson: Okay thank you all, that's the 5 questions. Now we will go ahead and take a vote on the granting of this variance, so I will make a motion that the board votes on whether to grant the variance sought, and to refresh this is to allow a 2 family dwelling on a lot 22,557 SF where 38,115 SF is required and I will direct counsel to consolidate our findings and prepare a written decision for my signature. We will now do a roll call vote, yes meaning you are in favor of granting this variance and no being you are opposed to it

Member POPAILO: Yes

Chairman Feigelson: Yes

Member FAVARA: Yes

Member ATKINS: No

Member BELL: Yes

Chairman Feigelson: The **variance granted with a majority vote**. Congratulations Reach out to Julie and as soon as our attorney is back online we'll draft the decision and get it signed as soon as possible.

Kirk Rother: Thank you very much to everyone. Have a nice night

Chairman Feigelson: Next up is **MAASS 8 Park Drive**, who I don't believe is here online. Let me pull up the documents and we can do a quick review.

Julie Tiller: I spoke with his wife this afternoon to let her know they were on the agenda tonight, she said she would let Jason know but didn't think he would be attending

Chairman Feigelson: This was a drawing of what the applicant was looking to do, and if you remember this simple application to add a 24x24 garage in the side yard caused a lot of confusion as to what we need to consider. So this is SR2 zone, area variance for garage in the side yard, the building inspector denied the building permit and referred to us. We have a complete application; we've done the EAF, done SEQRA determination, no county referral required and we're not at the stage of public hearing so nothing done there yet. This is a corner lot in the SR2 district with sewer and water, it's a 98:9 non-conforming lot and those are the setbacks we would follow, the original denial was on building coverage but after reconsidering the bulk table and the definitions, I don't believe there is an issue with total lot coverage because the pool is not included by the definitions within the code. It's unlikely we will need a variance for the total building coverage of the lot but we have asked the applicant to provide a full survey with the proposed garage because there are so many calculations that we need to do and this drawing is just not sufficient, there are too many missing dimensions. So the garage is an accessory building under 98:11 and needs to be 5 ft from the lot line on a normal lot, not on a corner lot; per say, and 10 ft from the building and that was the proposal. We have confirmed by re-reading the code very carefully that the side yard here on Second Court does need to conform to a front yard setback of 30 ft based on 98:9 and that's why these measurements are quite important. Also we have determined that the garage according to code cannot occupy more than 30% of the required side yard area, and that's the required side yard area as opposed to the actual side yard area, so the bottom line here is for this application we requested a survey, not something we like to incur those expenses on the applicant if we can avoid but this case is quite unusual, and it looks like only 2 variances will be needed so the next time we see this case will be dependent to when the applicant gets the survey done. That's really all I have, does anyone have any questions on this?

Member ATKINS: Last time we had this meeting Alexa was going to look into what was going on with the front and side and if it would be alright. We just granted the applicant in Sugar Loaf and he was over 15,000 SF short so I think if he has what is required I believe we should allow it.

Chairman Feigelson: Yes so the problem right now is we can't actually define the numerical values for the variance and that's why we're in a holding status but once we have that you are certainly entitled to take that view

Alexa: The shed and the pool was all taken into consideration for lot coverage, how did we deem that the pool is not considered part of lot coverage?

Chairman Feigelson: Because if you read the column where it talks about percentage building coverage it says; building coverage. If you look up building in the definitions it refers to a structure not a pool and has to have certain characteristics of a building and if you look in the definitions you'll see that

Alexa: Okay but it's not an above ground it's a built in pool

Chairman Feigelson: We can discuss this further but if you look at the definition of building in the code it's very specific about walls and a roof, if you look at it and want to discuss further I'm open to it but when I read it was very specific. But he will need a big variance for 30% of the required side yard and I assume we will spend time talking about this in the future

Alexa: Okay, I'm good

Chairman Feigelson: Okay so unless there are any other questions about this, we have one more item on the agenda tonight **GERMANO 464 Pine Hill Rd** application review and I believe we have the applicant here, for a quick summary this is AR3 zone, 3.4 acres requesting

an area variance for rear setback and what prompted this was a referral from the building inspector and a building permit denial. We have the application; need to determine if we need a county referral and sounds like it might need it as a note. I'll bring up the plan so we can all view and Mr. Germano why don't you tell the board what it is you're looking for.

Steve Germano: Okay thank you, so basically I have an existing dwelling to the right of the driveway and it's about 30 or 40 feet up on Pine Hill Rd, I was thinking about renovating it and when I started getting prices it was just crazy so then I thought I should just build something new. In doing so, I sat down with my architect and my site plan engineer and we did the septic design for the best place to put a home. The topography of this property is very hilly so you can't just put a home anywhere; most of the land is unbuildable and the land along Pine Hill Rd the first 40,50, 60 feet in is rough terrain and mostly ledge rock. So we found a spot that's a perfect spot, however the problem I'm having is because of the zone I'm in it has an incredible setback requirement of 100 feet, so I'm asking this board to grant me a variance and I would not be infringing on any of those 5 points you mentioned. Nothing environmental and the variance is for the setback to the mountain, I would still be at least 40 feet from my property line which is quite significant and that 40 feet is way up the mountain and I'm trying to figure out the best way to build there and this is the highest flat ground on the property and that means a lot. It's unfortunate because I have a huge piece of property but I'm seeking this variance to offset that 100 foot setback

Chairman Feigelson: Right, so it's a 60 foot variance you're seeking. What is the Orange County land? Is that a park?

Steve Germano: Yes it is, I bought this property from State of NY and the history is it was state owned and I heard it was a ranger station at one point and my house certainly supports that, it's like a cabin simple structure. It was a ranger station at one point for the parklands and they were going to use Black Meadow Creek as a reservoir, one of 5 reservoirs to be built and they abandoned that in the 70's or 80's and the state was left with these properties and they put tenants in there and I believe only 1 family lived in there for the past 20 years. The home is deteriorating, to the point that it needs everything and I'm living there as is but I'm eager to make this better and it will greatly improve the property.

Member POPAILO: So you need 100 feet from the back to the mountain but it's going straight up the mountain, correct? So you're looking to go 40 feet

Steve Germano: Yes and only a portion of the home will be touching the set back and it's just a perfect setting because you come up the driveway and you face the home

Member POPAILO: Okay so do we have to go to public hearing next?

Chairman Feigelson: Yes, so if the board has no major issues, the next meeting is Oct 8th and if you need a 239 referral that's not enough time because the county needs 30 days so the November meeting will be the 12th. Did you say the footprint of the construction is marked?

Steve Germano: Yes, I believe I left a copy of the building plan in the building department

Chairman Feigelson: I'm sorry, I meant if I was to visit the property would I be able to identify where the house and garage were going?

Steve Germano: I think so and I welcome you to go up there and see what we're talking about. If you get there before 11 am I'm home and you can text or call me anytime and I'll show you exactly what I'm talking about.

Chairman Feigelson: Any other questions from the board before we make a motion to schedule a public hearing? There are some things you have to do but Julie T will give you everything, so I'll make a **motion to schedule a public hearing for this application for Nov.12th**

Member POPAILO: I'll 2nd it

Member FAVARA: Yes

Member ATKINS: Yes

Member BELL: Yes

Chairman Feigelson: Yes. Okay so **public hearing is scheduled for Nov.12th** and we'll send the information and the agenda. Any other business before we adjourn?

Member POPAILO: I'll make a motion to close the meeting

Chairman Feigelson: I'll 2nd

Member FAVARA: Yes

Member ATKINS: yes

Member BELL: Yes

Meeting closed 8:11 pm

Respectfully submitted,

Julie Tiller
Zoning Board of Appeals Secretary