**ZONING BOARD OF APPEALS**

**TOWN OF CHESTER**

1786 Kings Highway

Chester, New York 10918

January 9, 2020

**PRESENT:** Gregg FEIGELSON, Chairman

Tom ATKIN, Member

Dan DOELLINGER, Member

Walter POPAILO, Member

**NOT PRESENT:** Julie BELL, Member

Bob FAVARA, Member

**ALSO PRESENT:** Robert DICKOVER Esq., Dickover, Donnelly, Donovan & Biaggi LLP

Alexa BURCHIANTI, Building Inspector

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

Chairman Fiegelson congratulated Alexa Burchianti on her new position as the Town’s Building Inspector

**MOTION** was made by Member Popailo, second by Member Doellinger to **ADOPT THE MINUTES OF DECEMBER 12, 2019 AS DRAFTED**. Motion passed 4-0

Let the record reflect their mailings were sent out and not much has come back, but it was also posted in the Times Herald Record in a timely manner.

Orange County Planning responded to the referral with Local Determination

**PUBLIC HEARING**

**RUSS & DONNA LEINER – AREA VARIANCE REQUESTED (SIDE YARD)**

49 GIBSON HILL ROAD (S/B/L 15-1-8.1 – AR-3 ZONE)

Russ Leiner, applicant provided an overview:

* Existing home from 1997
* Existing 2 family home
* Want to build extension on one side of the property that has zoning setbacks currently of 40’ and the applicant is not within those guidelines
* They would like to construct a 20’ addition, putting the structure 20’ from the 40’ setback

The Board had no additional comments or questions.

**MOTION** was made by Member Atkin, second by Member Popailo to **OPEN THE PUBLIC HEARING**. Motion passed 4-0

**MOTION** was made by Member Popailo, second by Member Atkin to **CLOSE THE PUBLIC HEARING**. Motion passed 4-0

**REGULAR MEETING**

**RUSS & DONNA LEINER – AREA VARIANCE REQUESTED (SIDE YARD)**

49 GIBSON HILL ROAD (S/B/L 15-1-8.1 – AR-3 ZONE)

Town Attorney Robert Dickover had the following comments / questions:

* The Board has to be precise with the variance
* What is the size of the addition?
  + Applicant advised the size of the addition is 16’ X 20’
* When it’s constructed, how far will the new structure be away from the side boundary line?
  + Applicant advised it would be 20’4” away from the side boundary line
* The Board confirmed the zone requires a 40- foot side yard, so the applicant is seeking an 18’ variance
* In addition to those details, the board also has to consider 5 factors for an area variance:
  + Whether or not an undesirable change or detriment to the nearby properties will occur if the variance is granted to you
    - Applicant advised there are no neighbors on the side of the house where the addition is proposed
  + Whether or not there is a need for your variance and, in particular, can the relief you’re seeking (the addition), be obtained in any other way – other than getting the variance
    - Applicant advised behind the residence is an incline that’s about 30% from grade, on the opposite side there’s a driveway setback from a natural retention pond for drainage, the front yard has the septic system. This is the only place we can put it.
  + Whether the requested area variance is substantial in a numerical fashion (percentage wise) versus what’s required there. Probably based on what you’re telling us, 40’ is required and you’re going closer than 20’, so it’s an excess of a 50% numerical variance.
    - The proposed addition won’t impede any other properties and the property on the northeast side, where the proposed addition would be built, won’t be built on since it’s owned by the Palisades Interstate Park Commission Property;
  + Whether or not there will be an adverse physical or environmental effect upon the neighborhood if the variance is granted and the house addition is built
    - Applicant advised it won’t impact drainage, swales, traffic or growth
  + Whether or not the difficulty created by your situation is self-created such that the variance is being requested because of something that you want to do because of something you’ve created and, in fact, it is. The Board will probably make a determination that it is self-created, but not fatal to your application.

Town Attorney Robert Dickover that if the Board is satisfied, his request is that the Board direct counsel to prepare a written decision consistent with the findings made this evening and it would be presented for a vote next month. Otherwise, the Board can grant a verbal approval this evening, but the decision still needs to be put in writing, consistent with the findings made this evening (if those are the Board’s findings), and still needs to be voted on.

Chairman asked if the Board had any additional questions on the findings. Board agreed to make the findings tonight and, based on those findings, the Board makes a decision to presumably grant the variance. It would be put in writing and present it back for a vote next month. The applicant walks out of the meeting knowing that they’re going to get it. They just can’t go get a Building Permit until they have your decision.

Discussion was held regarding the possibility of no meeting next month to vote:

Can the Board vote on it tonight?

Town Attorney Robert Dickover advised the problem with voting tonight is that it needs to be a written decision. If the Board allows the Attorney time, he could write up the resolution and put into the minutes an oral decision. The Board still needs to go over the 5 factors, but, as part of that process, the review of the 5 factors would be put into the record and made part of the oral decision with a roll call vote on that decision and a direction to reduce that direction to writing and submit to chair for review and, if in agreement, authorize the Chairman to sign the resolution. The Board agreed to the oral decision and authorizing the Chairman to sign.

Board review of the 5 factors:

Whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by granting the area variance

Member Tom Atkin – No

Member Dan Doellinger – No

Member Walter Popailo – No

Chairman Gregg Feigelson – No

Member Julie Bell – Absent

Member Bob Favara – Absent

Whether an applicant can achieve his or her goals via a reasonable alternative which does not involve the necessity of an area variance

Member Tom Atkin – No

Member Dan Doellinger – No

Member Walter Popailo – No

Chairman Gregg Feigelson – No

Member Julie Bell – Absent

Member Bob Favara – Absent

Whether the variance is substantial

Member Tom Atkin – Yes

Member Dan Doellinger – Yes

Member Walter Popailo – Yes

Chairman Gregg Feigelson – Yes

Member Julie Bell – Absent

Member Bob Favara – Absent

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

Member Tom Atkin – No

Member Dan Doellinger – No

Member Walter Popailo – No

Chairman Gregg Feigelson – No

Member Julie Bell – Absent

Member Bob Favara – Absent

Whether there has been any self-created difficulty

Member Tom Atkin – No

Member Dan Doellinger – Yes

Member Walter Popailo – Yes

Chairman Gregg Feigelson – Yes

Member Julie Bell – Absent

Member Bob Favara – Absent

Town Attorney Robert Dickover requested the record reflect this is a Type II Action under SEQRA because it is an application for an area variance for a one or two-family residential dwelling and no further environmental review is required.

The proposed decision is for the named applicant, Russell M and Donna E Leiner, for premises at Section 15, Block 1, Lot 8.1 in the Town of Chester. It’s an application seeking a side yard area variance of 19’ to allow them to construct a 16’ X 20’ foot addition to their home, which upon completion will be 18’ 8” away from the side boundary and hence a request for an 18’ variance. The decision would recite the applicable sections of the Code. It would recite that a Public Hearing was held this date and closed this date. It’ll describe the background of the application as a Public Hearing opened and closed this date based upon the Building Inspector’s denial letter of November 21, 2019 from which they’re taking this appeal. It’ll recite that they own an approximate 3-acre parcel of land located at 49 Gibson Hill Road. That no adjoining neighbors have been heard from at this hearing and there’s been no opposition otherwise received by the Board in connection with the application. And after the Hearing and presentation, the Board decided as follows:

* This is a Type II Action under SEQRA
* That the referral pursuant to General Municipal Law 239 was returned by the County Planning Department with the finding that it’s one for Local Determination

The decision would then recite that the 5 factors that have been taken into consideration, but no single one is viewed as precluding the granting of the variance. With respect to those factors:

1. With respect to the undesirable change or detriment to nearby properties, the decision will recite that no undesirable change in the character of the neighborhood or detriment to the neighbors in the neighborhood will result if the variance is granted, principally because there are no neighbors to this particular subject property.
2. With respect to the need for the variance, the decision will recite that the applicant is in need of the variance because the addition that they seek to build cannot be built in the rear, side or front yards of the property because of the impediments they put in front of you with 30% grade at the rear, a driveway and wet ponding area on the other side of the property and the septic being in the front of the property.
3. With respect to the substantial nature of the variance requested, the Board members opinions varied on that question, however, because of the focus of the Board’s inquiry is upon the character of the neighborhood and the effect of the variance if granted, this decision would recite that, under the circumstances presented here and the nature of the variance is in keeping with other homes in the neighborhood and there will be no material degradation of the neighborhood resulting from the grant of the variance
4. With respect to whether or not there will be an adverse physical or environmental effect upon the neighborhood the decision would recite that there would be no such adverse physical or environmental effects
5. With respect to the self-created factor the decision would recite that the Board members opinions differed on whether the variance is self-created, however, the Board believes, under the circumstances, that even if it be self-created, that the application is otherwise to be granted because there is no undesirable change in the character of the neighborhood as a result of it.

And, based upon that, employing the balancing test, the decision would recite that the Board resolves to grant an 18’ variance on this particular application.

**MOTION** was made by Member Popailo, second by Member Atkin to **ADOPT THE RESOLUTION AS READ BY COUNCIL**. Motion passed 4-0

**Roll Call For Against Abstain/Absent**

Chairman Gregg Feigelson [ X ] [ ] [ ]

Member Tom Atkin [ X ] [ ] [ ]

Member Dan Doellinger [ X ] [ ] [ ]

Member Walter Popailo [ X ] [ ] [ ]

Member Julie Bell [ ] [ ] [ X ]

Member Bob Favara [ ] [ ] [ X ]

Chairman Feigelson asked if anyone had anything else to discuss and there were no other comments.

**MOTION** was made by Member Popailo, second by Member Doellinger to **ADJOURN THE MEETING**. Motion passed 4-0

Respectfully Submitted,

Sandra VanRiper

Acting Zoning Board of Appeals Secretary