**ZONING BOARD OF APPEALS**

**TOWN OF CHESTER**

1786 Kings Highway

Chester, New York 10918

February 13, 2020

**PRESENT:** Gregg FEIGELSON, Chairman

Tom ATKIN, Member

Julie BELL, Member

Dan DOELLINGER, Member

Bob FAVARA, Member

**NOT PRESENT:** Walter POPAILO, Member

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

Alexa BURCHIANTI, Building Inspector

**Chairman Feigelson opened the meeting with the Pledge of Allegiance**

As there was no January meeting, there are no minutes to adopt.

**YOGESH & ARADHNA PAL – AREA AND USE VARIANCE APPLICATION**

15 DAVIS HILL ROAD (S/B/L 7-1-51 – AR-3 ZONE)

David Niemotko, Architect provided an overview of the project:

* Proposed conversion of an existing barn into a residence for his disabled, elderly parents
* The existing barn pre-dates zoning
* The existing barn is currently used as a garage and storage
* The level above the garage would be converted into living space
* The applicant is proposing conversion of the barn instead of an addition on the existing residence due to the cost – the addition would be more expensive than the conversion and possibly create issues with the existing septic and wet areas
* The applicant would reside in the existing home on the property
* The existing 2 structures encroach on the front yard setback
* The proposed project will not change the footprint of the existing structures on the property
* The applicant has no intention of renting out the converted barn space in the future

Chairman Feigelson opened the floor to questions from the Board:

* The existing barn looks like it’s ready to fall down and doesn’t appear to have a second floor
  + David Niemotko confirmed the barn has a second floor
* What is the foundation of the existing barn? Concrete slab? Stone foundation?
  + David Niemotko advised the barn has a below grade, stone foundation, which is sufficient for the proposed conversion. Applicant would tear down and rebuild if the Board agreed.
* As this would be a change of use, the factors have to be accounted for including whether the applicant can realize a reasonable return on the property without getting the use variance
* The existing house is 1,240 square feet and too small to accommodate everyone
* Town Attorney Robert Dickover has provided a memo to the Board (copy attached) and briefly reviewed the factors to be considered for a use variance listed below:
  + The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence
  + That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood
  + That the requested use variance, if granted, will not alter the essential character of the neighborhood
  + That the alleged hardship has not been self-created
* Town Attorney Robert Dickover advised that if the use variance is not granted, there is no need for the Board to consider the area variance
* The Board agreed the applicant should provide more information regarding the project and the above factors to be considered by the Board.
* David Niemotko advised:
  + The applicant is not treating this as a commercial change as they will only be using the property for residential purposes
  + There will be no reasonable return on the investment as the proposed conversion is for family use only to take care of elderly, disabled parents
* The applicant would prefer to covert the existing barn rather than put on an addition to the existing residence and increase the footprint of the existing structures
* The house and barn cannot be connected as the existing elevation would not allow for it
* The Board advised, if the requested variances were granted, they need to consider the potential precedent this proposed project would set in the Town for future projects
* The Board will have to look at the setbacks allowed in the AR3 Zone as well as the Exceptions to District Regulations noted in § 98-9 of the Town Code
* Town Attorney Robert Dickover commented:
  + The proposed project should be referred to Orange County Planning
  + The proposed project should have a Public Hearing
  + The requested Use Variance would be an Unlisted Action under SEQRA, the Town should declare Lead Agency and perform an Uncoordinated Review
  + The requested Area Variance would be a Type II Action under SEQRA, the Town should declare Lead Agency and perform an Uncoordinated Review
* Building Inspector Alexa Burchianti advised this project would also need Site Plan Approval from the Planning Board as it would be a change of use to the property
* David Niemotko advised he would discuss the Board’s comments with the applicant and confirm if the applicant wants to move forward with this request or withdraw
* Member Doellinger commented the Board is sympathetic and they appreciate the applicant is trying to use the existing structures, but there are several hurdles to overcome

**\*MOTION** was made by Member Bell, second by Member Doellinger, to **SCHEDULE THE PUBLIC HEARING FOR THURSDAY, MARCH 12, 2020**. Motion passed 4-0

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

**\*MOTION** was made by Member Bell, second by Member Atkin, to **ADJOURN THE MEETING**. Motion passed 4-0. Meeting adjourned.

Respectfully Submitted,

Sandra VanRiper

Acting Zoning Board of Appeals Secretary