

ZONING BOARD OF APPEALS  
TOWN OF CHESTER  
1786 Kings Hwy  
Chester, New York 10918  
June 9, 2022

**Meeting called to order:** 7:00PM

**Members present:** Chairman FEIGELSON  
Dan DOELLINGER, Member  
Tom ATKIN, Member  
Julie BELL, Member

**Members absent:** Walter POPPAILO, Member  
Giuseppe CASSARA, Alternate Member

**Also present:** Melissa FOOTE, Secretary  
Robert DICKOVER, Counsel  
Alexa BURCHIANTI, Building Inspector

**Chairman FEIGELSON:** called the meeting to order at 7:00 PM and opened with the Pledge of Allegiance.

No Minutes to Adopt.

**Chairman FEIGELSON:** We have one item on the agenda tonight. This is the Arnstein application, everybody hopefully has had a chance to look at all the materials.

**Counsel for Mr. Arnstein / Neil Frishberg Fabrication:**

Mr. Arnstein has been trying to build on this lot for almost 18 years or so. It was suggested that he come before you for a variance, among other things under Section 98 -9 a & d of your code. If he is in fact part of the property before the enactment of the code which would be sometime in 2009. He's entitled to the smaller bulk rate requirements, which is 10,000 sq ft, as opposed to 25,000 sq ft. His property is on the small side of 8,600 sq ft. The relief we're requesting, is an area variance to the 8,600 square feet. We're trying to determine if whether he has a water and sewer hookup, which has been an issue for a while, and I'm told the building inspector may be of help in that regard.

**Chairman FEIGELSON:** So, this is a referral but the request in the application was for 98-9d.

**Neil FRISHBERG:** I agree with Mr. Dickover's memo. We want to confirm with the ZBA that we are under sections 98-9d. We still need an area variance because we're still below the Bulk Rate, the bulk requirements of 10,000 square feet.

**Chairman FEIGELSON:** This is preexisting non-conforming?

**Alexa BURCHIANTI:** According to our exception to district regulations, we have a code for below 10,000 square feet. He doesn't need an area variance for the lot size. He just needs the variance for 98-9d.

**Alexa BURCHIANTI:** We have either water and sewer, either or both. So, if he has a Well, then he needs sewer. If he has water & sewer, then the setbacks are different. If he has one or the other water or sewer then the setbacks are also different. It's just a matter of if he gets his sewer, which is what he needs.

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**Chairman FEIGELSON:** What's the trigger getting sewer, the variance to 98-9d?

**Alexa BURCHIANTI:** Correct.

**Chairman FEIGELSON:** This lot doesn't actually have a street address?

**Alexa BURCHIANTI:** No

**Dan DOELLINGER:** All of the paperwork referred to it as either being Midway or South Side, and I think it's actually neither I think it's actually Lake Region.

**Alexa BURCHIANTI:** Yes, it's Lake Region because it's set back one house from Midway,

**Chairman FEIGELSON:** The code was amended.

**Alexa BURCHIANTI:** It's Local Law 4 that was amended in 2008.

**Rob DICKOVER:** That seems to be an issue. If he meets the water and sewer requirement, it's not a variance. He meets the requirements. Why would he need a variance? Right?

**Alexa BURCHIANTI:** Well, he wouldn't, but he needs permission to hook up to MOODNA.

**Rob DICKOVER:** That's not this board's decision.

**Alexa BURCHIANTI:** I understand that, but if you read 98d, two or more non-conforming abutting subdivision Lots not in separate ownership shall have three years from the date of subsection to obtain a building permit under the provision of subsection A.

**Rob DICKOVER:** Which he didn't do.

**Alexa BURCHIANTI:** Which he did not do. Any such non-conforming lots in the subdivision division granted approved by the planning board more than three years prior to the effective date. Subsection required to be re subdivided. Now, you can't be subdivided this lot. So, and if by current engineering and environmental design criteria for what is your drainage, buildable area cannot be satisfied when the building permit is applied for such a lot.... So, the previous building inspector kicked him back. So, in 2016, I received stuff from MOODNA because he originally thought he was going to have to come back to the planning board. I spoke to Don about that, and he said no. He doesn't have to come to the planning board. He's going to have to go to ZBA to get relief from 98-9-D. But then we had gotten the okay, from the hook up for MOODNA, and they said that he spoke to the building department back then, and Joe also said, he's going to need a variance from 98-9-d. So hence, here we are.

**Rob DICKOVER:** We're talking about something that happened at six years ago. 2016. Is this lot approved for hookup to water and sewer?

**Alexa BURCHIANTI:** As of right now? Yes.

**Ron ARNSTEIN:** There's a hydrant on my property.

**Rob DICKOVER:** So, you have you have water and sewer available?

**Ron ARNSTEIN:** Yes, and I have the two houses directly across who have water, and everyone has sewer and Mr. Lippman before my other attorney, found that there's no easement to my neighbor's sewer line on my property, which I don't really care about.

**Chairman FEIGELSON:** Alright, so the question is whether this is amended or created.

**Alexa BURCHIANTI:** I don't know what the previous language was prior to 2008.

**Chairman FEIGELSON:** Yes, so it's local law 4 - 2008, which I looked up and it seemed to have the same language as this section d.

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**Rob DICKOVER:** So, the only question really is whether or not the lot was owned individually and separate from an adjoining lot at the time of enactment of the subsection, whatever year that was prior to 2008. If he was then he's got the benefit of water and sewer, and he doesn't need a variance with

**Rob DICKOVER:** My guess is that this provision was there prior to 2008, and it was just the dimensional requirements that were changed in the bulk table. That would be pretty common. Okay.

**Chairman FEIGELSON:** But then why would they put that in d?

**Rob DICKOVER:** D was really an exemption provision that would exempt the lot from zoning changes.

**Chairman FEIGELSON:** So, there's also a note of an amendment to "a" on the same date. It only appears under a and d. It was changed, not added.

**Rob DICKOVER:** Who was town council in 2008?

**Dan DOELLINGER:** It was Jon Bonacic.

**Chairman FEIGELSON:** So then where does this leave us

**Frishberg:** issue comes to mind is can you give him relief from that three-year period of time?

**Rob DICKOVER:** If we take the position that we can grant relief, then we can grant relief. It may be that this board does not have the jurisdiction or authority to grant relief from that permission. So that's an issue. That may be what you're left with asking for, depending on the enactment date.

**Chairman FEIGELSON:** My sense is that this amendment coincides with comprehensive planning and rezoning that was done in the early 2000s. As a way to get builders to do something with their properties. They had subdivided them; they were just sitting around and to clarify the comprehensive plan and bring everything into order.

**Rob DICKOVER:** Is this lot or was this lot part of a subdivision approved by the town planning board?

**Ron ARNSTEIN:** It was already subdivided.

**Rob DICKOVER:** Was it part of an approved subdivision? Or was it an ancient subdivision?

**Alexa BURCHIANTI:** As far as I know, its ancient. Those were summer bungalows.

**Rob DICKOVER:** There are a number of questions to drive dissect this you need to know when 98-9a and 98- 9d were enacted. What was the language at the time that they were enacted? The next question is, when did the lots on the file map, lots 19 – 25, when did they get joined, and who were the predecessor owners? Making it look like the separate on this map? If I read your clients application correctly, he's only applying for this variance for 22,23,24, and 25. That's right. So, this has been divided and 19,20, and 21 came out. Your client bought all 7 of those and then sold off these three. The description says being Lots 19 through 25. Arguably he owns the property that houses are now built on.

**Rob DICKOVER:** As the building Inspector, what was your take on this application to build on these ancient 4 lots not subdivided.

**Alexa BURCHIANTI:** As far as I'm concerned, the way I look at it, at current day, that would be a buildable lot. Because as far as I see it, it is 10-13-5. I don't look at it as 4 separate parcels. I have to go by what my county records are showing me, and everything else.

**Rob DICKOVER:** By that by that and I would have to conclude that it's not in separate ownership, even now.

**Alexa BURCHIANTI:** So, then we're good?

**Rob DICKOVER:** No, not good. Because he doesn't get the benefit of 98-9d

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**Neil FRISHBERG:** Well then you still can give us a variance. We just need a really big variance. Yeah, well, right. Even if, even if we didn't find any of that even for the 19 ID, right. We just need a really big variance.

**Rob DICKOVER:** I'm going to reserve my opinion on whether or not the board can grant relief. Under those circumstances I don't I don't know the answer to that.

**Alexa BURCHIANTI:** So, if that lot was in someone else's name if he sold it to Jane Smith and didn't and still own 46 outside now it's two separate ownerships Correct. hypothetical question.

**Rob DICKOVER:** I'm not going to do that. I think you need to get for us the date of enactment of the original 98-9.

**Neil FRISHBERG:** We actually have old hard copies of this stuff in my office so that some of

**Rob DICKOVER:** We need to have an examination done to determine whether or not this actually was subdivided by the planning board and if it was, we need the date of filing of that map.

**Rob DICKOVER:** You're going to have to marry that up with your clients' predecessors and owners, the Winters, to determine whether or not they own any of these other adjoining lots or not. It appears that your clients needed to do a subdivision to accomplish what they're trying to do today.

**Rob DICKOVER:** He built on this preexisting, on this lot.

**Alexa BURCHIANTI:** Somebody else built on that lot.

**Rob DICKOVER:** Alright, somebody else built on that lot. But it's 1 lot. It's not 2 lots. Just because it has second different tax lot doesn't make it a buildable separate lot, under the zoning ordinance. Tax map lots don't equal buildable

**Dan DOELLINGER:** The house was built in the 40s, so it was probably built without the building permit.

**Alexa BURCHIANTI:** Correct, because we didn't enact zoning until 1957.

**Rob DICKOVER:** I think you need a subdivision frankly. And you're going to try to create a non-conforming lot in the subdivision. Two of them actually. Because that lot adjoining is probably a conforming lot with all these old seven lots joined together. Now you're trying to subdivide a lot into creating a non-conforming lot.

**Neil FRISHBERG:** I guess part of the problem is when the building inspector issued that permit was, he issuing it for 1 lot or 2.

**Alexa BURCHIANTI:** If it was built in a time when we issued permits?

**Chairman FEIGELSON:** I just looked it up According to Zillow, it was built in 1920.

**Alexa BURCHIANTI:** There's no permit, and there was no zoning. This particular property ended up in a very shallow gray area when they enacted this and did the verbiage on this.

**Alexa BURCHIANTI:** With water, he's got a hydrant on his property so I can't see them not allowing him to tie in. We had submitted a petition to the town board but they never they never did anything with it.

**Rob DICKOVER:** See what you can find out about a subdivision of this lot right now.

41:37 has been like because the rest of the analogies you get on like reason these are newer, right so these requires a subdivision when they move with region all the way around? I don't know maybe like maybe it stopped and started and Midway picks up for some time.

**Board & Applicant reviewing the Tax Maps.**

**Rob DICKOVER:** What's the answer to 239? Is it subject for referral or not?

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**Chairman FEIGELSON:** No, I don't know. I looked today on Google Maps like 500 feet in all directions. You're far you're like 800 feet from the border of Monroe so you're I think good.

**Chairman FEIGELSON:** The 1990 deed is for the entire parcel.

**Ron ARNSTEIN:** My attorney said that it was a separate deed, a separate tax map.

**Chairman FEIGELSON:** What's the next step? Can the ZBA give him a relief?

**Rob DICKOVER:** That's not a decision for this board. That's a building inspector decision. Subject to being your decision being appealed.

**Chairman FEIGELSON:** We can't move forward on this within the absence of some more information.

**Motion to table the application by:** Chairman FEIGELSON

**Second by:** Tom ATKIN

**Roll Call Vote**

**Tom ATKIN:** Yes

**Julie BELL:** Yes

**Dan DOELINGER:** Yes

**Motion to adjourn the meeting by** Chairman Feigelson

**Second by** Julie BELL

**Roll Call Vote**

**Tom ATKIN:** Yes

**Julie BELL:** Yes

**Dan DOELINGER:** Yes