

ZONING BOARD OF APPEALS
TOWN OF CHESTER
1786 Kings Hwy
Chester, New York 10918
March 10, 2022

Meeting called to order: 7:00PM

Members present: Gregg FEIGELSON, Chairman
Dan DOELLINGER, Member
Tom ATKIN, Member
Giuseppe CASSARA, Alternate Member

Members absent: Julie BELL, Member
Walter POPPAILO, Member

Also present: Rob DICKOVER, Counsel
Melissa FOOTE, Secretary

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

Member ATKIN: I'll Second.

Chairman FEIGELSON: Roll call vote

Member DOELLINGER: Yes

Member ATKIN: Yes

Alternate Member Giuseppe CASSARA: Yes

Chairman FEIGELSON: We have only one item on the agenda tonight. It's a continuation of 193 BMD LLC. I know we've talked a lot about this application. Let me pull up the site plan just for reference. So let's just really quickly review this because, as I said, we've been through this a few times. We have three variances we're talking about, we have the front yard setback, where there's the applicant is at 86.6 feet where 100 is required, we have a side yard setback of 70.4 feet where 90 feet is required. Both of those are preexisting, non-conformities, and we have a request for 69 parking spots where 120 are required by the square footage of the office building and the proposed addition to the warehouse. Does anybody have any questions? I'm not hearing any questions. I also mentioned in the last meeting that, we had two different SEQRA determinations that we had to make for this application. One we took care of which was the Type II action for the setbacks. The parking is considered an unlisted action, and as you'll recall, we did declare ourselves the lead agency. We declared that we will be carrying out an uncoordinated review. We need to close the loop on that. This is just for the parking, to be clear. Does anybody have any reason to believe that there might be some environmental impact to reducing the number of parking spots from the required 120 to 69. That is 51 spots less than required by code. Does anybody have any concerns? I guess my feeling is that fewer parking spots is probably a positive from an environmental standpoint. So having not heard anything, I'll make a motion that we make a negative SEQRA declaration for this unlisted action?

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Member DOELLINGER: I'll Second it.

Counsel DICKOVER: Mr. Chairman, you really should have the record reflect that the Board reviewed the Short Form Environmental Assessment Form. There are 11 questions, their connection with the parking variance that is being requested. Based on the members lack of comments with respect to their perception of adverse environmental consequences, I would suggest that all of the no to moderate answers be checked off in that Part two of the short form. So that we have a record that the Board did review that and made those determinations for SEQRA purposes.

Chairman FEIGELSON: Okay, so what's the what's the action at this moment?

Counsel DICKOVER: To check off the No boxes, in questions 1 through 11 on the Short Form EAF Part Two So let me go through them through them really quick for the board. The First Question, will the action for the parking variance, create a material conflict with an adopted land use plan or zoning regulation? And the question is no or a small impact may occur or a moderate to large impact may occur. The first box should be checked off on part two of the form.

Chairman FEIGELSON: That's fair can you can do that, since I don't have the form.

Counsel DICKOVER: I can mark it off and submit it to you for the Board's record. The Second Question was the action again, it's the parking variance result in a change in the use or intensity of use of land. Now a small impact may occur or a moderate to large impact may occur. I again suggested back to the board they have to make the determination that there would be no or small impact occurring as a result of the parking variance. Do the board members agree with that? A verbal answer would be good.

Member DOELLINGER: Yes, little or none.

Member ATKIN: Yes

Alternate Member CASSARA: Yes

Chairman FEIGELSON: I say yes as well.

Counsel DICKOVER: Question Three is would the action impair the character quality of the existing community? Again, I would suggest that the answers are No or a small impact that might occur.

Member DOELLINGER: No

Member ATKIN: No

Alternate Member CASSARA: No

Chairman FEIGELSON: I also say no.

Counsel DICKOVER: Question Four, will the proposed action have an impact on the environmental, and characteristics that cause the establishment of a critical environmental area? Again, I'm suggesting the answer is No.

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Member DOELLINGER: No

Alternate Member CASSARA: No.

Chairman FEIGELSON: No for me as well.

Counsel DICKOVER: Question Five, will the action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? Again, suggesting the answer is No.

Member DOELLINGER: No

Member ATKIN: No

Alternate Member CASSARA: No.

Chairman FEIGELSON: No for me as well.

Counsel DICKOVER: Question Six, will the action cause an increase in use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? Again, suggesting it's a No answer.

Member DOELLINGER: No

Member ATKIN: No

Alternate Member CASSARA: No.

Chairman FEIGELSON: No for me as well.

Counsel DICKOVER: Question Seven is a two-part question. A.) will the proposed action impact existing public or private water supplies? I'm suggesting the answer again is no.

Member DOELLINGER: I'm going to say No, but I believe we were still waiting to hear back from the Village of Chester or on the on the impact of the project.

Chairman FEIGELSON: We haven't received any information from them. Melissa, has anything happened since we communicated earlier today?

Melissa FOOTE: No. I spoke to the Engineer, Larry Torro. In the last meeting he said if anybody needed anything to please reach out to him, and I haven't heard anything from Village of Chester, and he hasn't heard anything from them as well.

Stephanie TUNIC: Mr. Chairman, if I may, I did have a chance to speak to Sean Arnott today, the Village of Chester Engineer, I thought the Water and Sewer Superintendent might be on here tonight to address but essentially, his recommendation to the Mayor and the Village Board was that any type of potential impact from the site would be better assessed at the Planning Board level, because drainage and other and other instances like that would be would be handled by the Planning Board, which I was also personally in agreement with. Obviously, we would address any concerns at that at that time. He didn't feel that at this stage with the variance that input from the village was needed. I am paraphrasing. I thought that they might send something, but I didn't speak to him today.

Chairman FEIGELSON: So, we're basically using our best discretion with the questions in the absence of any material that was submitted.

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Member ATKIN: I saw Gary Green yesterday. He's a Water Superintendent for the Village. He doesn't think that it will affect the well, but there's other issues like parking. They're short on the parking. They're going to put the addition on, and maybe there'll be more people working there.

Chairman FEIGELSON: We'll get to that. Those are all points that we should discuss, but right now, we're just trying to determine whether a reduction in the amount of parking to our best ability to determine will have an adverse environmental impact to this specific question.

Member DOELLINGER: My initial instinct would be no. A less impermeable surface would probably create less runoff, and definitely not affect the flow.

Member ATKIN: No

Alternate Member CASSARA: No

Chairman FEIGELSON: No as well.

Counsel DICKOVER: The Second Part of the Seventh question is whether the proposed actual impact existing public or private wastewater treatment utilities? Again, I suggest the answer is No.

Member DOELLINGER: No, I'm not aware of any thing in the area like that.

Member ATKIN: No.

Alternate Member CASSARA: No

Chairman FEIGELSON: No as well.

Counsel DICKOVER: Question Eight, will the proposed action, again this is the parking variance, impair the character or quality of important historic archaeological, architectural or aesthetic resources? Now suggesting the answer in response should be No.

Member DOELLINGER: No, I'm not aware of any thing in the area like that.

Member ATKIN: No.

Alternate Member CASSARA: No

Chairman FEIGELSON: No as well.

Counsel DICKOVER: Question Nine, will the proposed action result in adverse change to natural resources such as wetlands, waterbodies, groundwater, air quality, flora and fauna? Again, respectfully suggesting the answer would be No.

Member DOELLINGER: No, little to no impact based on the feedback from DEC.

Member ATKIN: No

Alternate Member CASSARA: No

Chairman FEIGELSON: No as well.

Counsel DICKOVER: Question Ten will the action result in an increase in the potential for erosion, flooding or drainage problems? Again, suggesting the answer is No.

Member ATKIN: No

Alternate Member CASSARA: No

Chairman FEIGELSON: No as well.

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Counsel DICKOVER: Last Question Eleven, will the proposed action create a hazard to environmental resources or human health? Again, I'm suggesting the answer is No.

Member ATKIN: No.

Alternate Member Giuseppe CASSARA: No

Chairman FEIGELSON: No as well.

Counsel DICKOVER: Mr. Chairman, based on the board's determinations for respect to those 11 questions, a motion could be made to resolve a negative declaration on this particular action.

Chairman FEIGELSON: Alright, so I'll pick up where I left off. So, I made a motion to make a negative declaration, and I was just about to ask if someone would second that.

Member DOELLINGER: I'll Second that.

Chairman FEIGELSON: Let's just do a roll call.

Member DOELLINGER: Yes

Member ATKIN: Yes

Alternate Member CASSARA: Yes

Chairman FEIGELSON: Yes, as well.

Just as a reminder, the public hearing is still open. I asked Melissa, if we had received any other correspondence, I guess the answer is no. I just want to double check to see if anybody is waiting to join for the public hearing. Is anybody here to speak on this application 193 BMD LLC? I'm not seeing or hearing anybody. All right, I will make a motion to close the public hearing. Can I get a second?

Member ATKIN: I'll second it.

Member DOELLINGER: Yes

Member ATKIN: Yes

Alternate Member Giuseppe CASSARA: Yes

Chairman FEIGELSON: Yes

Chairman FEIGELSON: All right, the public hearing is officially closed. At this point, we would normally review the five factors. I double did want to have a discussion about a possible condition on the parking variance. Stephanie, I would kind of want to hear from you. Do you Do you know offhand the applicant's current number of employees or the projected number of employees?

Stephanie Tunic: Yes. Right now, we, my client has 10 employees that work in the office side of the building, and 10 that work in the warehouse. He's mentioned that they have a van that busses seven employees, and within the warehouse, the 10 consolidate into about four cars per day. With the addition, they expect an additional five more employees for the warehouse. As I had alluded to before, there's no processing, or assembly that occurs there. Really the space is for an increased demand in the supplies and the goods that they're shipping out of the warehouse. So it's purely for storage. Of course, with the increased demand, they would look to

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hire about five more employees. But this as proposed is much more in excess of what they would require on a day to day basis. Also, just to mention on the future potentially uses, it is a warehouse space, as the board I'm sure is aware of the trends and warehousing, much of it is automated more and more. Less of manpower is required, as is storage space and mechanical area requirements. So we submit to the board that this is actually for future purposes, this is the least impact on the land, and likely the most that would be required for anybody that's operating a warehouse, both now and in the future with how the trends in the in the industry are going.

Chairman FEIGELSON: So, at any point in a future use could turn this warehouse into something different, which is why we were thinking of considering the board should consider whether we should put a cap on the number of total number of employees so that if use should change. It's more parking intensive in the future, this variance would become null and void. Do you have a suggested number that that the current owner with the current use might be comfortable with?

Stephanie TUNIC: With 25 employees, assuming that those five people bring cars in, Larry, I don't know if you have a suggestion as you've worked on this a little bit at the planning board stage too. The question is whether what would be a good suggested number as a cap for the employees that are allowed to work here and if it were to exceed that in the future, then this variance would become null and void. Right now, with the addition, you would have about 25 employees not even all 25 or no car, but let's say that they do one day. What would the cap be with spaces?

Counsel DICKOVER: Stephanie, Larry, when you came up with the number 69? Was that triggered by a certain number of employees or occupants in the building? Or was it just an arbitrary number?

Counsel DICKOVER: If you have 69 spaces, would it be reasonable perhaps to suggest that the employee count should not exceed, say 60. That will lead to spaces for nine visitors and or others. I don't think the zoning board though, is interested in seeing you come back until you exceed what the parking variances that they're granting. The planning board is going to have the same consideration when they discuss. But we're nowhere near that at this point. It seems to me a rational number would be somewhere between that 60 and 69 number.

Chairman FEIGELSON: I completely agree.

Larry TORRO: Given my clients plans, we would be amenable to that if the board would feel more comfortable with capping that in that way.

Chairman FEIGELSON: Any other any board members have any thoughts on that proposal?

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Member ATKIN: I have something and it probably doesn't pertain to us. There was a major fire during this week. I don't know if the new building will have a sprinkler system in it. I'm sure that's with the planning board but there was a major fire there this week, like a five alarm. This building was built in the 70s. I don't know if the new building is going to go to old code or it's going to be new code.

Chairman FEIGELSON: Okay, that's news to me.

Member ATKIN: Yeah, I'm telling you Stephanie, did you hear about the fire.

Stephanie TUNIC: To be honest, I was not aware.

Member ATKIN: It was like a five-fire alarm. If they build this new edition, I'm sure it should have a sprinkler system.

Member DOELLINGER: The fire was this weekend. It was a was a minor fire. It was handled by just the Chester Fire Department and it involved a light fixture that exploded. Some of the hot pieces from a light got on some cardboard boxes and set them on fire. The fire department was alerted to the fire by the alarm system. The building was unoccupied at the time, but they got there and they were able to gain entry and put the fire out. It was contained to a small area with just the cardboard boxes in the building. No structural damage.

Member ATKIN: Thank you Dan.

Chairman FEIGELSON: Thank you. Yes, thank you for filling in all the details. Okay, so I guess sounds like we've landed at a **condition for 60 employees. The parking component of the variances would be capped at 60 employees.** It's time to review the five factors so we can move forward.

#1 Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created?

Member DOELLINGER: No, it's in an industrial area and the proposed variances are in line with other buildings.

Member ATKIN: No

Alt. Member CASSARA: No

Chairman FEIGELSON: No, you could even argue that less parking is less impactful.

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

Member DOELLINGER: No, now, given the lot size and the confines of the wetland area, the only way he would be able to build in addition to this size would be requiring these variances.

Member ATKIN: Ye.

Alt. Member CASSARA: No

Chairman FEIGELSON: No. Well, some of these are preexisting conditions.

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3 Whether the variance is substantial

Member DOELLINGER: No, as before it's an industrial building in an industrial area. There's much larger building in close proximity.

Member ATKIN: No

Alt. Member CASSARA: No

Chairman FEIGELSON: No

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

Member DOELLINGER: No, they will not as we discussed during the review of the environmental assessment.

Member ATKIN: No

Alt. Member CASSARA: No

Chairman FEIGELSON: No

#5 Whether there has been any self-created difficulty

Member DOELLINGER: Yes. My answer in most cases is yes. The applicant bought this property, being aware of the requirements for the lot lines, etc. This is self created.

Member ATKIN: Yes

Alt. Member CASSARA: Yes

Chairman FEIGELSON: Yes

Chairman FEIGELSON: That concludes the five the answering of the reviewing of the area variance five questions. There are no strong objections to advancing this application to granting the variances. I will move ahead, and I will make a motion to direct counsel to draft a decision based on our findings to grant the variances sought. Specifically to allow a front yard setback of 86.6 feet where 100 feet is required and the side yard setback of 70.4 feet where 90 is required. And 69 parking spaces where 100 are required, with the condition that the total number of employees employed by the business does not exceed 60. Can I get a second?

Member DOELLINGER: I'll Second that.

Chairman FEIGELSON: Roll call vote

Member DOELLINGER: Yes

Member ATKIN: Yes

Alternate Member CASSARA: Yes

Chairman FEIGELSON: I also say yes. The next step is that counsel will draft that decision. And we will vote on it at the next meeting. But trending towards granting. Any questions?

Chairman FEIGELSON: Thank you for your applications, that were very complete, very informative. There's no other business for the board this evening. I'll make a motion that we adjourn. Can I get a second?

Member DOELLINGER: I'll second that.

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Chairman FEIGELSON: Roll call vote

Member ATKIN: Yes

Member DOELLINGER: Yes

Alternate Member CASSARA: Yes

Chairman FEIGELSON: Yes, we are adjourned.

Meeting adjourned at 7:33 pm

Respectfully submitted,

Melissa FOOTE
Zoning Board of Appeals Secretary