

1. 7:00 P.M. November 17, 2022
Zoning Board of Appeals Regular Meeting Materials

Documents:

[11-17-2022 ZBA AGENDA.PDF](#)
[ZBA FINDINGS 44 BROAD STREET.PDF](#)
[ZBA FINDINGS 140-150 WESTCHESTER AVENUE.PDF](#)
[245 MORTIMER STREET PUBLIC COMMENT FORM LETTERS .PDF](#)

No new applicant materials. Public comment for 245 Mortimer attached.

**VILLAGE OF PORT CHESTER
ZONING BOARD OF APPEALS
AGENDA**

November 17, 2022 / 7:00PM

Justice Court

350 North Main Street, Port Chester, NY 10573

FINDINGS

1. Case # 2022-0211

Port Chester OZ Fund III
181 Westchester Avenue
Port Chester, NY 10573

Anthony Gioffre III, Esq.
Cuddy & Feder, LLP
445 Hamilton Avenue
White Plains, NY 10601

On the premises **140-150 Westchester Avenue** in the CD-6 Zoning District, being **Section: 142.30, Block: 2, Lot(s): 17 & 65** on the assessment map of the Town of Rye, New York the applicant is requesting area variance relief from the following provisions of the Village of Port Chester Character Based Code:

Section 345.405.N.1.v “Lots shall be limited to one curb cut per lot” The applicant is proposing 3 curb cuts

Section 345.405.N.2d “Any gates, arms, or booths must be set back at least 20 feet from the Frontage” The applicant proposes to locate its security grills within 20 feet of the Frontage

2. Case #2022-0214

44 Broad Street Owner, LLC
Stephen Matri
271 Madison Avenue
New York, NY 10016

On the premises **44 Broad Street**, located in the CD-6T Zoning District, being **Section: 142.22, Block: 2, Lot(s): 69, 70, 71, 72, 73, 74, 75** on the assessment map of the Town of Rye, New York the applicant is requesting three area variances relating to the location of curb cuts and a loading area. Specifically, in order to increase pedestrian safety and the convenience of vehicular ingress/egress to the Property, the Applicant is seeking to maintain: (i) two curb cuts on a single lot (one curb cut per lot is the maximum (§ 345.405.N-4); (ii) a driveway width of 26 feet (24 feet is the maximum) (§ 345.405.A-9); and (iii) a loading area rolling gate set back 1 foot 4 inches from the lot line (20 feet is the minimum) (§ 345.405.N-4(2)(d)).

CONTINUED PUBLIC HEARING

This matter will be adjourned from tonight's proceedings while it is being heard before the Planning Commission

3. Case # 2022-0216

SJA Reconstruction LLC
435 Pleasantville Road
Briarcliff Manor, NY 10510

Aldo Vitagliano, Esq.
150 Purchase Street
Rye, NY 10510

On the premises **no # at this time Sylvan Road** in the CD-3.R7 Zoning District, being **Section: 135.44, Block: 2, Lot(s): 8** on the assessment map of the Town of Rye, New York

Decision of Zoning Compliance officer that the proposed lots for the subject parcel lack minimum street or highway frontage is in error as application located on a paper street has rights of ingress and egress - the standard of which is governed by NYS Village Law 7-736. An appeal of his determination is allowed under NYS Village Law Section 7-736-3 as well as the Village Code. Section 7-736 (2) requires that "No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is (a) an existing state, county, town or village highway, or (b) a street shown upon a plat approved by the planning board as provided under the provisions of this article, as in effect at the time such plat was approved, or (c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats." Sylvan Road satisfies this provision. Section 7-736(2) give authority to the Planning Board to determine that the street has been suitably Improved to their satisfaction. The decision of the Zoning Compliance officer requires a plat demonstrating compliance with the cited section or this appeal.

CONTIUED PUBLIC HEARING

4. Case #2022-0216

Damion Barrett
463 Pelham Road
New Rochelle, NY 10575

Estate of Jennie Mary Prescott by Deborah Prescott

On the premises **245 Mortimer Street**, located in the CD-3.R5 Zoning District, being **Section: 136.63, Block: 1, Lot(s): 63.2** on the assessment map of the Town of Rye, New York, the applicant is requesting two area variances related to construction of a new Single Family Dwelling.

Zoning Board of Appeals

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Attachment “A” - Village of Port Chester Zoning Table 345-405.A-4, CD-3.R5 District Standards requires a minimum of 20 feet of Street/Highway Frontage. *The construction plans propose 0 feet.*

2. **Attachment “B”** - NYS Village Law section 7-736 requires access from the structure to a street or highway duly placed on the Official Map (Public Street). *The site plan proposes an easement access to Mortimer Street a Public Street.*

NEW PUBLIC HEARINGS

None

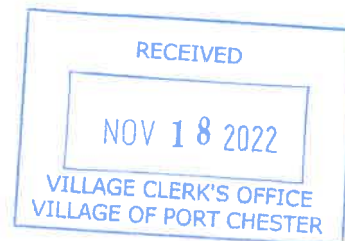
ADJOURN MEETING

NEXT MEETING:

December 15, 2022

THE ZONING BOARD OF APPEALS MEETING WILL BE HELD ON THE 3RD THURSDAY OF EVERY MONTH AT 7:00 O’CLOCK IN THE EVENING

ZONING BOARD OF APPEALS OF THE
VILLAGE OF PORT CHESTER



-----x
In the Matter of the Application

44 Broad Street Owner, LLC.

Case No. 2022-0214

-----x
FINDINGS OF FACT

1. The applicant is the owner of the subject premises located at **44 Broad Street**, Port Chester, New York, also designated as Section 142.22, Block 2, Lots 69, 70, 71, 72, 73, 74 and 75 on the Tax Map of the Town of Rye, New York.

2. The subject premises is located in a CD-6T Urban Core Character District.

3. The applicant proposes a 15-story mixed-use development, consisting of 10,370 square feet of ground floor retail space, 336 high-end residential units (including 10% AFFH units) and a 332-space parking garage.

4. The applicant has made application to the Planning Commission for site plan approval which referred it to the Zoning Board of Appeals for necessary variances.

5. The applicant seeks three variances to maintain:

- i) two curb cuts on a single lot (one curb cut per lot is the maximum per Section 345.405.N-4)
- ii) a driveway width of 26 feet (24 feet is the maximum per 345.405.A-9)
- iii) a loading area-rolling gate set back 1 foot 4 inches from the lot line, 20 feet is the minimum per Section 345.405.N-4(2)(d).

6. A public hearing was conducted on May 19, 2022, Jul 21, 2022, August 18, 2022 and October 20, 2022 wherein the applicant and all interested parties were given a full and complete opportunity to be heard.

7. David Cooper, Esq. of the law firm of Zarin & Steinmetz, White Plains, New York, represented the applicant, accompanied by its design team. Attorney Cooper introduced the application stating that the project would take full advantage of the Zoning Code that is intended to promote transit-oriented development in close proximity to the railroad station. The project would replace numerous existing vacant commercial

buildings with a new signature mixed-use building that would transform the downtown streetscape. The project would include pedestrian enhancements along Broad Street, such as curb extensions and a widened sidewalk to accommodate the anticipated increased business activity in the surrounding area.

7. In order to best enhance walkability in the area, counsel stated that vehicle access to the development would be limited to Pearl Street. There would be separate driveways to the parking garage and loading area to afford safe and convenient access.

8. Counsel also discussed the applicant's need to have a wider driveway in order to minimize on-street queuing of trucks seeking to utilize the loading area,

9. Counsel explained that the proposed location of the roll down door would minimize the visual impact of the loading area when not in use.

10. Counsel concluded that the benefits afforded by the requested variances would far outweigh any potential detriment to the community.

11. No one testified in favor or against the application.

12. As lead agency undertaking a coordinated review, the Planning Commission has issued a negative declaration under the State Environmental Quality Review Act (SEQRA) thereby enabling this Board to proceed to a determination.

CONCLUSIONS OF LAW

1. With regard to a request for an area variance, Village Law , Section 7-712-b(3)(b) requires the Zoning Board of Appeals to balance the benefit to the applicant if the variance is granted as against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood; and (5) whether the alleges difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

2. The grant of the requested variances will not result in an undesirable change in the character of the neighborhood or a detriment to nearby properties. The variances would permit the applicant to direct vehicular traffic to the development away from Broad Street, and considerably enhance the pedestrian experience in the area. Further, the proposed separate driveways for the parking garage and loading area would promote

pedestrian and vehicular safety. The proposed location of the roll-top gate would maintain the appearance of a single façade when the loading area is not in use.

3. The applicant cannot otherwise provide a feasible means of developing the subject premises without the requested variances.

4. The requested variances are not significant when viewed under the totality of the circumstances that are presented.


5. The requested variances will not have any adverse impact on the physical or environmental conditions in the neighborhood. The variances will not result in any decrease of light, air, privacy, security for fire and other dangers or overcrowding. Nor is there any evidence that the variances would negatively affect the natural environment and/or any ecological systems.

6. Although there is arguably the existence of self-created hardship, this is only one factor for the Board to consider and does not outweigh the other foregoing factors that otherwise overwhelmingly tip in the applicant's favor.

DETERMINATION

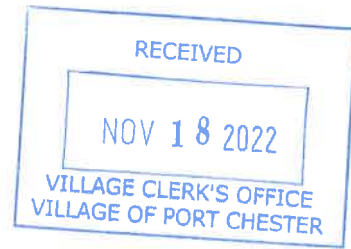
On motion of Commissioner *MORLINO*, seconded by Commissioner *D'ESTRADA*, the Zoning Board of Appeals of the Village of Port Chester, New York, hereby grants the application of 44 Broad Street Owner, LLC. Case No.: 2022-0214 for area variances. The Chair is hereby authorized to sign these Findings on its behalf.

Dated: November 20, 2022
Port Chester, New York



Evelyn Petrone
Chair

ZONING BOARD OF APPEALS OF THE
VILLAGE OF PORT CHESTER



-----x
In the Matter of the Application

Port Chester OZ Fund III QOZB, LLC

Case No. 2022-0211

-----x
FINDINGS OF FACT

1. The applicant is the contract vendee of the subject premises located at **140-150 Westchester Avenue**, Port Chester, New York, also designated as Section 142.30, Block 2, Lots 17 and 65 on the Tax Map of the Town of Rye, New York.

2. The subject premises is located in a CD-6 Urban Core Character District.

3. The applicant proposes a 12-story, approximately 234,849 square foot mixed-use development, consisting of 4,763 square feet of ground floor retail space and 223 high-end residential units (including 10% AFFH units) with residential amenities and garage parking providing 112 spaces.

4. The applicant has made application to the Planning Commission for site plan approval, which referred it to the Zoning Board of Appeals for necessary variances.

5. The applicant seeks a variance to maintain a security grill within 20 feet from the front lot line (proposed 2'8").

6. A public hearing was conducted on February 17, 2022, March 17, 2022, May 19, 2022 and October 20, 2022 wherein the applicant and all interested parties were given a full and complete opportunity to be heard.

7. Anthony Gioffre, Esq. of the law firm of Cuddy & Feder, White Plains, New York, represented the applicant, accompanied by its design team. Attorney Gioffre introduced the application stating that the project takes full advantage of the provisions of the CD-6 District which promotes higher density mixed uses in tall buildings in proximity to public transit, as well be consistent with the Village's Comprehensive Plan that relate to "Higher Density Planning Zones" and the Village's 2017-2022 Strategic Plan and the long-range policies expressed in Westchester County's Westchester 2025 Plan. The project would replace existing commercial/residential buildings and an at-grade parking lot with a new signature mixed-use building that would transform the downtown

streetscape. The project would include pedestrian enhancements along all street frontages.

8. Counsel's summation was that the benefits afforded by the requested variance to accommodate the proposed development are clearly significant and that there is no detriment to the community.

9. Over the course of the application, the applicant has taken into account concerns expressed by the village and the public. As a result, it revised the original plans so that vehicular ingress/egress to the development is through a single curb cut on Broad Street.

10. Attorney Anthony Tirone, representing the Capitol Theatre, Neri Bakery and others, opposed that part of the application relating to the second curb cut on New Broad Street and vehicular egress/ingress on Pearl Street and had no objection to the variance that is being sought.

11. As lead agency undertaking a coordinated review, the Planning Commission has issued a negative declaration under the State Environmental Quality Review Act (SEQRA) thereby enabling this Board to proceed to a determination.

CONCLUSIONS OF LAW

1. With regard to a request for an area variance, Village Law , Section 7-712-b(3)(b) requires the Zoning Board of Appeals to balance the benefit to the applicant if the variance is granted as against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

2. The grant of the requested variance will not result in an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed development is in accord with Zoning Code, Comprehensive Plan and local and county planning documents.

3. The applicant cannot otherwise provide a feasible means of developing the subject premises without the requested variance.

4. The requested variance is technical in nature.

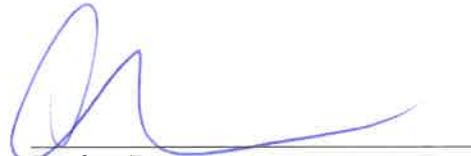
5. The requested variance will not have any adverse impact on the physical or environmental conditions in the neighborhood. The variance will not result in any decrease of light, air, privacy, security for fire and other dangers or overcrowding. Nor is there any evidence that the variance would negatively affect the natural environment and/or any ecological systems.

6. Although there is arguably the existence of self-created hardship, this is only one factor for the Board to consider and does not outweigh the other foregoing factors that otherwise overwhelmingly tip in the applicant's favor.

DETERMINATION

On motion of Commissioner *SIMMONS* seconded by Commissioner *MORLINO*, the Zoning Board of Appeals of the Village of Port Chester, New York, hereby grants the application of Port Chester OZ Fund III QOZB, LLC. Case No.: 2022-0211 for an area variance. The Chair is hereby authorized to sign these Findings on its behalf.

Dated: November 17, 2022
Port Chester, New York



Evelyn Petrone
Chair

245 Mortimer Street

Public Comment Submissions

The following persons have submitted the same form letter comments for ZBA Case 2022-0216 – 245 Mortimer Street, Port Chester, NY. They have individually asked that these letters be forwarded to the recipients listed in the letter. Instead of sending each letter I have compiled a list of names and addresses of those who have submitted the form letter.

A copy of the form letter is below the list of names.

Julie DeRosa 241 Mortimer Street
Anthony Ianni 241 Mortimer Street
Dominique Ianni 241 Mortimer Street
Amelia Perez 239 Mortimer Street
Michael Tolone 241 Mortimer Street

Memo to:

Evelyn Petrone, Chairperson, & All Members of Port Chester Zoning Board of Appeals
Michael Scarola, Chairperson, & All Members of Port Chester Planning Commission
Luis Marino, Mayor, & All Members of the Port Chester Board of Trustees
Anthony M. Cerreto, Village Attorney, Village of Port Chester
Curt LaValla, Director of Planning, Village of Port Chester
Connie Phillips, Secretary, Zoning Board of Appeals & Port Chester Planning Commission
Kevin Donohue, Building Inspector, Village of Port Chester
Stuart L. Rabin, Village Manager, Village of Port Chester
Janusz Richards, Village Clerk, Village of Port Chester
Gary J. Zuckerman, Supervisor, Town of Rye
Denise Knauer, Assessor, Town of Rye
Jeffrey Binder, Esq., Town Attorney, Town of Rye

Dear ZBA Board Secretary Connie Phillips:

Kindly forward my email to all of the above recipients and confirm that it will be part of the record as my Public Comments for the [November 17, 2022 Public Hearing for ZBA Case #2022-0216](#) at [245 Mortimer Street](#). I am in total opposition of this Applicant and what they propose to build right next to my home. Below is a list of reasons why this Application should be rejected and they should be sent to the Portchester Planning Commission for review under SEQRA. In addition to my email, Dean Santon has provided you with more detail and proof in his August 22, 2022 and October 18, 2022 memos. It would behoove you to read those. Here are my main concerns:

1. Both the [245 Mortimer Street](#) lot and the private, *right-of-way* lot (co-owned by owners of 239, 241 & [245 Mortimer Street](#)) and the 239 and [241 Mortimer Street](#) lots, do not appear on any approved subdivision plat of record with the Westchester County Clerk's Office. Therefore, it should be immediately cited as not being in compliance with the Chapter A402 Subdivision of VPC Code. Therefore, your board should refer Co-Applicants (Barrett and Prescott) to the Port Chester Planning Commission ("PCPC") to file for an "**Application for Subdivision Approval.**" By referring this Applicant to the Portchester Planning Commission for Subdivision Approval, it will not only address the illegal subdivisions by deed that created the four (4) lots at 239, 241 and [245 Mortimer Street](#) along with frontage issues, but it will also address issues like parking, off-street parking, driveways, screening, landscaped buffers, etc. under SEQRA.

2. This Application does not meet the five factors rule because whenever property owners create illegal subdivisions by deed, without the required municipal, subdivision review/approval under SEQRA, the health, welfare & safety of the public suffers. Therefore how can you approve this applicant without sending it to the Planning Commission for their input?

3. Just because the Village of Portchester issued a 1991 Building Permit to Nicholas Monick to build the houses at 239 and 241 Mortimer Streets without first noting that there was no approved 4-lot subdivision as confirmed by a subdivision plat map of record on file with the Westchester County Clerk does not make it right!

4. The June 7, 2022 ZBA Application for Variance form is only signed by contract vendee Damion Barrett of New Rochelle. It must also be signed by the current property owner of record (*The Estate of Jennie May Prescott*) as a Co-applicant, to prove that it is properly authorized and has standing before the ZBA.

5. Applicant has zero (0) feet of the required 20 feet of **Minimum Street Frontage**. A 20-foot variance is 100% of the **Street Frontage** requirement.

6. Some of the residents, including myself have not received a Public Notification of the October 20, 2022 ZBA Public Hearing, as required under Section 345.808 of the Village of Portchester Code. Therefore, there were some abutting neighbors unaware of this and they are now catching up because of me telling them about it. These neighbors were unable to get the

information from the media as the Westmore News also did not comply with the same code because they referred the Public to the Village Clerk's phone number, email address and erroneous website address rather than to the Planning Department contact information in the paper.

In summary, I want to reiterate that now that I have informed almost all of the neighbors in the surrounding area about this project and the next meeting date, I implore you to do the right thing and reject this application and send this Applicant to the Portchester Planning commission where they belong so we can go over all of the issues mentioned above to ensure this project is done with minimal negative impact to the surrounding area including our homes. We need the opportunity to vet this project together with the Planning Commission to oversee that it is done properly.

Please confirm receipt of my email and confirm that it will be sent to all of the above-mentioned recipients.

Thank you.