

1. 7:00 P.M. Dec 15, 2022
Zoning Board of Appeals Regular Meeting Materials

Documents:

[12-15-2022 ZBA AGENDA.PDF](#)
[FINDINGS 245 MORTIMER STREET - SIGNED.PDF](#)

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

December 15, 2022 / 7:00PM

Justice Court

350 North Main Street, Port Chester, NY 10573

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FINDINGS

1. 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.

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.*

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.*

CONTINUED PUBLIC HEARING

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

2. 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.

NEW PUBLIC HEARINGS

None

ADJOURN MEETING

NEXT MEETING:

January 19, 2023



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

Damion Barrett



Case No. 2022-0216

-----X
FINDINGS OF FACT

1. The applicant is the contract-vendee of the subject premises located at 245 Mortimer Street, Port Chester, New York, also designated as Section 136.63, Block 1, Lot 63.2 on the Tax Map of the Town of Rye, New York.
2. The subject premises is unimproved.
3. The subject premises is located in a CD-3.R5 One Family Residence District.
4. The applicant proposes to construct a one-family dwelling together with a road.
5. The Building Department issued correspondence, dated May 10, 2022, which stated, in pertinent part, as follows:

“A Building Permit Application was received on March 29, 2022 to construct a New Single Family Dwelling located at 345 Street in the CD-3.R5 District and which included the following information:

--Application for Building Permit

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Eight-page construction plan set prepared by Errol McIntosh, RA
dated 1/12/2022

--Two-Site Plans, Exhibit “A” and “B” prepared by Cardarelli Design & Architecture

A review of the construction plans and site plans revealed non-compliance cited as follows:

1. 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 proposes [sic] 0 feet.

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

6. A public hearing was conducted on July 21, 2022, August 18, 2022, October 20, 2022 and on November 17, 2022 wherein the applicant and all interested parties were given an opportunity to be heard.

7. The applicant was represented by Jack Adesso, Esq., Mount Vernon, New York.

8. Attorney Adesso presented at each of the public hearings.

9. During the proceedings. Errol McIntosh, R.A. appeared on behalf of the applicant and Deborah Prescott, executrix for the Estate of Jennie Mary Prescott, also appeared as the personal representative of the deceased owner of the premises.

10. Attorney Adesso introduced the case stating that the proposed one family dwelling is a conforming use in the CD-3.R5 Zoning District.

11. Counsel contended that the sole issue is that the subject premises does not comply with the frontage requirements of the Zoning Code and requires relief from the Zoning Board under the State Village Law to authorize access to the village portion of Mortimer Street.

12. Counsel submitted deeds going back to 1951 and a title report, which were made part of the public record supporting his contention that the applicant has the legal right to utilize a deeded right-of-way parcel in common with his neighbors to access the village portion of Mortimer Street. Such right of way is subject to an express easement for the installation of utilities and that the cost of upkeep is to be determined by a majority of the benefitted parties.

13. Pursuant to the requirements of the New York State Fire Code, the applicant must provide a “Fire Apparatus Road” that is at least twenty feet wide from Mortimer Street to the proposed dwelling on the subject premises, and include provision for storm water management. The applicant’s plans indicate that such required road would traverse the right-of-way parcel which is currently unimproved.

14. Counsel made reference that in 1984 and 1990 the Zoning Board granted variances to permit the construction of two-family dwellings at 239 and at 241 Mortimer Street which had similar issue.

15. Counsel emphasized that without the requested relief the applicant would be unable to utilize the subject premises for any purpose.

16. Counsel concluded that the applicant will work with the neighboring properties before and during construction of the proposed dwelling and road to minimize disruption and potential impacts.

17. Over the course of the several public hearings, neighbors and interested members of the general public testified in opposition to the application. No one from the public testified in favor.

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 variance would permit the applicant to construct a new, conforming one family dwelling on a parcel that has sat vacant for decades. The proposed road would also provide upgraded access to the village portion of Mortimer Street that will not only benefit the applicant, but also that of his neighbors who currently use an unimproved way.

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

4. The requested variance is significant, but this factor must be viewed under the totality of the circumstances that are presented.

5. The requested variance will not have any adverse impact on the physical or environmental conditions in the neighborhood. The applicant must satisfy Village and State Code requirements on application to the Building Department for the construction of the proposed dwelling and fire apparatus road which would mitigate any potential nuisance or other impacts.

6. The requested variance will not result in any decrease of light, air, privacy, security for fire and other dangers or overcrowding. In fact, the evidence points to the

contrary. Nor is there any competent evidence that the variance would negatively affect the natural environment and/or any ecological systems.

7. 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 tip in the applicant's favor.

8. Second, the Board must consider the additional request for relief pursuant to Village Law, Section 7-736 regarding the related issue of access to a village street.

9. The applicant proffered documentary evidence and testimony regarding the existence of perpetual access to the village portion of Mortimer Street and evidence of an agreement providing for the allocation of responsibility/obligations of the applicant and neighboring property owners regarding such access.


10. The applicant's plans comply with the New York State Fire Code evidencing a fire apparatus road at least 20 feet wide.

11. Based on the unique circumstances presented, and in weighing the benefit to the applicant as against the detriment to neighboring properties and the Village as herein discussed, there is support in the record for the Zoning Board to grant the requested exception.

DETERMINATION

On motion of Commissioner *MORLINO* seconded by Commissioner *SIMMONS*, the Zoning Board of Appeals of the Village of Port Chester, New York, hereby grants the application of Damion Barrett, Case No.: 2022-0216 for an area variance and exception under Village Law, Section 7-736, which is a Type II action requiring no further environmental review. The Chair is hereby authorized to sign these Findings on its behalf.

Dated: December 15, 2022
Port Chester, New York

FOR 
Evelyn Petrone
Chair