

1. 7:00 P.M. June 16, 2022

Documents:

[06-16-2022 ZBA AGENDA.PDF](#)
[ZBA MINUTES JUNE 16, 2022.PDF](#)

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

June 16, 2022 / 7:00PM

Justice Court

350 North Main Street, Port Chester, NY 10573

FINDINGS

None

PUBLIC HEARINGS

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)).

3. Case # 2022-0215

130 Midland Owner LLC
130 Midland Avenue
Port Chester, NY 10573

On the premises **130 Midland Avenue**, in the CD-4 Zoning District, being **Section: 142.53, Block: 1, Lot(s): 5**, on the assessment map of The Town of Rye, New York the applicant seeks 7 area variances : (i) maintain the existing driveway width of 52' at the curb, with a slight expansion internally to 57'-6" (whereas 24' is the maximum allowed) (§345.405.A-5); (ii) continue parking in the 2nd lot layer (whereas parking is limited to the 3rd layer in the CD-4 District) (§345.405.A-5); (iii) provide less facade void areas on Floor and Decor building (whereas 20% is required / 2% proposed) (§345.405.A-5); (iv) provide less facade glazing on the Floor and Decor Building (20% of total facade area minimum / 1% proposed) (§345.405.A-5); (v) maintain 86% impervious surfaces on the Property in order to comply with contamination "capping" remediation measures (whereas 80% is the maximum) (§345.405.A-5); (vi) maintain no buildings along the Property's Frontage (whereas a minimum of 60% must be built out in the CD-4 District) (§345.405.A-5); and (vii) allow Floor and Decor to use its standard 8' tall logo on the building (whereas a 3' maximum for signs is imposed) (§345.701.B-3).

ADJOURN MEETING

NEXT MEETING:

July 21, 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

MINUTES OF MEETING

Application for Permit or Variance

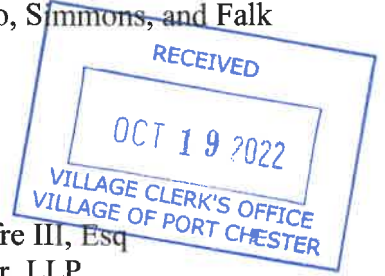
A meeting of the Zoning Board of Appeals was held at the Courtroom of the Police Headquarters Building, 350 North Main Street, Port Chester, NY, on June 16, 2022, at 7:00 p.m. with Chairman Evelyn Petrone presiding.

Present in addition to Ms. Petrone were Messrs., D'Estrada Morlino, Simmons, and Falk

Also in attendance was Village Planning Director Curt Lavalla,

Date of Hearing: June 16, 2022
No. of Case: 2022-0211
Applicant: Port Chester OZ Fund III
181 Eastchester Avenue
Port Chester, NY 10573

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



Nature of Request:

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 per lot" The applicant is proposing 3 curb cuts

Section 345. 405.2.d "Any gates, arms, or booths must be set back at least 20 feet from the Frontage" The applicant proposes to locate the security grills within 20 feet of the frontage.

Summary of statement or evidence presented:

A letter was received Anthony Gioffre Esq., attorney for the applicant, requesting the matter be adjourned and placed on the July 21, 2022 agenda

Action taken by Board:


On the motion of Commissioner Simmons, seconded by Commissioner Morlino, the matter was adjourned to the July 21, 2022 meeting

Record of Vote: For 5 Against Absent Abstain

List names of members & how voted – F-for, A-against, Ab-absent, Abs-Abstain

Adjourn Hearing to July 21, 2022

Petrone F
D'Estrada F
Morlino F
Simmons F
Falk F

Signed 
Evelyn Petrone
Title **Chair**

ATTEST:

MINUTES OF MEETING

Application for Permit or Variance

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Present in addition to Ms. Petrone were Messrs., D'Estrada Morlino, Simmons, and Falk

Also in attendance was Village Planning Director Curt Lavalla,

Date of Hearing: June 16, 2022
Case No.: 2022-0214
Applicant: 44 Broad Street Owner, LLC
Stephen Matri
271 Madison Avenue
New York, NY 10016



Nature of Request:

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)).

1. Names and addresses of those appearing in favor of the application.

No one

2. Names and addresses of those appearing in opposition to application.

No one

Summary of statement or evidence presented:

David Cooper Esq. of Zarin & Steinmetz represented this matter for the applicant. Mr. Cooper stated that this application is going to be requesting an adjournment to the July meeting because the Planning Commission has not completed the SEQRA process.

Public:

No one from the public spoke for or against this matter.

Findings of Board:

The Public Hearing will remain open and the matter will be adjourned to the July meeting as requested.

Action taken by Board:

On the motion of Commissioner D'Estrada, which was seconded by Commissioner Simmons, the matter was adjourned to the July 21, 2022 meeting

Record of Vote: For ___Against ___ Absent ___Abstain ___
List names of members & how voted – F-for, A-against, Ab-absent, Abs-Abstain

Adjourn to July 21st Meeting

Petrone	F
D'Estrada	F
Morlino	F
Simmons	F
Falk	F

Signed 

Evelyn Petrone
Title Chair

ATTEST:

MINUTES OF MEETING

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Present in addition to Ms. Petrone were Messrs., D'Estrada Morlino, Simmons, and Falk

Also in attendance was Village Planning Director Curt Lavalla,

Date of Hearing: June 16, 2022
Case No.: 2022-0215
Applicant: 130 Midland Owner LLC
130 Midland Avenue
Port Chester, NY 10573



Nature of Request:

On the premises **130 Midland Avenue**, in the CD-4 Zoning District, being **Section: 142.53, Block: 1, Lot(s): 5**, on the assessment map of The Town of Rye, New York the applicant seeks 7 area variances : (i) maintain the existing driveway width of 52' at the curb, with a slight expansion internally to 57'-6" (whereas 24' is the maximum allowed) (§345.405.A-5); (ii) continue parking in the 2nd lot layer (whereas parking is limited to the 3rd layer in the CD-4 District) (§345.405.A-5); (iii) provide less facade void areas on Floor and Decor building (whereas 20% is required / 2% proposed) (§345.405.A-5); (iv) provide less facade glazing on the Floor and Decor Building (20% of total facade area minimum / 1% proposed) (§345.405.A-5); (v) maintain 86% impervious surfaces on the Property in order to comply with contamination "capping" remediation measures (whereas 80% is the maximum) (§345.405.A-5); (vi) maintain no buildings along the Property's Frontage (whereas a minimum of 60% must be built out in the CD-4 District) (§345.405.A-5); and (vii) allow Floor and Decor to use its standard 8' tall logo on the building (whereas a 3' maximum for signs is imposed) (§345.701.B-3).

1. Names and addresses of those appearing in favor of the application.

No one

2. Names and addresses of those appearing in opposition to application.

No one

Summary of statement or evidence presented:

David Cooper Esq. of Zarin & Steinmetz represented this matter for the applicant along with his team Phil Fruchture, Kevin Lahey and Steven Matri

Mr. Cooper began by saying they are asking the Board to grant the 7 area variances that were requested. The variances are primarily the result of the Form Based Code where the provisions were not crafted for the Midland Avenue corridor. This is a project that will revitalize the vacant Key Foods Shopping Center area with a Floor and Décor Store.

Mr. Cooper informed the Board that the Planning Commission did adopt a Negative Declaration within SEQRA with the coordinated review. *(A copy was forwarded to the Board by the Planning Director)* and procedurally the Board is now able to vote on the variances. Most of the variances that are being requested are to keep the existing pattern of development including setbacks and parking. Façade glazing and siding are all regulated by the Form Based Code

Mr. Cooper said that at the previous meeting, an extensive review of the balance for granting area variances for this application was provided. See balance test narrative below)

First, granting the area variances would not result in an undesirable effect on the

character of the community, or a detriment to nearby properties. The width of the curb cut, location of the parking, and building setback are long-existing conditions in the neighborhood. In addition, the impervious surface variance is necessary to accommodate site remediation, which is a desirable outcome for the community. Moreover, the façade requirements in the CD-4 District do not appear to be tailored to address the Midland Avenue commercial corridor. Indeed, there are few, if any, uses along this corridor which would comply with the glazing, void and sign requirements of the CD-4 District. As such, allowing the Applicant to replace the vacant former Key Foods building with a 1-story Floor and Décor flagship store at the Property would result in significant benefit to the neighborhood.

Second, there is no feasible alternative method to obtain the benefits associated with the requested area variances. In order to comply with the height, coverage and setback requirements, the Applicant would be unable to clean up and redevelop the Property in a manner that could accommodate a flagship Floor & Décor store, or any other quality national retailer of this size.

Third, the requested variances are not substantial, particularly when viewed in light of limited impact the additional sign height and impervious surface coverage. While the percent deviation associated with some of the variances may be significant, the Applicant's use of permeable pavement, though not considered to be permeable due to the liner beneath directing water to the stormwater management facilities would ensure that the actual environmental impact of the lack of "permeable" surfaces would be minimal. In addition, as the sign size is consistent with the signage on neighboring parcels and is located on a building that does not front Midland Avenue but rather is set back more than 200 feet from the roadway ensures that the size of the sign will have a minimal impact. When weighed in light of the overall benefit that revitalizing the Site provides to the neighborhood and the Village as a whole, the extent of the variances requested should not be classified as "substantial." As the New York courts recognize, the "substantiality" prong is not simply satisfied by a mathematical calculation: The ZBA's consideration of this percentage deviation alone, taken in a vacuum, is not an adequate indicator of the substantiality of Petitioners' Variance Application. Certainly, a small deviation can have a substantial impact, or a large deviation can have little or no impact depending on the circumstances of the variance application. Substantiality must not be judged in the abstract. The totality of the relevant circumstances must be evaluated in determining whether the variance sought is, in actuality, a substantial one.

Fourth, there would not be an adverse impact on the environmental or physical conditions of the neighborhood if your Board were to grant the requested variance. The Applicant proposes to maintain the same curb cut and driveway distance as existing on the Site today. The Project would result in a reduction in traffic when compared to the prior grocery store use, which is also reflected in the reduction of parking area through the utilization of landscaped parking islands. This landscaping will work in conjunction with the improved on-Site stormwater management system to reduce the impact of stormwater to the Site and prevent infiltration of stormwater into the Site's soil which is known to have been contaminated. In addition, to the extent that the minimal façade voids and glazing and/or Floor and Décor sign could result in a visual impact, such conditions would be screened by the proposed landscaping along the Property's frontage.

Fifth, arguably, the need for the variances is not self-created because the variances are mostly the result of provisions in the Form Based Code that were not tailored to the Midland Avenue commercial corridor. To the extent your Board considers the alleged hardship concerning the requested variances self-created, however, such determination does not preclude the granting of the requested area variance. See N.Y. Village Law § 7-712-b(3)(b) ("whether the alleged difficulty was self-created . . . shall not necessarily preclude the granting of the area variance.").

A review and discussion of the architectural drawings was provided by architect Phil Fruchture

Public:

No one from the Public spoke for or against this matter

Findings of Board:

Action taken by Board:

On the motion of Commissioner D'Estrada, which was seconded by Commissioner Simmons, the Public Hearing was closed.

Record of Vote: For 5 Against ___ Absent ___ Abstain ___

List names of members & how voted – F-for, A-against, Ab-absent, Abs-Abstain

Close public hearing

Petrone	F
D'Estrada	F
Morlino	F
Simmons	F
Falk	F

On the motion of Commissioner Morlino, which was seconded by Commissioner Simmons, Village Attorney was directed to prepare Findings of Fact for the July meeting.

Record of Vote: For 5 Against ___ Absent ___ Abstain ___

List names of members & how voted – F-for, A-against, Ab-absent, Abs-Abstain

Prepare Findings

Petrone	F
D'Estrada	F
Morlino	F
Simmons	F
Falk	F

Signed



Evelyn Petrone

Title Chair

ATTEST:

MINUTES OF MEETING

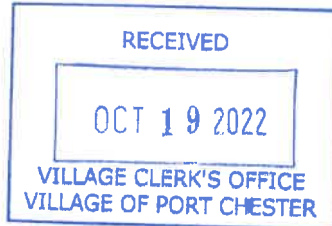
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Present in addition to Ms. Petrone were Messrs., D'Estrada Morlino, Simmons, and Falk

Also in attendance was Village Planning Director Curt Lavalla,

Date of Hearing: June 16, 2022



ADJOIURN MEETING

On the motion of Commissioner Simmons, seconded by Commissioner Morlino, the meeting was adjourned to July 21, 2022.

Record of Vote: For 5 Against Absent Abstain

List names of members & how voted – F-for, A-against, Ab-absent, Abs-Abstain

Adjourn meeting to July 21, 2022

Petrone	F
D'Estrada	F
Morlino	F
Simmons	F
Falk	F

Signed

Evelyn Petrone

Title Chair

ATTEST: