

MINUTES OF MEETING

Application for Permit or Variance

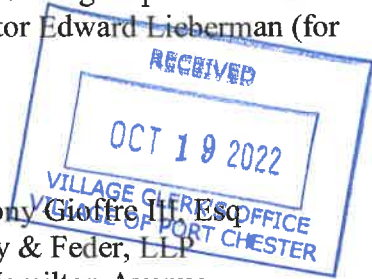
A meeting of the Zoning Board of Appeals was held at the Courtroom of the Police Headquarters Building, 350 North Main Street, Port Chester, NY, on April 21, 2022, at 7:00 p.m. with Chairman Evelyn Petrone presiding.

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

Also in attendance was Village Planning Director Curt Lavalla, Building Inspector Kevin Donohue, Village Attorney Anthony Cerreto and Special Prosecutor Edward Lieberman (for Case 2022-0212)

Date of Hearing: April 21, 2022
No. of Case: 2022-0211
Applicant: Port Chester OZ Fund III
181 Eastchester Avenue
Port Chester, NY 10573

Anthony B. 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 dated April 19, 2022 was received from Anthony B Gioffre III, Esq. of Cuddy & Feder LLP, requesting an adjournment of this matter from tonight's meeting to afford the applicant additional time to address comments previously raised by the Board in a previous meeting. The applicant would like to be placed on the ay 19, 2022 agenda.


Action taken by Board:

On the motion of Commissioner Simmons, seconded by Commissioner Morlino, the matter was adjourned to the May 19, 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 May 19, 2022

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

Signed 
Evelyn Petrone
Title Chair

ATTEST:

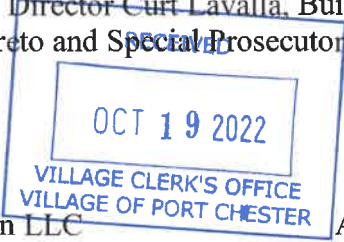
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Date of Hearing: April 21, 2022
No. of Case: 2022-0212
Applicant: SJA Reconstruction LLC
435 Pleasantville Road
Briarcliff Manor, NY 10510

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

Nature of Request:

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 the applicant is requesting an interpretation that proposed access to applicant’s property via a driveway onto Sylvan Road constitutes a street; that such a street need not be located entirely within the Village of Port Chester as a pre-condition to receipt of a Building permit; and further than the dedication of Sylvan Road by the Town of Rye constitutes a determination that same has been suitable improved to the satisfaction of the Planning Board.

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:

Aldo Vitagliano, Esq. represented this matter for the applicant Frank Sileo, who was also present.

Chair Petrone informed everyone that the Board had received a confidential memo from their Special Counsel Ed Lieberman and they will need to discuss this in Executive Session .

Prior to the start of this application the Board entered into an Executive Session with the newly appointed Special Counsel for advice regarding this matter.

Executive Session

On the motion of Commissioner Morlino, seconded by Commissioner Simmons, the Board entered into an Executive Session at 7:08 pm

On the motion of Commissioner Simmons, seconded by Commissioner Morlino, the Board exited the Executive Session at 7:18 pm

Findings of Board:

Chair Petrone addressed the applicants and members of the public by informing them that the Public Hearing was still open on the matter and invited the applicant to come forward. Ms Petrone informed everyone that special counsel was engaged for this matter and the Board requested a memo on some of the issues that were troubling to the Board.

The first issue was Jurisdiction – the ZBA felt like they did not have a determination on this case and proceeded to ask Mr. Donohue (Building Inspector) if he had made a determination. Mr. Donohue said he had not made a determination on the issuance or non-issuance of the building permits. There has been no specific denial from the Building Department. Ms. Petrone asked if this had been communicated to anyone to which Mr. Donohue provided a copy of an email dated January 25, 2022 between himself and the applicants’ attorney Ado Vitagliano in which he answers Mr. Vitagliano who asked if a formal Denial Letter would be prepared. Mr. Donohue wrote in the email “Not at this time. An email was sent on 11/29/2021 to Frank Sileo for the 8 Sylvan Road application requesting certain comments be addressed before review of the application could continue”. (attachment A)

Ms. Petrone asked Mr. Lieberman if he had anything additional to his memo to which Special Counsel Lieberman said no except the issue of whether there was a decision goes to your jurisdiction. Ms Petrone said basically if we have no jurisdiction the appeal is fraught.

Mr. Vitagliano then gave testimony that he had a conversation with the Pacific Legal Foundation which focuses on inverse condemnation. Specifically, when does it take place and when is a municipality crossing the line telling the applicant they are not moving forward on an application to the extent the municipality has to buy the property or do something.

Mr. Vitagliano said they were there on a two pronged approach 1. An interpretation and 2. To appeal the Building Inspectors determination. Since the building inspector said he did not make a determination and what he says in his letter is an opinion then the applicant is still here on an interpretation. Also an extra fee was paid for the interpretation.

Mr. Lieberman informed the Board that if we look at the Village’s Zoning Ordinance the only use of the word “interpretation” is as a category of appeal. Zoning Boards have two types of jurisdictions; appellate and original. Original can only be conferred by the legislative body, in this case the Zoning Board, in the Zoning ordinance. Statutorily the ZBA’s only jurisdiction is appellate. In the Board’s ordinance when someone needs a variance, that is definitely an appeal. But in your ordinance, you treat interpretations as appeals as well. No delegation of original jurisdiction is given to this ZBA in the Zoning Ordinance or anywhere else in the Village of Port Chester, that would give the ZBA the ability to hear an appeal on an application without a prior denial. Only jurisdiction is appellate, there is no determination in this case and would posit that there is no jurisdiction in this case on either account variance or interpretation.

Clarification by Board member: Unless we have a determination, which we don’t, there is essentially nothing to appeal? To which Mr. Lieberman replied “yes” and as indicated in Mr. Donohue’s email he is awaiting more information from the applicant.

The applicant was not in agreement and indicated that that the matter was filed with the Building Department and funds were remitted and cashed and no action was taken on the paperwork that was provided

It was also determined by the Board that a referral from the Planning Commission is needed regarding the sub division. Mr. Lieberman also said that this Board, when a variance is needed with a sub division it is required to refer the matter to the Planning Commission for a recommendation on the variance.

Mr. Donohue said point one, he has not made a decision on this matter to approve or deny; point two, no further information has been received on this application since the original email was sent on November 29th to Frank Sileo (Applicant) Requesting certain documents and \$150 check to refer this application to the Village Engineer because they needed more information. So with that **No Denial Has Been Written!**

Action taken by Board:

On the motion of Commissioner Simmons which was seconded by Commissioner Morlino, the matter was dismissed.

Record of Vote: For 5 Against Absent Abstain

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

Dismiss Application

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

On the motion of Commissioner Simmons which was seconded by Commissioner D'Estrada, the attorney was directed to prepare Findings of Fact for the May 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

Application for Permit or Variance

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Also in attendance was Village Planning Director Curt Lavalla, Building Inspector Kevin Donohue, Village Attorney Anthony Cerreto and Special Prosecutor Edward Lieberman (for Case 2022-0212)

Date of Hearing: April 21, 2022
No. of Case: 2022-0213
Applicant: Edison Criollo
98 Birch Street
Port Chester, NY 10573



Nature of Request:

On the premises 98 Birch Street, located in the CD-3.R5 Zoning District, being Section: 136.63, Block: 1. Lot: 27 on the assessment map of the Town of Rye, New York the applicant is requesting a Use Variance to construct a 12 x 22 rear deck with stairs on an existing legal non-conforming two family dwelling.

Village of Port Chester Zoning Code Section 345-901D (2) Extension of Non-Conforming Uses states "Any such Non-Conforming Use may be extended throughout any parts of the structure that were manifestly arranged or designed for such use of the effective date of this chapter, any amendment of this chapter or any amendment to the Zoning Map"

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:

The Applicant (Edison) along with his wife (Angelica) presented this matter. Mr. Criollo informed the Board because he was trying to make a small deck on the back of the house. (12' x 22') An application was filed last year. R. Criollo said the application is being denied because they live in a single family zone and his house is a two family house. Mr. Criollo said his house is not the only two family house in the Zone and he provide proof of other houses with porches in the backyard. He also provided pictures of his current house (Attachment A)

Chair Petrone stated that from what she understands, the problem with the applicant's situation is the house, is a 2 family house in this zone is non-conforming because this is a single family zone.

Clarity Question: is this non-conforming because the Zoning Code changed or was it prior to the adoption of new Code?

Mr. Donohue informed the Board that they have a denial letter in their materials which he read to the Board *Village of Port Chester Zoning Code Section 345-901D (2) Extension of Non-Conforming Uses states "Any such Non-Conforming Use may be extended throughout any parts of the structure that were manifestly arranged or designed for such use of the effective date of this chapter, any amendment of this chapter or any amendment to the Zoning Map"* after which he stated that there is no further amendments to the code. In addition, there is no guidance nor are there any thresholds, etc. The original application for this matter was received in the Building Department back in July 2021.

It was requested of Board Counsel Anthony Cerreto to provide some clarity on the language of the Code in relationship to the term "expansion/extension" Mr. Cerreto said that he would need to research this matter in greater detail and have a further discussion with the Building Inspector.

Ms. Petrone then explained to the applicant that a more detailed review of this application is necessary by the Board. In addition, a Use Variance requires certain specific information from the applicant as well as proof of a hardship by not having this deck.

2 children (17 and 9)

There are renters on the 2nd floor

The applicant is on the first floor which is on the front of the house and uses the back door to enter and exit. The stairs on the back of the house are actually for the 1st floor. There is also an empty basement. The applicant does not use the front door because the renters use that door to get to the 2nd floor.

Determined to be a legally non conforming use, there sre no encroachments or area variances needed.

Public: No one

Findings of Board:

Action taken by Board:

On the motion of Commissioner D'Estrada, which was seconded by Commissioner Simmons, the matter was adjourned to the May19th meeting.

Record of Vote: For 5 Against Absent Abstain

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

Adjourn to May 19, 2022

Petrone

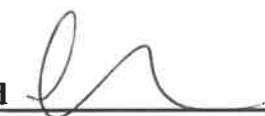
D'Estrada

Morlino

Simmons

Falk

Signed



Evelyn Petrone

Title Chair

ATTEST:

Attachment A



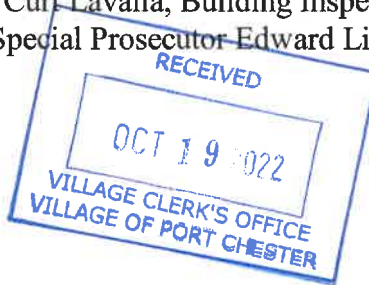
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Date of Hearing: April 21, 2022

ADJOIURN MEETING

On the motion of Commissioner Morlino, seconded by Commissioner Simmons, the meeting was adjourned to May 19, 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 May 19, 2022

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

Signed 
Evelyn Petrone
Title Chair

ATTEST: