



**PORT CHESTER BUILDING AND FIRE PREVENTION DEPARTMENT**

222 GRACE CHURCH STREET • PORT CHESTER, NEW YORK 10573

**939-5203**

**Frank Ruccolo**

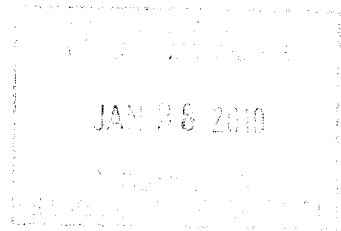
Assistant Building & Plumbing Inspector

MEMO TO: Joan Mancuso, Village Clerk

FROM: Anne Belfatto, ZBA Secretary *AB*

DATE: January 28, 2010

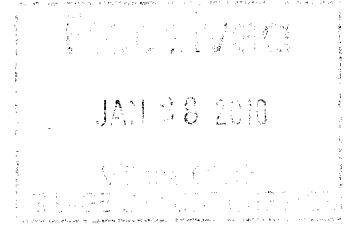
RE: **Zoning Board of Appeals Decisions**



Pursuant to Section 7-712-a of Village Law, attached are the decisions rendered by the Zoning Board of Appeals at their meeting held on Thursday, January 21, 2010.

Please respond with the proper filing date.

AB/  
Attachments



# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573

**Board Members**

**William Villanova, Acting Chairman**  
**Evelyn Petrone, Secretary**  
**Ronald Luiso**  
**Art D'Estrada**

**(914) 939-5203**

January 25, 2010

Mr. and Mrs. Andreas Putz  
15 Haynes Avenue  
Dobbs Ferry, NY 10522

**RE: Case No. 1477 (F1444)**  
**2 Harbor Drive**  
**Variance to Construct 3½ Story Addition**

Dear Mr. and Mrs. Putz:

It was the decision of this Board at its hearing held on Thursday, January 21, 2010, to grant the variance as requested on your application regarding the above captioned matter.

Sincerely,

William Villanova  
Acting Chairman

WV:akb

cc: Michiel Boender, AIA

RESOLUTION ON APPEAL

Before the

Zoning Board of Appeals

OF THE VILLAGE OF PORT CHESTER, N.Y.

IN THE MATTER OF THE APPEAL

*of*

Andreas and Sara Putz

from the determination of the Building

Inspector denying application for permit to construct a  
3½ story addition

on premises No. 2 Harbor Drive

in the Village of Port Chester, New York, being Section

No. 142.63, Block No. 1, Lot No. 13, on

the Assessment Map of the said Village

having heretofore appealed to this Board from a determination of the Building Inspector denying appellants application for permission to construct a 3½ story addition on premises located in a R7 zoning district

on the premises No. 2 Harbor Drive

in the Village of Port Chester, being Section No. 142.63

Block No. 1, Lot No. 13

on the Assessment Map of said Village on the ground that the same violates the

zoning ordinance of said Village in the following particulars, viz: Section 345-40, Part II, Dimensional

Regulations: Maximum height of building requires 2½ stories/35'0", applicant proposes 3½ stories/39'8", variance required

# MINUTES OF MEETING

## Application for Zoning Variance

**Date of Hearing:** January 21, 2010

**No. of Case:** 1477, 2 Harbor Drive

**Applicant:** Andreas and Sara Putz

**Nature of Request:** See publication notice annexed hereto.

Height variance to construct 3½ story addition

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

- a. Andreas Putz, 15 Haynes Avenue, Dobbs Ferry, NY
- b. Michiel Boender, AIA, 163 North Main Street, Port Chester, NY
- c.
- d.
- e.

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

- a. None
- b.
- c.
- d.
- e.

**Summary of statement or evidence presented:** Findings of Fact as prepared by Village Attorney, Anthony Cerreto.

**Findings of Board:** SEE ATTACHED

**Action taken by Board:** A motion was made Ms. Petrone, seconded by Mr. D'Estrada, to approve the Findings of Fact as prepared by Village Attorney, Anthony Cerreto, and to grant the variance as requested on application. A vote was taken and the motion carried.

ZONING BOARD OF APPEALS OF THE  
VILLAGE OF PORT CHESTER

-----x  
In the Matter of the Application of  
Andreas Putz

Case No. 1477

-----x  
FINDINGS OF FACT

1. The applicant is the owner of property located at 2 Harbor Drive, Section 142/63, Block 1, Lot 13 on the Tax Map of the Town of Rye, New York.
2. The subject premises is improved by a one-family dwelling.
3. The subject premises is located in an R-7 Single-Family Residence District.
4. The applicant proposes an addition.
5. The Building Department denied the application for a building permit by Notice of Disapproval dated October 29, 2009 which stated as follows:  
  
Section 345-40, Part II, Dimensional Regulations: maximum height of building requires 2 ½ stories/35'0". Applicant proposes 3 ½ stories/39'8", variance required.
6. A public hearing was conducted on December 17, 2009 wherein the applicant and all interested parties were given a full and complete opportunity to be heard.
7. The applicant appeared and his architect, Michael Boender, AIA, Port Chester, made the following presentation. Mr. Boender stated that the applicant was proposing significant renovations to the house with an addition to the second floor and dormers in the attic with a tower structure. He stated that the addition would reconfigure the existing layout of the second floor and add a bedroom and bathroom. There would be access to the tower structure from all floors. He stated that the renovations represented a significant investment in the property and that they are in keeping with neighboring properties.
8. No one appeared in favor or against the application.

## 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 requested variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed addition will add value to the subject property and the surrounding neighborhood.

3. The applicant cannot otherwise provide a means of improving his property without the variance. No other variances are sought other than the height variance for the tower. The tower structure is designed to be more than functional, and intended to compliment the other significant residences nearby.

4. The requested variance is minor.

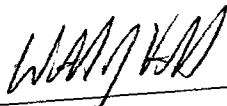
5. The requested variance will not have any adverse impact on the physical or environmental conditions in the neighborhood. The variance will not result in any decrease of light, air, privacy, security for fire and other dangers or overcrowding. Nor is there any evidence that the variance would negatively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

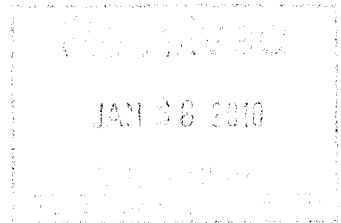
6. Since the applicant purchased the property with presumptive knowledge of the restrictions contained within the R-7 Zoning District, there is arguably the existence of self-created hardship. However, this is only one factor for the Board to consider and does not outweigh the other foregoing factors that otherwise tip in his favor.

## DETERMINATION

On motion of Ms. Petrone, seconded by Mr. D'Estrada  
, the Zoning Board of Appeals of the Village of Port Chester, New York,  
granted the application of Andreas Putz, Case No. 1477, for an  
area variance which is a Type II action requiring no further environmental review and  
authorizes the Chairman to sign these Findings on its behalf.

Dated: January 21, 2010  
Port Chester, New York

  
\_\_\_\_\_  
William Villanova  
Acting Chairman



# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573

**Board Members**

**William Villanova, Acting Chairman**  
**Evelyn Petrone, Secretary**  
**Ronald Luiso**  
**Art D'Estrada**

(914) 939-5203

January 25, 2010


Mr. Demetrios Adamis, Esq.  
Gioffre & Gioffre  
2900 Westchester Avenue  
Suite 206  
Purchase, NY 10577

**RE: Extension**  
**Case No. 1394 (F1869)**  
**Willett Avenue/Abendroth Place**

Dear Mr. Adamis:

It was the decision of this Board at its hearing held on Thursday, January 21, 2010, to grant a ninety day extension on variances that were granted June 15, 2006 for and application to construct a multi-family residential structure with a commercial component on the first floor at the above noted location.

Sincerely,

  
William Villanova  
Acting Chairman

WV:akb

cc: Frank Boccanfuscoi



# MINUTES OF MEETING

## Application for Zoning Variance

Date of Hearing: January 21, 2010

No. of Case: 1394, Willett Avenue/Abendroth Place

Applicant: Demetrios Adamis, Esq.

Nature of Request: ~~See publication notice annexed hereto.~~

Extension on variances that were granted 6/15/06

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

- a. Demetrios Adamis, Esq., 2900 Westchester Avenue, Purchase, NY
- b.
- c.
- d.
- e.

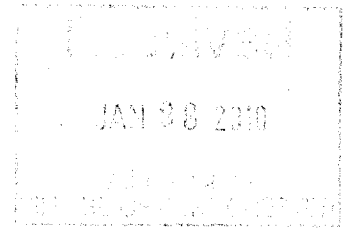
### 2. Names and addresses of those appearing in opposition to application.

- a. None
- b.
- c.
- d.
- e.

**Summary of statement or evidence presented:** Requesting another 90 day extension. Making some progress with financing. Final site plan approval runs out June/July. Site secured and deal with the issues as they arise.

### ~~Findings of Board~~

**Action taken by Board:** A motion was made by Mr. Luiso, seconded by Ms. Petrone, to grant a ninety day extension on variances that were granted June 15, 2006. A vote was taken and the motion was carried.



# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573

**Board Members**

**William Villanova, Acting Chairman**  
**Evelyn Petrone, Secretary**  
**Ronald Luiso**  
**Art D'Estrada**

**(914) 939-5203**

January 25, 2010

Mr. Demetrios Adamis, Esq.  
Gioffre & Gioffre  
2900 Westchester Avenue  
Suite 206  
Purchase, NY 10577

**RE: Extension**  
**Case No. 1415 (F113)**  
**Willett Avenue and Abendroth Avenue**

Dear Mr. Adamis:

It was the decision of this Board at its hearing held on Thursday, January 21, 2010, to grant a ninety day extension on variances that were granted February 15, 2007 for and application to construct a multi-family residential structure at the above noted location.

Sincerely,

William Villanova  
Acting Chairman

WV:akb

cc: Frank Boccanfusco

MINUTES OF MEETING

Application for Zoning Variance

Date of Hearing: January 21, 2010  
No. of Case: 1415, Willett Avenue and Abendroth Avenue  
Applicant: Demetrios Adamis, Esq.

Nature of Request: ~~See publication notice annexed hereto.~~  
Extension on variances granted 2/15/07.

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

- a. Demetrios Adamis, Esq., 2900 Westchester Avenue, Purchase, NY
- b.
- c.
- d.
- e.

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

- a. None
- b.
- c.
- d.
- e.

Summary of statement or evidence presented: Requested another ninety day extension. Made an amendment to the site plan application. Preliminary approvals for 100 units project. Same foot print but loped off one floor. Another issue is availability of financing.

~~Findings of Board~~

Action taken by Board: A motion was made by Ms. Petroen, seconded by Mr. Luiso, to grant a ninety day extension on variances that were granted February 15, 2007. A vote was taken and the motion carried.



# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573



**Board Members**

**William Villanova, Acting Chairman**  
**Evelyn Petrone, Secretary**  
**Ronald Luiso**  
**Art D'Estrada**

**(914) 939-5203**

January 25, 2010

Mr. Steven Feinstein, Esq.  
Gallo, Feinstein & Naushtut, LLP  
211 South Ridge Street  
Rye Brook, NY 10577

**RE: Case No. 1441 (F1394)**  
**13 Maple Place**  
**Use Variance to Convert One Family into a Two Family Dwelling**

Dear Mr. Feinstein:

It was the unanimous decision of this Board at its hearing held on Thursday, January 21, 2010, to approve the Findings of Fact, as prepared by the Village Attorney, regarding the request for variances for the above captioned matter that were denied at the last hearing of December 17, 2009.

Sincerely,

William Villanova  
Acting Chairman

WV:akb

cc: Jaime Montoya  
Timothy Wetmore, AIA

# MINUTES OF MEETING

## Application for Zoning Variance

**Date of Hearing:** January 21, 2010

**No. of Case:** 1441, 13 Maple Place

**Applicant:** Jaime Montoya

**Nature of Request:** See publication notice annexed hereto.

Use variance to convert one family into a two family dwelling

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

a. None

b.

c.

d.

e.

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

a. None

b.

c.

d.

e.

**Summary of statement or evidence presented:** Findings of Fact as prepared by Village Attorney, Anthony Cerreto.

**Findings of Board:** SEE ATTACHED

**Action taken by Board:** A motion was made by Ms. Petrone, seconded by Mr. D'Estrada, to approve the Findings of Fact as prepared by the Village Attorney, Anthony Cerreto, and deny the variances as requested on application. A vote was taken and the motion was unanimously carried.

ZONING BOARD OF APPEALS OF THE  
VILLAGE OF PORT CHESTER

-----X  
In the Matter of the Application of  
Jaime Montoya

Case No. 1441

-----X  
FINDINGS OF FACT

1. The applicant is the owner of property located at 13 Maple Place, Section 136.78, Block 3, Lot 7 on the Tax Map of the Town of Rye, New York.

2. The subject premises are improved by a one-family dwelling.

3. The subject premises has a lot size of 50 by 100 feet.

4. The subject premises are located in an R-5 Single-Family Residence District.

4. The applicant proposes to convert a one family dwelling into a two-family dwelling with additions to the dwelling and parking in the side yard..

5. The Building Department denied the application for a building permit by revised Notice of Disapproval dated May 16, 2008 which stated as follows:

Section 345-41, Part I, Use Regulations: Two family dwelling not permitted, variance required.

Section 345-41, Part II, Dimensional Regulations: Minimum 25'0" front yard setback required, 21'0" existing, 21.2' proposed, variance required. Minimum 8'0" side yard setback required, 5.5' existing, approximately 5.3' proposed., variance required. Minimum open space requires 2,000 square feet per dwelling unit, 4,000 square feet required, -0- square feet proposed, variance required.

Section 345-6(I)(3), Accessory Uses: Parking spaces not permitted in required side yards, side yard parking spaces proposed, variance required.

6. This matter was the subject of many public hearings wherein the applicant and all interested parties were given a full and complete opportunity to be heard.

7. The applicant appeared by counsel, Steven Feinstein, Esq, Rye Brook, New York.

8. It was represented at the hearing that the dwelling was constructed in 1900 and that the applicant purchased the subject premises in 1978 with a mortgage of \$29,500. . In 1984, he refinanced. In 2006, he refinanced again with a mortgage of \$365,000.

9. It was further represented that the applicant was represented by counsel at the time of purchase who had advised that the legal occupancy was a two-family dwelling and that the mortgage documents also reflected that fact. In 2004, the Town of Rye Assessor had assessed the property as a two-family dwelling. It was further represented that the applicant used the premises for such occupancy until 2007 when he was prosecuted by the Village of Port Chester Building Department for overcrowding conditions. The applicant pled guilty to the charges and paid a fine.

10. The applicant retained an architect and plans were submitted with the Building Department. This resulted in an initial notice of disapproval from the Building Inspector dated March 18, 2008. Such disapproval was based upon the Building Officials' finding that the premises were located in both an R-5 and RA3 Multi-Family Zoning District.

11. The application was originally made for a permit and area variances to permit the two-family use pursuant to Section 345-33(A) of the Zoning Code. This section specifically authorizes the Zoning Board of Appeals to allow for an extension of one lawful conforming use to extend into another less restrictive district up to a maximum distance of fifty feet. .

12. The Building Official's finding was later found to be in error and that the property was in fact located exclusively in the R-5 Zoning District resulting in a revised notice of disapproval.

13. Thereafter, the applicant provided copies of records that evidenced that other neighboring properties in the R-5 District had obtained "pre-date" letters from the Building Official certifying that these other nonconforming uses could continue. It was not suggested that these certifications were incorrectly issued, but that the character of the neighborhood was multiple-family despite its designation as within a single-family zoning district.

14. The applicant ultimately presented this matter as one for a use variance.

15. The applicant contended that he would be unable to obtain a reasonable rate of return if confined to using the house as a single-family dwelling. It was represented that the carrying costs of the premises, such as taxes, utilities and insurance, are in excess of combined net income of \$3,300 a month. The applicant presented a letter from a realtor who stated that he could rent the additional unit for \$1,880 a month and that such rental would allow him to keep the property.

16. It was further contended that the premises are unique in that it is the only property directly adjacent to, or possibly on, the boundary line between the single-family

and multiple-family zoning districts. The applicant further contended that conversion of the house as a two-family dwelling would be in keeping with the neighborhood and that there would be no detrimental impact to surrounding properties. Lastly, it was contended that the applicant's hardship was not self-created in that he had used a local attorney, that the bank qualified him for a mortgage for a two-family house and that he had no reason to believe that the house was not a two-family house until he was the subject of prosecution.

17. One neighbor opposed the application.

#### CONCLUSIONS OF LAW

1. Village Law, Section 7-712-b(2)(b) provides that the Zoning Board of Appeals shall not grant a use variance unless there is a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship/. In order to prove such unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located (1) the applicant cannot realize a reasonable rate of return, provided that lack of return is substantial as demonstrated by competent financial evidence (2) that the alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood and (4) that the alleged hardship has not been self-created.

2. The applicant has not met its burden in proving competent, financial evidence to support the claim of lack of reasonable return. The applicant submitted a considerable amount of raw data, but did not provide any witnesses or expert witnesses to flesh out the details or draw it together in any meaningful way to support his conclusions other than to state that he could not afford to pay the expenses on the house without the additional income. Further, based upon his own testimony, it appears that even if he rented out the second floor as an additional dwelling unit he still would not be able to carry the property.

3. The applicant has not provided any testimony or documentation to establish uniqueness.

4. The applicant has established that the essential character of the neighborhood would not be altered if the use variance is granted. Most of the houses in the neighborhood are in appearance and use similar to that of the applicant

5. The applicant's hardship is entirely self-created. He admitted to borrowing the entire amount as a mortgage as opposed to a line of credit which he could access the monies as needed and pay interest on only the amount used. He deposited the money in an annuity or other account which he used to pay for his application for a variance and credit debt and other loans. By his own admission, a fraction of the proceeds he obtained




was for the proposed improvements to the dwelling. The applicant's presentation ultimately is not credible. It appears that he assumed the certain approval of this Board. .

DETERMINATION

On motion of Ms. Petrone, seconded by Mr. D'Estrada,  
, the Zoning Board of Appeals of the Village of Port Chester, New York,  
denied the application of Jaime Montoya, Case No. 1441 for a use  
variance.and authorizes the Chairman to sign these Findings on its behalf.

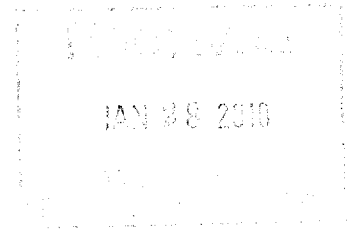
Dated: January 21, 2010  
Port Chester, New York

  
\_\_\_\_\_  
William Villanova  
Acting Chairman



## Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573



**Board Members**

**William Villanova, Acting Chairman**  
**Evelyn Petrone, Secretary**  
**Ronald Luiso**  
**Art D'Estrada**

**(914) 939-5203**

January 25, 2010

Mr. Gary Gianfrancesco, AIA  
Arconics Architecture  
545½ Westchester Avenue  
Rye Brook, NY 10573

**RE: Case No. 1473 (F367)**  
**54 Poningo Street**  
**Variances to Convert Existing Building for Church Use**

Dear Mr. Gianfrancesco:

As per your request, it was the unanimous decision of this Board at its hearing held on Thursday, January 21, 2010, to adjourn the above captioned matter to the next scheduled meeting of February 18, 2010.

Sincerely,

William Villanova  
Acting Chairman

WV:akb

cc: Anthony Carbone, Esq.

# MINUTES OF MEETING

## Application for Zoning Variance

Date of Hearing: January 21, 2010

No. of Case: 1473, 54 Poningo Street

Applicant: Seguanda Iglesia Pentecostal

Nature of Request: See publication notice annexed hereto.

Variances to convert existing building for Church use.

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

- a. Anthony Carbone, Esq. 320 Westchester Avenue, Port Chester, NY
- b. Gary Gianfrancesco, AIA, 545½ Westchester Avenue, Rye Brook, NY
- c.
- d.
- e.

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

- a. None
- b.
- c.
- d.
- e.

Summary of statement or evidence presented: Requested one month adjournment as issues have arisen with respect to the variances requested.

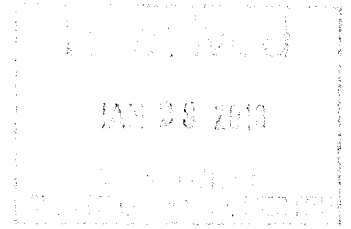
~~Findings of Board~~

Action taken by Board: A motion was made by Mr. Luiso, seconded by Mr. D'Estrada, to adjourn this application to the next scheduled hearing of February 18, 2010. A vote was taken and the motion was unanimously carried.



## Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573



**Board Members**

**William Villanova, Acting Chairman**

**Evelyn Petrone, Secretary**

**Ronald Luiso**

**Art D'Estrada**

**(914) 939-5203**

January 25, 2010

Mr. Lawrence Bennett  
312 Ronbru Drive  
New Rochelle, NY 10804

**RE: Case No. 1476 (F4386)**  
**435 Elm Street**  
**Variances to Widen Existing Driveway**

Dear Mr. Bennett:

It was the unanimous decision of this Board at its hearing held on Thursday, January 21, 2010, to adjourn the above captioned matter to the next scheduled meeting of February 18, 2010.

Sincerely,

William Villanova  
Acting Chairman

WV:akb

cc: Elio Guaman

# MINUTES OF MEETING

## Application for Zoning Variance

Date of Hearing: January 21, 2010

No. of Case: 1476, 435 Elm Street

Applicant: Elio Guaman

Nature of Request: See publication notice annexed hereto.

Variations to widen driveway.

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

- a. Lawrence Bennett, 312 Ronbru Drive, New Rochelle, NY
- b. Elio Guaman, 435 Elm Street, Port Chester, NY
- c. Architect's report submitted and Labeled Exhibit "C"
- d.
- e.

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

- a. Robert Geradi, 433 Elm Street, Port Chester, NY
- b.
- c.
- d.
- e.

**Summary of statement or evidence presented:** Report from architect as to soil and rock conditions. Have reduced size of curb cut. Would like to go into neighbor's basement to verify his conditions. Applicant will, if variances are granted, provide tenants to park in the driveway. It will be in their leases. Two cars for owner and his wife and two cars for each of the tenants. Wall condition still exposed. Front wall reduce for better view getting out of driveway. Basement used for storage. Board requested time to review report submitted this evening.

~~Findings of Board~~

**Action taken by Board:** A motion was made by Mr. Luiso, seconded by Mr. D'Estrada, to adjourn this application to the next scheduled hearing of February 18, 2010. A vote was taken and the motion was unanimously carried.



# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573

(914) 939-5203

**Board Members**

**William Villanova, Acting Chairman**  
**Evelyn Petrone, Secretary**  
**Ronald Luiso**  
**Art D'Estrada**

January 25, 2010

Mr. Gary Gianfrancesco, AIA  
Arconics Architecture  
545½ Westchester Avenue  
Rye Brook, NY 10573

**RE: Case No. 1221C (F707)**  
**25 Midland Avenue**  
**Variances to Construct Addition to Existing Auto Repair Facility**

Dear Mr. Gianfrancesco:

Please be advised that at the Zoning Board of Appeals hearing held on Thursday, January 21, 2010, said Board reviewed your application for request of variances regarding the above captioned matter and a decision will be made at the next meeting scheduled for February 18, 2010.

Sincerely,

William Villanova  
Acting Chairman

WV:akb

cc: Joseph Sandarciero  
Anthony Carbone, Esq.

# MINUTES OF MEETING

## Application for Zoning Variance

Date of Hearing: January 21, 2010

No. of Case: 1221C, 25 Midland Avenue

Applicant: Joseph Sandarciero

Nature of Request: See publication notice annexed hereto.

Variations to construct addition to existing auto repair facility

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

- a. Anthony Carbone, Esq., 320 Westchester Avenue, Port Chester, NY
- b. Gary Gianfrancesco, AIA, 545½ Westchester Avenue, Rye Brook, NY
- c. Letter from Angelina Carriero, 9 Midland Avenue, Port Chester, NY submitted and Labeled Exhibit "A"
- d. Letters from Planning Commission submitted, Labeled Exhibits "B" and "C"
- e. Memo from Village Engineer submitted, Labeled Exhibit "D"
- f. Letter from NYSDOT submitted, Labeled Exhibit "E"

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

- a. None
- b.
- c.
- d.
- e.

**Summary of statement or evidence presented:** Two tax lots. Business in Village for over 30 years. Auto shop operating at this location since 1949. Vacant lot since demolition of multi-family dwelling. Proposed retail store which will be conforming and will be attached to existing building. Neighborhood predominately non-conforming. Both lots have been combined for review of applicant's operations. Planning Commission has recommended in favor and have granted site plan approval. Addition will eliminate office and plows and will be able to park more vehicles in existing building. Addition will have retail on first floor and offices on the second floor.

### ~~Findings of Board~~

**Action taken by Board:** A motion was made by Mr. Villanova, seconded by Mr. Luiso, to close the public hearing and to render a decision at the next scheduled hearing of February 18, 2010. A vote was taken and the motion was unanimously carried.

Another motion was made by Mr. Villanova, seconded by Mr. Luiso, requesting the Village Attorney to prepare Findings of Fact for said application. A vote was taken and the motion was unanimously carried.



# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573



**Board Members**

**William Villanova, Acting Chairman**  
**Evelyn Petrone, Secretary**  
**Ronald Luiso**  
**Art D'Estrada**

**(914) 939-5203**

January 25, 2010

Mr. John Colangelo, Esq.  
211 South Ridge Street  
Rye Brook, NY 10573

**RE: Case No. 1478 (F2014)**  
**240 Westchester Avenue**  
**Variances to Convert Beauty Salon into Dental Office**

Dear Mr. Colangelo:

Please be advised that at the Zoning Board of Appeals hearing held on Thursday, January 21, 2010, said Board reviewed your application for request of variances regarding the above captioned matter and a decision will be made at the next meeting scheduled for February 18, 2010.

Sincerely,

William Villanova  
Acting Chairman

WV:akb



# MINUTES OF MEETING

## Application for Zoning Variance

Date of Hearing: January 21, 2010  
No. of Case: 1478, 240 Westchester Avenue  
Applicant: 240 Westchester Avenue, LLC

Nature of Request: See publication notice annexed hereto.  
Variances to convert beauty salon into dental office

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

- a. John Colangelo, Esq., 211 South Ridge Street, Rye Brook, NY
- b. Michiel Boender, AIA, 163 North Main Street, Port Chester, NY
- c. Dr. Patel, owner
- d. Domenick Ranieri, 20 Oak Street, Port Chester, NY
- e. Sophia Kulpinski, 12 Oak Street, Port Chester, NY

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

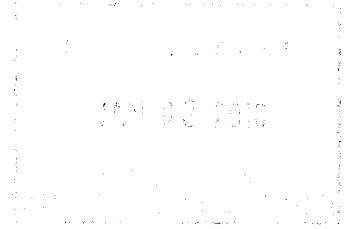
- a. None
- b.
- c.
- d.
- e.

**Summary of statement or evidence presented:** Location presently has a nonconforming beauty salon use on the first floor and there is residential on the second floor. Propose dental office on the first floor which is a permitted use. There is a separate entrance for residential. Most alterations will be interior and ADA compliant. Will add lift at rear for ADA compliance. Proposed use consistent with area, less intensive than before. Practicing 17 years in the Village and needs to move to a bigger location. Has four employees, open 9:00 a.m. to 6:00 p.m. - Monday, Tuesday, Thursday and Friday and 9:00 a.m. to 6:00 p.m. alternating Saturdays. Two municipal lots in the immediate area. Most patients walk to office. All conditions existing, not creating them. Will not change the character of the neighborhood.

~~Findings of Fact~~

**Action taken by Board:** A motion was made by Mr. Luiso, seconded by Mr. D'Estrada, to close the public hearing and to render a decision at the next scheduled hearing of February 18, 2010. A vote was taken and the motion was unanimously carried.

Another motion was made by Mr. Villanova, seconded by Mr. D'Estrada, requesting the Village Attorney to prepare Findings of Fact for said application. A vote was taken and the motion was unanimously carried.



## Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573

**Board Members**

**William Villanova, Acting Chairman**  
**Evelyn Petrone, Secretary**  
**Ronald Luiso**  
**Art D'Estrada**

**(914) 939-5203**

January 25, 2010

Mr. John Colangelo, Esq.  
211 South Ridge Street  
Rye Brook, NY 10573

**RE: Case No. 1472 (F382)**  
**36 Bush Avenue**  
**Variances to Convert Existing Warehouse into Church**

Dear Mr. Colangelo:

It was the unanimous decision of this Board at its hearing held on Thursday, January 21, 2010, to grant the variances as requested on your application regarding the above captioned matter.

Sincerely,

William Villanova  
Acting Chairman

WV:akb

cc: The Salvation Army

RESOLUTION ON APPEAL

Before the

Zoning Board of Appeals

OF THE VILLAGE OF PORT CHESTER, N.Y.

IN THE MATTER OF THE APPEAL

of

The Salvation Army

from the determination of the Building

Inspector denying application for permit to convert existing structures into a chapel and class rooms for Church use

on premises No. 36 Bush Avenue

in the Village of Port Chester, New York, being Section

No. 136.78, Block No. 2, Lot No. 16, on

the Assessment Map of the said Village

having heretofore appealed to this Board from a determination of the Building Inspector denying appellants application for permission to convert existing structures into a chapel and class rooms for Church use on premises located in a M1 zoning district

on the premises No. 36 Bush Avenue

in the Village of Port Chester, being Section No. 136.78

Block No. 2, Lot No. 16

on the Assessment Map of said Village on the ground that the same violates the

zoning ordinance of said Village in the following particulars, viz: Section 345-55, Part I, Use Regulations: Church permitted by "Special Exception", approval required. Section 345-61(C)(1): 21,780 square feet required, 21,579 square feet existing and proposed, variance required. Right of way requires 60'0", 50'0" existing and proposed, variance required. Paved roadway requires 40'0", 30'0" existing and proposed, variance required. Section 345-61(C)(2): Front setback requires 25'0" from all property lines, existing and proposed 0'0", 1'0" and 0'0", variance required. Section 345-61(C)(3): Off-street parking shall be provided in accordance with the provisions of Section 345-14 in all zones: 36 parking spaces required, 18 parking spaces proposed, variance required. Section 345-13(D)(1), Nonconforming Building or Structures: Applicant proposes to increase the size of the existing structures, variance required. Section 345-10(M), Yards and Courts: Transitional yards and screening required, applicant proposes parking, variance required

# MINUTES OF MEETING

## Application for Zoning Variance

**Date of Hearing:** January 21, 2010

**No. of Case:** 1472, 36 Bush Avenue

**Applicant:** The Salvation Army

**Nature of Request:** See publication notice annexed hereto.

Variations to convert existing warehouse into a Church

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

- a. John Colangelo, Esq., 211 South Ridge Street, Rye Brook, NY
- b.
- c.
- d.
- e.

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

- a. None
- b.
- c.
- d.
- e.

**Summary of statement or evidence presented:** Findings of Fact as prepared by Anthony Cerreto, Village Attorney.

**Findings of Board:** SEE ATTACHED

**Action taken by Board:** A motion was made by Ms. Petrone, seconded by Mr. Luiso, to approved the Findings of Fact as prepared by Anthony Cerreto, Village Attorney, and to grant the variances as requested on application. A vote was taken and the motion was unanimously carried.

ZONING BOARD OF APPEALS OF THE  
VILLAGE OF PORT CHESTER

-----X  
In the Matter of the Application of  
The Salvation Army

Case No. 1472

-----X  
FINDINGS OF FACT

1. The applicant is the owner of property located at 36 Bush Avenue, Section 136.78, Block 2, Lot 16 on the Tax Map of the Town of Rye, New York.

2. The subject premises is improved by a warehouse building.

3. The subject premises is located in an M-1 Industrial District.

4. The applicant was represented by John Colangelo, Esq., Rye Brook, New York.

5. The applicant proposes a church.

6. The Building Department denied the application for a building permit by Notice of Disapproval dated September 14, 2009 which stated as follows:

Section 345-55, Part I, Use Regulations: Church permitted by "Special Exception", approval required.

Section 345-61©(1): 21,780 square feet required, 21,579 square feet existing and proposed, variance required. Right of way requires 60'0" existing and proposed, variance required. Paved roadway requires 40'0", 30'0" existing and proposed, variance required.

Section 345-61©(2): Front setback requires 25'0" from all property lines, existing and proposed 0'0", 1'0" and 0'0", variance required.

Section 345-61©(3): Off-street Parking shall be provided in accordance with the provisions of Section 345-14 in all zones: 36 parking spaces required, 18 parking spaces proposed, variance required.

Section 345-13(D)(1), Nonconforming Building or Structures: Applicant proposes to increase the size of the existing structures, variance required.

Section 345-10(M), Yards and Courts: Transitional yards and screening required, applicant proposes parking, variance required.

7. A public hearing was conducted on October 15, 2009, November 19, 2009 and December 17, 2009 wherein the applicant and all interested parties were given a full and complete opportunity to be heard.

8. The applicant was represented by counsel and the development team.

9. Counsel noted that the applicant requires a grant of special exception approval from the Board of Trustees and that it would require variances/waivers of certain of the standards for such approval. He indicated that the applicant would seek such relief from the Board of Trustees should the application be advanced.

10. The presentation was as follows: The applicant wishes to relocate within the Village from its present location at the Carver Center. They have had a place of worship in the Village of Port Chester for many years, going back to 1836. The Salvation Army was most recently located in the downtown and was forced to relocate to the Carver Center as a result of the Village's downtown redevelopment efforts. The nearest Salvation Army facility is in the City of White Plains. The applicant has investigated alternative sites within the Village and has selected the subject premises as the most appropriate location for its short and long-term needs.

11. The existing 19,200 square foot building is used as the offices and maintenance/storage facility for an entertainment equipment company. The lot size is 21,579 square feet.

12. With the notable exception of two other similarly-sized industrial buildings, the surrounding neighborhood is residential consisting of single-family and multiple-family dwellings.

13. The applicant represented that the existing building is actually five separate structures that have been combined over the years. Such arrangement would require the applicant to entirely renovate the interior with new HVAC, electrical and plumbing systems. In some areas of the building, such as the chapel, the roof heights are proposed to be increased. No exterior additions are proposed and the existing footprint will be preserved.

14. The applicant indicated that the chapel is the primary building space and will be recognized as a church from the exterior by a special cupola and cross at the building entrance.

15. The plans show that the proposed exterior design will include new windows, entrance and a stucco finish to cover the existing brick and concrete block. The applicant stated that the building will be transformed from an existing industrial building into an attractive church that will be a significant asset to the neighborhood and uplift to the greater community.

16. The applicant discussed the nature of their proposed operations of the facility. The focus is on the chapel, but the proposed facility will contain several multi-purpose Sunday school rooms, a large activity, multi-purpose room, music room, computer literacy center, arts and crafts space, kitchen and offices. A Sunday school and Bible study is scheduled on Sundays before and after the worship service. In support of the neighborhood schools, the applicant will offer after-school education programs that would operate between 3:30 p.m. and 5:30 p.m. on weekdays. Office hours are to be from 9 a.m. to 3 p.m. also during the week. The applicant does not rent or lease space to third parties as a matter of policy and has no intention of doing so at the proposed facility.

16. As a result of concerns in the planning and zoning review process, the applicant provided a written response to the issues of intensity of use/noise impacts, use of spaces/unknown future of facility, the raised roof areas/neighbors/parking and traffic concerns, fencing/building maintenance funding, transitional space area.

17. The applicant further modified the plans to decrease the number of seats in the chapel from 150 to 106, decreasing the number of required off-street parking spaces.

18. One resident testified in opposition to the application.

#### 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 Zoning Board takes judicial notice of the favored status of churches both under New York and federal law.

3. The requested variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed church will be a substantial asset to the neighborhood. The applicant, a long-standing social institution, will remain in the Village. The applicant has mitigated traffic and parking impacts to the extent possible.

3. The applicant cannot otherwise provide a means of improving its property for the church without the variances.

4. The requested variances are not significant and the applicant has made every attempt to seek the minimum variances necessary.


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 variance would negatively impact the natural environment and/or any ecological systems.

6. Since the contract vendee<sup>is purchasing</sup> the property with presumptive knowledge of the restrictions contained within the M-1 Zoning District, there is arguably the existence of self-created hardship. However, this is only one factor for the Board to consider and does not outweigh the other foregoing factors that otherwise tip in its favor.

#### DETERMINATION

On motion of Ms. Patrone, seconded by Mr. Luiso,  
, the Zoning Board of Appeals of the Village of Port Chester, New York,  
granted the application of the Salvation Army, Case No. 1472, for  
area variances which is a Type II action requiring no further environmental review and  
authorizes the Chairman to sign these Findings on its behalf.

Dated: January 21, 2010  
Port Chester, New York

  
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William Villanova  
Acting Chairman