



# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573

Board Members

(914) 939-5203

December 28, 2010

Mr. Dante Alvarez  
143 Oak Street  
Port Chester, NY 10573

**RE: Case No. 1491**  
**141-143 Oak Street**

Dear Mr. Alvarez:

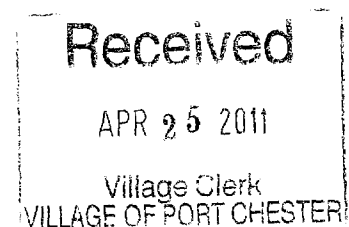
Please be advised that the above captioned matter could not be presented to the Zoning Board of Appeals at its hearing held on Thursday, December 16, 2010, due to the fact that you did not comply with the requirement to provide the return receipts, which is proof of the certified mailings to property owners within 250 feet of the subject property.

Your application will be placed on the agenda for the next scheduled meeting of January 20, 2011.

Sincerely,

William Willanova  
Acting Chairman

WV: co



**MINUTES OF MEETING**  
**Application for Zoning Variance**

**Date of Hearing:** December 16, 2010  
**No. of Case:** 1491, 141-143 Oak Street  
**Applicant:** Dante Alvarez

**Nature of Request:** See publication notice annexed hereto.  
Variances to build two car parking space in front yard

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

- a. Dante Alvarez
- b.
- c.
- d.

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

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

**Summary of statement or evidence presented:** None

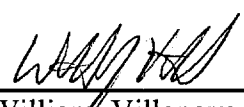
**Action taken by Board:** Chairman Villanova advised the applicant to re-notice the application and did not open the public hearing due to the fact that the case did not comply with the requirements to provide the return receipts, which is proof of the certified mailings to property owners within 250 feet of the subject property. The public hearing was adjourned to the next scheduled meeting, January 20, 2011.

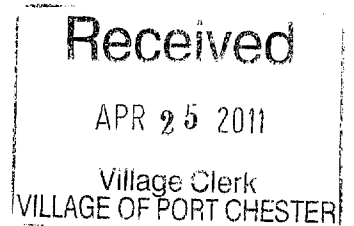
**Record of Vote:** For -0- Against -0- Absent -0-

**List names of members and how voted – symbols as follows:** F-for, A-against, Ab-absent

**Close Public Hearing**

**Attest:**

**Signed**   
\_\_\_\_\_  
William Villanova  
**Title** Acting Chairman





# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573

Board Members

(914) 939-5203

MEMO TO: Anthony M. Cerreto, Village Attorney  
FROM: William Villanova  
DATE: December 29, 2010  
RE: **Findings of Fact**  
**ZBA Case No. 1487**  
**21 Gilbert Place**

Be advised that it was the unanimous decision of this Board at its meeting held on December 16, 2010, to approve the findings of fact as prepared by you for the above noted matter.

Secretary Petrone made a motion, seconded by Mr. Luiso, to approve the findings of fact and the vote was as follows:

Aye - Petrone  
Aye - Luiso  
Aye - Strauch  
Aye - Espinoza  
Aye - Villanova

WV: co





# Zoning Board of Appeals

222 GRACE CHURCH STREET  
PORT CHESTER, NEW YORK 10573

Board Members

(914) 939-5203

December 28, 2010

Mr. Oscar Ovalle  
Greenwich Design Architects  
309 Greenwich Avenue  
Suites 201-202-203  
Greenwich, CT 06830

**RE: Case No. 1487 (F874)**  
**21 Gilbert Place**  
**Variance to Convert Two family to a One Family and to**  
**Convert Garage Second Floor Space from Storage to One Family Unit**

Dear Mr. Ovalle:

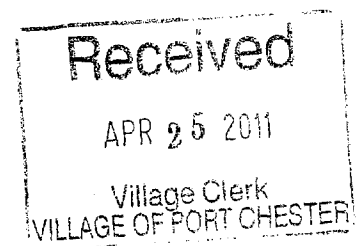
It was the unanimous decision of this Board at its hearing held on Thursday, December 16, 2010 to deny the variances as requested on your application for the above captioned matter.

Sincerely,

William Villanova  
Acting Chairman

WV: co

cc: Gloria Gonzales



**MINUTES OF MEETING**  
**Application for Zoning Variance**

**Date of Hearing:** December 16, 2010  
**No. of Case:** 1487 , 21 Gilbert Place  
**Applicant:** Oscar Ovalle

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

Variations to convert two family to a one family and convert garage second floor space from storage to a one family unit

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

- a. Gloria Gonzalez
- b.
- c.
- d.

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

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

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

**Findings of Board:** See Attached

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

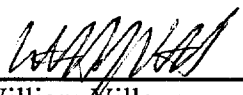
**Record of Vote:** For -Five- Against -0- Absent -1-

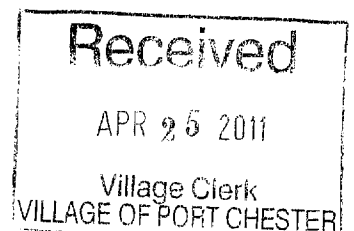
**List names of members and how voted – symbols as follows:** F-for, A-against, Ab-absent

**Findings of Fact**

F - Petrone  
F - Luiso  
F - Strauch  
F - Villanova  
F - Espinoza  
AB- D'Estrada

**Attest:**

**Signed**   
\_\_\_\_\_  
William Villanova  
**Title** Acting Chairman



*Original*

ZONING BOARD OF APPEALS OF THE  
VILLAGE OF PORT CHESTER

-----X  
In the Matter of the Application of  
Gloria Gonzalez

Case No. 1487

-----X  
FINDINGS OF FACT

1. The applicant is the owner of property located at 21 Gilbert Place, Port Chester, New York, also designated as Section 141.52, Block 1, and Lot 14 on the Tax Map of the Town of Rye, New York.

2. The subject premises are improved by a building used as a two-family residence and a garage.

3. The subject premises are located in an R-2F Two-Family Residence District.

4. The applicant proposes to convert the two-family dwelling into a one-family dwelling and the garage to a one-family dwelling.

5. The Building Department denied the application for a building permit by revised Notice of Disapproval, dated September 15, 2010, which stated as follows:

Section 345-42, Part I, Use Regulations: Two family dwelling included covered one-family dwelling on adequate lot is a permitted use.

Section 345-42, Part II, Dimensional regulations (both buildings) Maximum floor area ratio requires 4,000 square feet, applicant proposes 4,201 square feet, variance required. Minimum open space requires 800 square feet per unit (1,600 square feet required), -0- feet proposed and existing, variance required.

Section 345-42, Part II, Dimensional Regulations (Building #1): Front-yard setback requires 20'0", 0.51" proposed and existing, variance required. Side yard setback requires 8'0", 0.60 proposed and existing, variance required. Total of two side yards on interior lot requires 14.0", 12.5 proposed and existing, variance required.

Section 345-42, Part II, Dimensional Regulations (Building #2): Side yard setback requires 8'0", 1.87" proposed and existing, variance required. Total of two side yards on interior lot requires 14'0", 4.67 proposed and existing, variance required. Rear yard setback requires 30'0", 0.95 proposed and existing, variance required.

Received  
APR 25 2011  
Village Clerk  
VILLAGE OF PORT CHESTER

Section 345-6(I)(3), Accessory Off-Street Parking: parking shall not be located within a required front or side yard, applicant proposes one (1) parking space in front of house, variance required.

Section 345-6(I) (4), Access Driveways: Driveway through required front and side yard shall not exceed 10'0", 23.3' proposed and existing variance required.

Section 345-6(I) (1), Accessory Buildings: Detached accessory buildings shall not exceed one story, variance required.

Section 345-5(3): A building or structure or part thereof authorized by a variance from the dimensional regulations of this Regulation, granted by the Board of Appeals, shall be deemed a nonconforming building or structure. In 1982, ZBA Case No. 743, dimensional variances granted for illegally constructed garage.

6. A public hearing was held on wherein the applicant and all interested parties were given a full and complete opportunity to be heard.

7. The applicant was represented by Oscar Ovalle, Greenwich Design Architects.

8. The presentation was made that the subject premises was purchased in 2003 for \$850,000; however, no documentary proof was submitted in support thereof. The Applicant testified that since the date of purchase, the house has been used as a two family dwelling, with the second floor rented out. The second floor of the garage has also been used as a dwelling and rented to others until last year when the use was discontinued because of Village code enforcement efforts.

The applicant is the mother of two children. Her family/household composition also consists of an uncle, a nurse and a baby sitter who reside in the house. One of the children requires special assistance.

The applicant contends that she requires receipt of the rental income from the residential use of the garage in order to defray the cost of carrying the premises. She testified that the monthly payment on the mortgage was \$7,500 before recent refinancing, which made it \$5,500. No documentation was submitted in support of this, nor in support of any other expenses of the property, nor of the household income.

9. The garage was the subject of grant of dimensional variances by the Zoning Board of Appeals in 1982 (Case No. 743).

10. One resident testified against the application.

#### CONCLUSIONS OF LAW

1. With regard to the applicant's request for variances, 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.

3. This application as presented reflects a complete failure of proof.

4. There was no evidence produced upon which the Board could find that the variances would not be a detriment or not work an undesirable change to the surrounding neighborhood

5. The applicant does not need variances to use the house for two-family occupancy, and such use may lawfully continue. Whatever justification the applicant may have in making the application, it is apparent that they are for personal convenience or for additional income (incidentally no proof of monetary hardship was submitted). Both are insufficient grounds upon which this Board may grant relief.

6. A plethora of variances are sought.

7. There was no evidence produced upon which the Board could find that the ~~the~~ variances would not result in an adverse impact physical or environmental condition in the neighborhood; nor that the variances would 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 not negatively impact the natural environment and/or ecological systems. In fact, the granting of the variances to enable the conversion of a garage as a separate residence would not only negatively impact the otherwise stable residential neighborhood, but would also add to overcrowding, parking and traffic congestion in an area that is already densely impacted.

8. Further, the Zoning Board takes judicial notice that the Village of Port Chester has the second highest building and occupancy density in Westchester County. A grant of variances to allow the legalization of the garage to residential use and the displacement of off-street parking into yards that would otherwise be open space is no mere administrative action. It would be tantamount to the Zoning Board usurping the legislative determination of the Board of Trustees as expressed in the Zoning Regulations.

9. The applicant purchased the property with presumptive knowledge of the regulations contained in the R-2F Zoning District, as well as the Zoning Board's prior determination with respect to the garage which is a matter of public record. The applicant's long-standing unlawful use of the garage (until discontinued by enforcement action of the Village) further supports a finding of claim of self-created hardship.



DETERMINATION

On motion of \_\_\_\_\_ seconded by \_\_\_\_\_  
\_\_\_\_\_, the Zoning Board of Appeals of the Village of Port Chester, New York,  
denies the application of Gloria Gonzalez, Calendar No. 1487, for area variances and  
authorizes the Chairman to sign these Findings on its behalf.

Dated: December , 2010  
Port Chester, New York



William Villanova  
Chairman