

# Memo

**To:** Members Town of Chester Zoning Board  
**From:** Robert J. Dickover  
**Date:** 3/19/2020  
**Re:** Orr Application for Area Variance to allow Garage to be constructed in front yard

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1. The Request for Relief

The applicant seeks to construct a three-car garage in the front yard of his premises and has applied for an area variance to the zoning code section 98-11 which does not allow permitted accessory buildings to be located within the required front yard.

2. The Property.

Address: 265 Pine Hill Road

TM #: Sec. 16 Bl. 1 Lot 64

Zoning District: AR-3

Size: 2.0 Acres

3. The Facts.

By letter dated 2/3/2020 the Town Building Inspector denied an application for a building permit due to the proposed location of the garage violating Town Code Section 98-11.B in that the proposed garage is located in the front yard of the subject premises where the code prohibits same in the front yard. The applicants appeal from that denial and seek an area variance from the front yard prohibition.

The appeal is timely.

4. The Application.

The application appears to be complete.

5. The Law.

Town Zoning Code § 98-11 "Accessory buildings" requires that:

A. A permitted accessory building may be located in any required side or rear yard, provided that:

(1) Such building, except for farm purposes, shall not exceed 24 feet in height.

(2) Such building shall be set back at least five feet from any lot line and at least 10 feet from the principal building.

(3) Such building shall not occupy more than 30% of the required side or rear yard.

(4) Such building shall meet all front yard setback requirements for corner lots.

B. No such building shall project nearer to the front street line than the principal building.

(1) Construction of accessory buildings may be allowed in the front or side yard, but not within the required minimum setback of such front or side yard, on lots containing five acres or more. However, such accessory structure shall not be visible from the road on which the parcel fronts.

C. In all residence districts, a private garage is permitted only on the same lot as a dwelling.

D. No garage in a residential or LB District shall provide storage for more than one motor vehicle for each 25 feet of lot width or major fraction thereof, or more than one vehicle for each 2,500 square feet of lot area or major fraction thereof, nor for more than eight motor vehicles in any case, of which not more than one vehicle may be a commercial vehicle.

E. Accessory buildings.

(1) Accessory buildings shall have no living space unless the accessory building is expressly for the purpose of providing living space, such as a caretaker's or manager's unit, which is provided for elsewhere in these regulations.

(2) Exception: The LB-SL District shall allow accessory buildings to have living space as approved by the Building Department or the Planning Board.

(3) Setbacks in § 98-11A shall apply.

6. Discussion:

The plan submitted shows the garage to be in the front yard of the premises.

7. SEQRA:

This application is subject to compliance with the provisions of SEQRA and the procedures therefore must be followed.

The applicant has submitted a short form EAF.

This project appears to be a Type II action in that it is one seeking an area variance for a one, two, or three family residential building. If the application be, in fact, for a residential structure the typing of the action as a Type II will end the environmental review and nothing further will be required.

8. The Issue: Whether the application meets the criteria for the area variance requested and satisfies the five (5) factors necessary for granting an area variance but no single one is viewed as precluding the granting of the variance.

9. GML 239-m:

This application materials indicate that the application is not subject to NYS GML section 239-m review.

10. Public Hearing:

A Public Hearing on this application is required. The applicant must produce proof of mailing the required public notice to all property owners within 300' of the project property boundaries. Proof of that mailing should be placed in the Zoning Board file on this application.

Publication of the Public Notice is also required. The affidavit of publication of the Public Notice must also be secured and placed in the Zoning Board file on this application.

- I make note that due to the current prohibitions upon public gatherings that special provisions will need to be made for the conduct of a public hearing. Until the situation settles down, I suggest the matter not yet be scheduled for public hearing.

11. The Law – The Five (5) Factors Test.

In order to receive an approval, the zoning board of appeals shall take into consideration the benefit to the applicant if the requested variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider and the applicant must demonstrate that the proposal meets the criteria set forth in the five factor test. In making its determination the Board must determine:

- (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 effect or impact on the physical or environmental conditions in the neighborhood or district; 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.

The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

Respectfully,

Robert J. Dickover, Esq.  
Counsel to the Zoning Board of Appeals

- *Denotes an action item*