

TOWN OF CHESTER: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

-----X  
*In the Matter of the Application of*

ARTHUR ALZAMORA

*For an area variance as follows:*

**DECISION**

- *to allow construction of a ground mounted small scale solar energy system (panel) in the required front yard area.*
- X

**Introduction**

ARTHUR ALZAMORA has filed an application seeking relief from the Town of Chester Zoning Board of Appeals ("ZBA") in the nature of an *Area* variance together with a request for an interpretation as to whether the proposed location is in the required *front* yard.

The application requests that an *Area* variance be granted allowing the construction of a ground mounted small scale solar energy system (panel) in what may be the required front yard area. The zoning code § 98-40.D.1.B does not allow ground-mounted small-scale solar energy system to be located within the required front yard.

Upon presentation of their case to the Board, the applicant has conceded that the proposed location is in the required front yard and that part of the application has been withdrawn.

The property is located at 26 Neal Drive in the AR-3 Zoning District and is identified on the Town of Chester tax maps as Section 17, Block 1, Lot(s) 90. The

property consists of a single parcel which in total amounts to approximately 5 Acres. The parcel is presently improved with a single family residential structure. The applicant seeks to construct a ground-mounted small-scale solar energy system within the required front yard. The Planning Board has previously approved construction in the rear yard and upon request to build in the front yard the Planning Board by its letter dated August 10, 2021 has referred the question to the Zoning Board.

A public hearing was held via videoconference on October 14, 2021, notice of which was duly published and mailed to adjoining property owners as required by Code. That hearing was closed on October 14, 2021.

#### Law

Town Zoning Code § 98-90.D.1.b requires that:

D. Small-scale solar energy systems.

(1) A ground-mounted small-scale solar energy system is a permitted accessory use and structure in all zoning districts, subject to site plan approval by the Planning Board and subject to the following requirements.

(b) A ground-mounted small-scale solar energy system shall not be located in the front yard, unless the applicant applies to, and demonstrates to the satisfaction of, the Planning Board that the front yard is the only area where the solar energy system can reasonably function, and that appropriate screening to mitigate impacts on adjoining properties is implemented.

From the foregoing it is seen that on this approximate 5 acre parcel that a

solar array shall not be permitted in the front yard unless the Planning Board determines that the front yard is the only area where the solar energy system can reasonably function, and that appropriate screening to mitigate impacts on adjoining properties is implemented. On the application to the Planning Board, that Board determined that the array could be placed in the rear yard which determination precludes a finding by that Board that the front yard is the only area where the system can reasonably function. The applicant now seeks an area variance from the proscription against arrays being in the front yard.

### **Background**

After receiving all the materials presented by the applicant and hearing no members of the public at the public hearing held before the Zoning Board of Appeals on October 14, 2021, the Board makes the following findings of fact:

1. The Planning Board referred the question to the Zoning Board by letter dated 08/10/2021.
2. The applicant has sought an interpretation as to whether the proposed location is in the required front yard. That portion of the appeal has been withdrawn upon the applicant's concession that the location is in the required front yard.
3. The application for an area variance has been continued and now heard by the Planning Board.
4. The applicant is the owner of an approximate 5 acre parcel of land consisting of one tax parcel identified as Section 17, Block 1, Lot(s) 90 located at 26 Neal Drive.



5. No adjoining neighbors were heard during the hearing and the Board has not received any adverse written correspondence concerning the matter and no opposition has been received by the Board in connection with this matter.
6. Several members of the Board have visited the site and observed that the proposed solar system will not be visible from any public thoroughfare though it may be visible from the private road upon which the property is located. Further, that the array will be visible to neighbors at the rear of the property if placed in the rear yard.

After hearing the presentation made by the applicant and considering the materials received by the Board, the Board decides as follows:

#### **SEQRA**

This matter constitutes a Type II action under the State Environmental Quality Review Act because it is an application for an area variance for a one or two family residential dwelling.

#### **GML 239 Referral**

This application was not required to be referred to the Orange County Planning Department for review.

#### **Findings**

As to the requested variance to allow the construction of a ground mounted small scale solar energy system (panel) in the required front yard area, the Board finds that because the array will be visible if placed in the rear yard to the neighbors at the rear of the property and will not be visible to people from any public road if placed in the front yard that the geography of the parcel allows for the requested

variance and is appropriate.

In reviewing the facts presented for the requested area variance, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the Board of Appeals, but no single one is viewed as precluding the granting of the variances.

*(1) Undesirable Change—Detriment to Nearby Properties*

No undesirable change in the character of this neighborhood or detriment to the neighbors in that neighborhood will result if the requested variance is granted. The Board observed that the proposed construction of the solar array will be well hidden from sight of neighboring properties in the front yard because of the presence of a forested screen. In addition, if constructed in the rear yard as is permitted, the array would be more visible to neighbors in the rear.

*(2) Need for Variance*

The Board finds that the benefit sought by the applicant can be achieved by another method. The array could be constructed in the rear yard of the property and therefore the need for the variance is only that the applicant does not want to have it visible to them from their home.

*(3) Substantial Nature of Variances Requested*

The Board members opinions varied. Some determined that the variance was not substantial because there would be no adverse impact upon the neighborhood since the array would not be visible from the neighbors. Other members opined that because the array is permitted in the rear yard that moving it to the front yard is a substantial variance.

*(4) Adverse Physical & Environmental Effects*

Because the system array is permitted and can be placed in the rear yard there is no adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The impacts are the same whether in the front or rear yard.

*(5) Self-Created Difficulty*

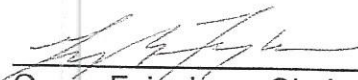
The Board members determined that the need for the variance is self-created.

**Decision**

In employing the balancing tests set forth in Town Law Section 267-b(3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the variance as described herein and in conformity and as shown on the application materials presented.

Information Note: Town of Chester Code Section 98-38.I provides that: "Unless construction is commenced and diligently pursued within six months of the date of the granting of a variance, such variance shall become null and void."

Dated: November 11, 2021

  
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Gregg Feigelson, *Chairman*  
Town of Chester ZBA

*By roll call a motion to adopt the decision was voted as follows:*

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Gregg Feigelson – Chairman	x			
Julie Bell				x
Dan Doellinger	x			
Walter Popailo	x			



Tom Atkin	X			
Giuseppe Cassara, Alternate	X			

STATE OF NEW YORK )  
COUNTY OF ORANGE ) ss:

I, Melissa Foote, Secretary to the Zoning Board of Appeals of the Town of Chester, do hereby certify that the foregoing is a true and exact copy of a Decision maintained in the office of the Town of Chester Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on November 11, 2021.

Melissa Foote  
Melissa Foote, Secretary  
Town of Chester Zoning Board of Appeals

Heidi Schmid Deputy  
I, Linda Zappala, Clerk of the Town of Chester, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on November 17, 2021.

Heidi Schmid  
Linda Zappala, Clerk Deputy Town Clerk  
TOWN OF CHESTER

HEIDI SCHMID  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 013C6285472  
Qualified in Orange County  
My Commission Expires July 08, 20 25