

TOWN OF CHESTER: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

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In the Matter of the Application of

DANIEL DOELLINGER AND JULIA
DOELLINGER

DECISION

For an area variance as follows:

- *An area variance allowing a side yard setback of 8 feet for a pool where 15 feet is required.*

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Introduction

Daniel Doellinger and Julia Doellinger have filed an application seeking relief from the Town of Chester Zoning Board of Appeals (“ZBA”) in the nature of an *Area* variance.

The application requests that an *Area* variance be granted allowing a side yard setback of 8 feet where 15 feet is required to permit the installation of an in-ground swimming pool in approximately the same area as an existing above-ground pool.

The property is located at 20 Twin Brooks Drive in the AR-3 Zoning District and is identified on the Town of Town of Chester tax maps as Section 24, Block 2, Lot 11.2. The property consists of a single parcel which in total amounts to approximately 1.18 +/- acres. The parcel is presently improved with a single family residential structure and an above-ground swimming pool. The applicant seeks to remove the above-ground pool and install an in-ground pool in the same general location.

A public hearing was held on January 14, 2021 notice of which was duly published

and mailed to adjoining property owners as required by Code. That hearing was closed on January 14, 2021.

Law

The Bulk Table for the AR-3 zoning district requires a minimum of fifteen feet (15') for the side yard setback for a swimming pool.

Background

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

1. The Building Inspector denied a building permit application by letters dated 11/24/2020.
2. The applicant has appealed the Building Inspector's determination seeking the variance above-noted.
3. The applicant is the owner of an approximate 1.18 acre of land consisting of one tax parcels identified as tax parcel Section 24, Block 2, Lot 11.2 located at 20 Twin Brooks Drive.
4. No adjoining neighbors were heard during the hearing.
5. No opposition has been received by the Board in connection with this matter.

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

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 because the construction will be an improvement to the property and it is amply separated from the view of neighbors and the street.

(2) Need for Variance

The applicant is in need of the variance because there would not exist sufficient distance between the house and the pool for a patio if the side yard is held at 15 feet.

(3) Substantial Nature of Variances Requested

The Board members opinions varied on whether the variance requested is substantial, however, because the focus of the inquiry by the Zoning Board of Appeals is

upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the nature of the variance is in keeping with other homes in the neighborhood and there will be no material degradation of the overall neighborhood resulting from this grant of a variance. Some members opined that the variance, though substantial, is inconsequential.

(4) Adverse Physical & Environmental Effects

The variance will not adversely impact the physical or environmental conditions in this neighborhood because a pool already exists in the same area and constructing the new pool closer to the side yard boundary will not adversely affect the neighbors.

(5) Self-Created Difficulty

Board members opinions were that it is self-created, however, the board believes, under the circumstances presented, that if there be any self-created hardship that the nature of the need for the variance requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of the variance.

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 variances as described herein.

Information Note: Town of Town of Chester Code Section 98-38.1 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: February 11, 2021

GREGG FEIGELSON, *Chair*
Town of Chester, Zoning Board of Appeals

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

AYES: Gregg Feigelson – Chairman
Julie Bell
Walter Popailo
Tom Atkin, Alternate Member
Bob Favara

NAYS: None
Gregg Feigelson – Chairman
Julie Bell
Walter Popailo
Tom Atkin, Alternate Member
Bob Favara

ABSENT: None
Gregg Feigelson – Chairman
Julie Bell
Walter Popailo
Tom Atkin, Alternate Member
Bob Favara

ABSTAINED: Dan Doellinger

COUNTY OF ORANGE)

I, JULIE TILLER, 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 February 11, 2021.

JULIE TILLER, SECRETARY
TOWN OF CHESTER, ZONING BOARD OF APPEALS

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 _____.

LINDA ZAPPALA, CLERK
TOWN OF CHESTER