

# Memo

**To:** Members Town of Chester Zoning Board  
**From:** Robert J. Dickover  
**Date:** 8/4/2020  
**Re:** Flower & Sandstrom Application for Side Yard Area Variance for Deck

---

1. The Request for Relief.

Michael Flower and Laurene Sandstrom have applied for an area variance to the zoning code section 98-9(C) which permits

Yard requirements. The following accessory structures may be located in any required yard:

- (1) Chimneys or pilasters.
- (2) Open arbor or trellis.
- (3) Unroofed steps, patio or terrace no closer than 15 feet to the street line or 10 feet to any side or rear lot line, provided that the building complies with the yard requirements of this chapter. No side or rear yard restrictions are provided for townhouse or attached dwellings.
- (4) Awning or movable canopy not to exceed 10 feet in height above the ground level over which it is located.
- (5) Retaining wall, fence or masonry wall.
- (6) Overhanging roof not in excess of 10% of the required yard setback.

The proposal is for a deck to be placed in the side yard. I do not see a deck as one of the included accessory structures which may be located in a required side yard. Rather, the provisions of 98-9(A) require for this lot that the side yard be a minimum of 30 feet. The existing side yard is shown on the survey provided to be 39.5 feet.

The proposed deck would encroach into the side yard by 30' 3". The variance therefore being sought should be from 98-9(A) and seeking a side yard of 9' 3" where the code requires a minimum side yard of 30 feet.

2. The Property.

Address: 73 Dug Road

TM #: Sec. 24 Bl. 2 Lot 10

Zoning District: AR-3

Size: 1.7 Acres

3. The Facts.

By letter dated July 29, 2020 the Town Building Inspector denied an application for a building permit due to the proposed deck not meeting the required side yard setback. The applicants appeal from that denial and seek an area variance from the side yard setback.

The appeal is timely.

4. The Application.

The application requires a short form EAF to be submitted otherwise it appears to be complete.

➤ Submit Short Form EAF

If my observations of the code and the application are correct, the application should be amended to reflect the appropriate variance being sought, i.e. a variance to Sec. 98-9(A). Upon presentation by the applicant the application may be so deemed amended.

5. The Law.

Town Zoning Code § 98-9 "Exceptions to District Regulations" section C requires that:

Yard requirements. The following accessory structures may be located in any required yard:

(1) Chimneys or pilasters.

(2) Open arbor or trellis.

(3) Unroofed steps, patio or terrace no closer than 15 feet to the street line or 10 feet to any side or rear lot line, provided that the building complies with the yard requirements of this chapter. No side or rear yard restrictions are provided for townhouse or attached dwellings.

(4) Awning or movable canopy not to exceed 10 feet in height above the ground level over which it is located.

(5) Retaining wall, fence or masonry wall.

(6) Overhanging roof not in excess of 10% of the required yard setback

6. Discussion:

The discrepancy in the application and the existing code requirement should be clarified by the applicant.

➤ Clarify the dimension of the variance being sought. It is noted that the setback is hand-drawn on the plat submitted and does not appear to be the original work of the surveyor. The Board and applicant are reminded of the provisions of NYS Education Law Article 145 which makes the alteration of a survey a crime under the laws of the State of New York. If this plat is to be filed in the Office of the Building Inspector the alteration, if it be such, must be made by a licensed land surveyor or engineer, or made at one's such direction and annotated as such.

7. SEQRA.

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

> The applicant must submit 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:

A determination must be whether this application is subject to NYS GML section 239-m review. If so, the application and all supporting materials must be sent to the Orange County Planning Department. That department will have 30 days after referral to make its report. No decision on the application should be made until the passage of that 30-day period if the referral is mandated.

- Determine if a 239 referral is required and, if so, make the referral.

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.

The public hearing should not be concluded until the OC Planning Department has had 30 days to respond to the Sec. 239-m referral, if applicable.

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

In order to receive an approval for each of the two sheds seeking side yard area variances, 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