

Memo

To: Members Town of Chester Zoning Board

From: Robert J. Dickover

Date: 7/31/2020

Re: Jason Maass and Kelli Maass (the "Applicant") Application for Area Variance to allow a Garage to be constructed that will result in the maximum building coverage allowance of 15% to be exceeded

1. The Request for Relief

The applicant seeks to construct a two-car garage on their premises and have applied for an area variance to the zoning code section 98-7 which limits the lot building coverage to a maximum of 15% of the total lot area.

2. The Property.

Address: 8 Park Drive

TM #: Sec. 19 Bl. 1 Lot 17

Zoning District: SR-2

Size: 0.37 Acres or approx. 16,150 sf.

3. The Facts.

By letter dated 07/27/20 the Town Building Inspector denied an application for a building permit due to the maximum lot coverage being exceeded. The applicants appeal from that denial and seek an area variance from the lot coverage requirement.

The appeal is timely.

4. The Application.

The application is not completed.

➤ A Short form EAF should be provided.

5. The Law.

Town Zoning Code § 98-7 "Schedules of District Regulations" requires that:

§ 98-7 Schedules of District Regulations.

The Schedules of District Regulations which accompany this chapter are hereby made a part of this chapter.

The bulk area table for the SR-2 zoning district is attached. It has different bulk area requirements depending on the size of the lot. The subject lot appears to be sub-standard with respect to the minimum lot size(s) required (21,780 sf.) and the subject lot does not meet the minimum width required.

The survey that has been provided is not readable enough to identify the exact lot size or existing yard dimensions. Other non-conformities may exist in addition to the ones noted herein.

- A legible survey should be provided and examined to identify other possible non-conformities with the required zoning bulk area requirements.

The denial letter from the Building Inspector used the lot coverage requirement applicable to lots one acre in size. Lesser size lots appear to be permitted in the zoning district and have different lot coverage requirements.

- This issue requires consideration by the Zoning Board.

6. Discussion:

The plan submitted shows the architectural style of the proposed garage.

7. SEQRA:

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

The applicant has not submitted a short form EAF.

- A Short form EAF should be provided.

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.

- Upon receipt of a SFEAF, the Board can declare itself Lead agency and type the project accordingly.

8. GML 239-m:

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

- A review of the property location is required in order to ascertain whether a 239 referral is or is not required. This is required prior to scheduling a public hearing on the matter.

9. 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 if going to be held via video conference/remotely.

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.

10. 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

➤ *Identifies an action item*

ZONING

Town of Chester

SR-2 District

Schedule of Use and Area Requirements

[Amended 6-7-2005 by L.L. No. 2-2005; 3-6-2007 by L.L. No. 4-2007; 9-9-2008 by L.L. No. 4-2008; 2-23-2011 by L.L. No. 2-2011; 9-27-2017 by L.L. No. 1-2017]

Permitted Uses	Uses Requiring Site Plan Approval	Accessory Uses	Minimum Lot		Minimum Required Yards (feet)				Maximum Building Height (feet)	Maximum Percentage of Building Coverage
			Area (acres)	Width (feet)	Front	One Side	Total Side	Rear		
1. Single-family dwellings, not to exceed one dwelling unit per lot with neither central water nor central sewer service.	1. Conversion of a single-family home to a two-family dwelling per § 98-29. ¹ 2. Bed-and-breakfast per § 98-29. 3. Clustered development with approval per § 98-25 and with lot areas as set forth in this table. ² Site plan approval shall be required by the Planning Board only for multipurpose or community buildings, recreation or other facilities or areas as determined by the Planning Board.	1. Customary accessory buildings, including swimming and wading pools not operated for gain, private garage, storage building or carport. 2. Customary home occupations, including (a) family day-care home; (b) group family day-care home, per § 98-29H(2)(a) only for a permitted single-family dwelling.	1	150	60	30	60	60	35	15%
2. Single-family dwellings, not to exceed one dwelling unit per lot with either central water or central sewer.			32,670 square feet	100	35	20	40	40	35	20%
3. Single-family dwellings, not to exceed one dwelling unit per lot with both central water and central sewer.			21,780 square feet	100	35	15	30	40	35	25%
	4. Two-family dwellings not to exceed a total of two dwelling units per lot. ³		(1)	125	35	20	40	40	35	20%
	5. Planned adult communities as per § 98-29.		25	300	As required in § 98-29.					
	6. Senior housing as per § 98-29.	3. Keeping of not more than a total of five dogs or cats over six months of age or two other domestic animals.	5	200	50	30	60	50	40	30%
	7. Senior assisted-care facility as per § 98-29.									
	8. Annual membership clubs providing indoor and outdoor recreational facilities per § 98-29.									
	9. Bed-and-breakfast inns per § 98-29.									
4. Municipal buildings and uses, including fire stations, offices, libraries, parks, museums and public schools, etc.	10. Religious institution as per § 98-29F. 11. Cemeteries. ⁴	4. Accessory uses limited to parish houses, day-care centers, nursery schools, meeting halls and required parking and loading areas pursuant to § 98-22 and signs pursuant to § 98-21. 5. Customary accessory uses parking and loading areas pursuant to § 98-22 and signs pursuant to § 98-21.	3	200	50	50	100	50	40	30%
	12. Schools as per § 98-29O.		See § 98-29.							
	13. Public utility structures and rights-of-way per § 98-29.		As required by the appropriate regulatory agency.							
	14. Excavations and removal of soil, subject to §§ 98-12 and 98-13. DEC mining permit may be required.		20	500	150	150	300	150	15	—
	15. Day-care centers and nursery schools per § 98-29.		2	150	60	30	60	60	35	20%
	16. Market-rate senior housing.		See § 98-29W.							
	17. Small-scale solar energy system per § 98-40D and subject to architectural review pursuant to § 98-28.									

NOTES:

¹ Lot area requirements are 175% of the requirement for a single-family dwelling unit with similar utility services.

² Individual clustered lot sizes shall be determined by the Planning Board at the time of approval. Lot sizes for lots with both central water and sewer service, clustered, is 14,520 square feet. However, no more than two dwelling units shall be allowed per acre of land in the SR-2 Districts involved in the project.

³ No more than 20% of the dwelling units in a subdivision shall be in two-family units.

⁴ See regulations for existing historic cemeteries.

