

# Memo

**To: Members Town of Chester Zoning Board**

**From: Robert J. Dickover**

**Date: 6/24/2020**

**Re: Marrone Application for Rear Yard Area Variance to allow pool to be placed 9.5 feet from rear yard boundary**

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1. The Request for Relief.

Ryan Marrone has applied for an area variance to the zoning code section 98-16.C which requires that a pool shall be located at least 15 feet from any rear or side line of a premises and shall be at least 25 feet away from any septic tank and its fields.

The applicant claims that he has a pool placed 9.5 feet away from the rear boundary. A survey with handwritten notations thereon has been presented from which the side yard setback is undetermined.

The Building Inspector denial letter states that a side yard setback is violated. A variance with respect to that requirement may also be necessary.

2. The Property.

Address: 6 Derosé Lane

TM #: Sec. 34 Bl. 1 Lot 2

Zoning District: SR-2

Size: 28,620 square feet

3. The Facts.

By letter dated 6/17/2020 the Town Building Inspector denied an application for a building permit due to the pool violating Town Code Section 98-16.C in that the pool does not meet the setback requirements to side and rear property lines. The applicants appeal from that denial and seek an area variance from the rear yard setback.

The appeal is timely.

4. The Application.

The application is subject to SEQRA requirements and a short form EAF should be submitted. Otherwise, the application appears to be complete.

- Submit Short Form EAF

5. The Law.

Town Zoning Code § 98-16.C "Swimming pools" states that:

No commercial or private swimming pool shall be constructed, installed or maintained on any premises unless it complies with the following provisions:

C. The pool shall be located at least 15 feet from any rear or side line of a premises and shall be at least 25 feet away from any septic tank and its fields.

6. Discussion:

The plan submitted is difficult to discern what the current side and rear setbacks are. Clarification should be provided by the applicant.

The written application states that they seek a 6 ft rear yard setback. If the actual location is 9.5 feet as stated, the variance is for 5.5 feet. The discrepancy should be clarified by the applicant and the application amended.

- 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 should submit a short form EAF.

This project appears to be a Type II action in that it is one seeking . . . construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density [6 CRR-NY 617.5(12)]

If the application be, in fact, for a minor accessory/appurtenant 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:

From the application materials submitted I cannot determine whether the application is subject to NYS GML section 239-m review.

- Determine if the application is subject to 239 review.

If it is, 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.

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 the rear yard area variance, 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.

On this application if the Board is inclined to grant the requested relief, the Board might consider a condition that the variance will expire and is granted for the limited time during which the pool exists in its present location and that no relocation, reconstruction, replacement, or re-building shall have the benefit of the variance hereby granted.

Respectfully,

Robert J. Dickover, Esq.

## Counsel to the Zoning Board of Appeals

- Denotes an action item