

TOWN OF CHESTER: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

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In the Matter of the Application of

Yogesh and Aradhna Pal

DECISION

For an area variance as follows:

- *An area variance to the zoning code § 98-8 and § 98-9 to expand the size of the existing residential structure by connecting it to the existing barn and converting said barn into living space which will result in the residential structure being 25.3 feet from the side yard boundary where the Code requires a minimum 30 foot side yard.*

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Introduction

Yogesh and Aradhna Pal have filed an application seeking relief from the Town of Chester Zoning Board of Appeals ("ZBA") in the nature of a side yard *Area* variance.

The application requests that an *Area* variance(s) be granted allowing the conversion of the existing garage into living space and connecting same to the existing house. The zoning code sections § 98-8 and § 98-9 require the residence to have a minimum 30 foot side yard. The resulting structure will have a 25.3 foot side yard.

The property is located at 15 Davis Hill in the AR-3 Zoning District and is identified on the Town of Chester tax maps as Section 7, Block 1, Lot(s) 51. The property consists of a single parcel which in total amounts to approximately 2.13 +/- Acres. The parcel is presently improved with a single family residential structure and an existing detached garage/barn. The applicant seeks to connect the two structures with an approximate 67 foot long enclosed "link" being approximately 5 - 6 feet wide.

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.

This property was previously before the Board seeking a use variance to allow conversion of the existing barn into a second dwelling unit where the zoning code allows only one dwelling per lot. That application also sought area variances for front yard setbacks. That application was denied by the Board.

Law

Town Zoning Code § 98-7 Schedules of District Regulations provides:

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

98 Attachment 2 – AR-3 Bulk Table provides that a single family dwelling not to exceed one dwelling unit per lot is a permitted use. Also permitted as an accessory use is a garage and storage building.

The minimum required front yard is 100 feet and the minimum required side yard is 40 feet. Because the buildings are pre-existing they may remain as legal non-complying pre-existing structures.

§ 98-8 Nonconforming buildings, structures and uses provides:

The following provisions shall apply to all buildings, structures and uses existing on the effective date of this chapter, which buildings and uses do not conform to the requirements set forth in this chapter, and to all buildings, structures and uses that become nonconforming by reason of any subsequent amendment to this chapter and the Zoning Map which is a part thereof, and to all conforming buildings housing nonconforming

uses:

B. Buildings and structures nonconforming as to bulk requirements and use.

(3) Normal maintenance and repair, alteration, reconstruction or enlargement of a building which does not house a nonconforming use but is nonconforming as to district regulations for lot area, lot width, front, side or rear yards, maximum height and lot coverage or other such regulation is permitted if the same does not increase the degree of or create any new nonconformity with such regulation in such building.

§ 98-9 Exceptions to district regulations provides:

A. Existing undersized residential lots of record. Nothing shall prohibit the use of an existing undersized residential lot of record containing less than the prescribed area, width or yard requirements, as specified below, when such lot is owned individually and separate from any adjoining tract at the time of enactment of this subsection, provided that all other provisions of this chapter are met. Yard setback requirements for the following categories of lots must be the minimums specified below:

[Amended 9-9-2008 by L.L. No. 4-2008]

Minimum Yard Setbacks

Lot Area(square feet)	Front	Side-One	Side-Both	Rear
80,000 and over	50	30	80	60

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

January 14, 2021, the Board makes the following findings of fact:

1. The Building Inspector denied a building permit application by letters dated 10/26/2020.
2. The applicant has appealed the Building Inspector's determination seeking the variance above-noted.
3. The applicant is the owner of an approximate 2.13 acre of land consisting of one tax parcels identified as tax parcel Section 7, Block 1, Lot(s) 51 located at 15 Davis Hill.
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 referred to the Orange County Planning Department for review. That Department has not reported and the time to do so has timed out.

Findings

As to the requested variance to allow a side yard from the barn as converted into living space and becoming a part of the main residence, the Board finds that granting the

requested variance 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 garage/barn structure currently exists and though the proposal is to convert it into living space, doing so will have no undesirable change or be a detriment to nearby properties because once constructed the visual impact on neighboring properties and from the road will be negligible.

(2) Need for Variance

The applicant is in need of the variance because they need to take care of their aging parents in-place and this construction is the most feasible manner for them to do so. Moving the barn is not feasible and the proposal is the easiest way to accomplish their goal.

(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.

The Board finds that the variance requested – a 4.7 foot side yard variance - is both small mathematically and in practice – notably, the full variance only applies to the closest point of the barn/garage to the side yard line with the distance resolving to the required setback a short distance away.

(4) Adverse Physical & Environmental Effects

The variance will not adversely impact the physical or environmental conditions in this neighborhood for same reasons as above.

(5) Self-Created Difficulty

Board members opinions differed on whether the need for the variances 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 variances.

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.

Information Note: Town of 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: February 11, 2021

Gregg Feigelson, *Chairman*
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
Dan Doellinger
Walter Popailo
Bob Favara

NAYS: None
Gregg Feigelson – Chairman
Julie Bell
Dan Doellinger
Walter Popailo
Bob Favara

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

COUNTY OF ORANGE) ss:
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JULIE TILLER, SECRETARY
TOWN OF CHESTER, ZONING BOARD OF APPEALS

LINDA ZAPPALA, CLERK
TOWN OF CHESTER