

# Memo

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

**From: Robert J. Dickover**

**Date: 8/19/2020**

**Re: Sapanaro Application for Area Variance to allow a lot area of 22,557 square feet**

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1. The Request for Relief

The applicant seeks to construct a two-family residential dwelling on a vacant 22,557 sf lot. The code allows two-family residences provided the lot area is 175% greater than the required minimum lot size which is 21,780 sf. The required lot size for the proposed two-family dwelling is therefore 38,115 sf. Based upon the foregoing a 15,558 sf variance is requested.

2. The Property.

Address: 1351 Kings Highway

TM #: Sec. 13 Bl. 3 Lot 3.1

Zoning District: LB/SL

Size: 22,557 S.F.

3. The Facts.

By letter dated 08/12/2020 the Town of Chester Planning Board Chairman referred the matter to the Zoning Board of Appeals. The letter refers the matter of an "interpretation."

The application received seeks an area variance for lot size.

➤ Clarification on the application should be provided by the applicant.

The appeal is timely, and the Zoning Board has jurisdiction over the matter.

4. The Application.

The application might not be complete due to the SEQRA issue addressed further herein.

Also, clarification on the relief requested is needed before the application can be deemed complete.

5. GML 239-m:

This application is subject to the referral requirements of General Municipal Law (GML) Section 239-m. Once the application is complete, including clarification on the relief being requested, the full application should be referred to the county Planning Department.

6. SEQRA:

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

The applicant has submitted a short form EAF.

The SFEAF indicates an affirmative answer in response to question 12. a. "Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?"  
Eligible property: Greek Revival (1824, former residence)

This affirmative response, by definition classifies the project as a Type I action. If so, a long form EAF (LFEAF) is required.

- Clarification on this response should be provided to determine appropriate typing of the action. If it be a Type I, a LFEAF is required in order for the application to be complete.

If the property is not a Type I as mentioned above, it is then 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.

7. The Law.

Town Zoning Code § 98- Attachments - "Schedule of Use and Area Requirements" requires that a two family dwelling must have lot area equal to 175% of a single family dwelling with either central water or sewer (21,780 square feet).

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. 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.

- This matter might not yet be ready for scheduling of a Public Hearing.

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

➤ *Denotes an action item*