

# Memo

**To:** Chester Zoning Board of Appeals

**From:** Robert J. Dickover

**Date:** 11/17/2022

**Re:** Summerville Way Subdivision / Rachel Mandel / Interpretation-Variance / Sec. 6, Block 1, Lot(s) 36.11, 36.12 and 37.1

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This memorandum will address the application for an Interpretation or, in the alternative, variance dated on or about October 24, 2022.

1. The Application.

Prior to the instant application the Village Planning Board by letter dated October 12, 2022 advised the Town of Chester Zoning Board of Appeals (“ZBA”) that the applicant (Mandel) had appeared before the Planning Board seeking a three-lot subdivision whereby two of the proposed lots “have no direct access to a state, county or local road” and appear to require “access through an easement”.

The letter further provides that “accordingly, pursuant to NYS Town Code Section 280-a, the applicant has been referred to your Board for an interpretation and/or a variance as to whether:

1. The applicant needs a standard 280-a variance to be issued by the ZBA
2. The applicant needs a 280-a section F variance for access to a state, county, local road by easement which requires a Town Board Action to declare an open data area on the above properties.

The letter then ends by stating that “this matter is thus referred to your board for consideration of a variance from this requirement . . . “

Following the letter from the Planning Board, the Applicant has now filed an appeal with the ZBA. The appeal is not dated but from the supporting documents appears to have been made on or about October 24, 2022 and is therefore presumed to be timely filed.

The Appeal states it seeks an area variance “if necessary” and an Interpretation. In

support of the application the Applicant submits as her factual terms the exact manner in which she seeks from the ZBA: “Interpretation of Planning Board Determination that all lots meet frontage and lot width requirements of the Town of Chester Code regardless of where lot access is provided-See attached letter”

There is no “attached letter” to the application but, again presumably, the attached letter refers to the Letter from the Planning Board to the ZBA.

The Application goes on to summarize the practical difficulty because of the existing zoning regulations as follows: “Failure to grant relief would limit development of two lots that conform with all aspects of zoning”; and

Describes the circumstances supporting the application as: “NYSDOT has granted concept approval for the new driveway location as it is the only safe access (see attached)”

I cannot fully comprehend what is being sought in the way of this appeal and will not speculate as to what relief the applicant is applying for.

As noted above, the Planning Board letter says that “accordingly, pursuant to NYS Town Code Section 280-a, the applicant has been referred to your Board for an interpretation and/or a variance as to whether:

1. The applicant needs a standard 280-a variance to be issued by the ZBA
2. The applicant needs a 280-a section F variance for access to a state, county, local road by easement which requires a Town Board Action to declare an open data area on the above properties.

The letter ends with “this matter is thus referred to your board for consideration of a variance from this requirement . . . “

The application materials state that it seeks an area variance “if necessary” and an Interpretation” and then proceeds to say that it seeks an “Interpretation of Planning Board Determination that all lots meet frontage and lot width requirements of the Town of Chester Code regardless of where lot access is provided-See attached letter”

Within the application I see no reference to a Planning Board determination with respect to frontage or lot width in the absence of which I see no Code provision requiring any “interpretation.”

Gleaning from the foregoing however, I can surmise that the application is for a review of a determination made by the Planning Board that without access to a state, county or town road that the subdivision cannot be approved unless either: a) a variance is granted under Town Law Sec. 280-a, or b) unless the Town creates an open area development for the property.

- Upon an introduction to the ZBA of the appeal by the Applicant they must clarify the appeal.

2. The Applicable Law.

NYS Town Law § 7267-b provides for the permitted actions of a board of appeals. At subparagraph 1 therein the provision provides that as to

Orders, requirements, decisions, interpretations, determinations - The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

I do not find in the application materials any determination by the “administrative official” i.e. the Town Building Inspector, from which the appeal is taken. Rather, I do see the “referral” letter from the Town Planning Board.

At Town of Chester Code section §98-37 provision is made for the powers and duties of the ZBA and provides that:

§ 98-37 Powers and duties.

The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of the Board that is conferred by law:

A. Interpretation. On appeal from an order, requirement, decision or determination made by an administrative official or on request by any official, board or agency of the Town, to decide any of the following questions:

- (1) Determination of the meaning of any portion of the text of this chapter or of any condition or requirement specified or made under the provisions of this chapter.
- (2) Determination of the exact location of any district boundary shown on the Zoning Map.

## B. Variances.

(1) To authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, there are unnecessary hardships in the way of carrying out the strict letter of this chapter, subject to terms and conditions to be fixed by the Board of Appeals; provided, however, that no such variance shall be granted unless said Board finds: . . .

The only determination that can be gleaned from the application materials is that stated in the Planning Board letter that

1. The applicant needs a standard 280-a variance to be issued by the ZBA
2. The applicant needs a 280-a section F variance for access to a state, county, local road by easement which requires a Town Board Action to declare an open data area on the above properties.

I do not see anything within the foregoing that requires an *interpretation*.

- I again reiterate that upon introduction of the appeal by the Applicant they must clarify the appeal. Until that is done I will reserve for that time further comments upon the nature of this Appeal.

### 3. The Property.

Address: The property is described as being at 3966 Summerville Way, Chester, NY

Tax ID #: The property is shown on the tax maps as Sec. 6, Block 1, Lot(s) 36.11, 36.12 and 37.1.

Zoning District: The property is located in the SR-6 zoning district.

Parcel Size: 4.06 +/- acres.

### 4. 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 Zoning Board must make a preliminary classification of the project. Requests for Interpretation to the ZBA are Type II actions which upon classification

by the ZBA will be subject to no further environmental review. Refer to: 6 CRR-NY 617.5 Type II actions.

(a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) of this section apply to all agencies.

(c) The following actions are not subject to review under this Part:

(31) Interpreting an existing code, rule or regulation;

Similarly, the request for area variances are also Type II actions.

(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;

(11) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph (13) of this subdivision and the installation, maintenance or upgrade of a drinking water well or a septic system or both, and conveyances of land in connection therewith;

(16) granting of individual setback and lot line variances and adjustments;

(17) granting of an area variance for a single-family, two-family or three-family residence;

➤ Until the application is clarified, I will reserve for that time further comment upon whether the action is for an area variance and thereby perhaps a Type II or Unlisted.

5. GML 239-m:

The application is subject to and must be referred to the Orange County Planning Department. No public hearing should be concluded until the OC Planning Department has had 30 days to respond to the Sec. 239-m referral.

The file should not be referred until the application is clarified.

6. Public Hearing:

A Public Hearing on this application is required. Until the application is clarified the hearing should not be scheduled.

Once scheduled 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.

Respectfully,

Robert J. Dickover, Esq.  
Counsel to the Zoning Board