

Memo

To: Members Town of Chester Zoning Board
From: Robert J. Dickover
Date: 9/1/2022
Re: Young Area Variance to allow a 6' 9.5" foot high Fence

1. The Request for Relief

The applicant seeks to construct an 81.5" high fence rear yard of his premises and has applied for an area variance to the zoning code section 98-14(B) which does not permit fences over 6 feet in height to be located in a rear yard.

2. The Property.

Address: 270 Bull Mine Road
TM #: Sec. 5 Bl. 1 Lot 30.11
Zoning District: RS-210
Size: 41,772 +/- SF

The Facts.

By letter dated 6/17/2022 the Town Building Inspector issued an Order to Remedy (OTR) to Edward & Cheryl D Cruz-Young citing them for having a pool fence beyond the maximum height allowed by Town Code 98-14B). The applicant now seeks an area variance to allow a fence to be 81.5 inches high where the Code allows a maximum height of 6 feet.

3. The Application.

The application appears to be complete.

4. The Law.

Town Zoning Code § 98-14(B) "Fences" provides that:

§ 98-14 Fences and walls.

B. Fences and walls not exceeding six feet in height shall be permitted in any yard or along the edge of any yard, provided that no fence or wall along the sides or front edge of any front yard shall be over four feet in height for open fences or over three feet in height for solid fences. This section shall not

apply to fences or walls approved for buffering or screening by the Planning Board during the site plan approval process.

5. Discussion:

The plan submitted (photos) shows the fence to surround a pool that appears to be in the back yard of the premises. The submitted survey does not show the pool or the fence.

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.

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.

7. GML 239-m:

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

8. 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.

9. 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 a granted variance. 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 variance(s), 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*