

**MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS, MEETING HELD ON MONDAY, MARCH 6, 2017 AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410.**

Present

Ken Wilson, Chairman; Marion Nero, Secretary; Breina Schain, John Pepper, Agnes White.

Alternates: Jackie Cianci, Gerald Devine.

Absent: Agnes White and Richard Formica (alternate)

Staff: David Kehoss, Zoning Enforcement Officer

**I. CALL TO ORDER.**

Chairman Wilson called the meeting to order at 7:31 p.m. and read the fire safety announcement for the record.

**II. ROLL CALL**

The clerk called the roll.

Ms. Cianci is the alternate for the meeting.

**III. DETERMINATION OF QUORUM**

Following roll call a quorum was determined to be present.

**IV. PLEDGE OF ALLEGIANCE**

The group Pledged Allegiance to the Flag.

**V. ACCEPTANCE OF MINUTES - Public Hearing December 5, 2016 and Regular Meeting, December 5, 2016.**

MOTION by Ms. Nero; seconded by Mr. Pepper.

MOVED to accept the minutes of the Public Hearing of December 5, 2016 and Regular Meeting of December 5, 2016 subject to corrections, additions, deletions.

VOTE The motion passed unanimously by those present.

**VI. COMMUNICATIONS**

**1. Connecticut Federation of Planning and Zoning Agencies  
69th Annual Conference, Thursday, March 23, 2017.**

If any Board members plan on attending this conference, please advise Ms. Patrignelli in the Planning Department.

**VII. PUBLIC HEARING**

Secretary Nero read the call of public hearing into the record of the meeting.

Chairman Wilson explained the procedures for a public hearing of the ZBA. He commented on the law requiring consideration of the facts of a case, and the hardship related to the application. Mr. Wilson read the definition of "hardship" into the record.

The application of Michael J. Cropp, 20 Baxter Court, Cheshire CT 06410, requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 20 foot rear line variance of the required 40 foot rear line setback in an R-40 zone. The resulting rear line setback requested is 20 feet for a pool. The property is located at 20 Baxter Court, Cheshire CT 06410, as generally shown on Assessor's Map No 58, Lot No. 71, in an R-40 zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

- 1. Michael J. Cropp                      2017-03-01                      PH 3/6/17**  
**20 Baxter Court    MAD 5/10/17**  
**Requesting a variance of Section 32**  
**Schedule B, Dimensional Requirements**  
**Requesting a 20-foot rear line variance**  
**Of the required 40 foot rear line setback**  
**For an in-ground pool**  
**The resulting rear line setback requested is 20 feet.**

The Board members reviewed the application and accompanying documents and drawings. An as-built survey was submitted with the application. Letters of notification about the public hearing on the Cropp application were sent to abutting neighbors, and a copy of the letter was submitted for the file. There has been no response from neighbors.

Michael Cropp, 20 Baxter Court, Cheshire CT, presented his application. He stated the reason for the hardship on his property is due to the uniqueness of the property with the house built very far back from the road. It has a drainage/utility easement when facing the left side of the property for the propane tank and septic system. The proposed location for the pool is the only location on the property where a pool can be built. The property also has a unique hardship because there is a deed restriction on an above ground pool, and only an in-ground pool can be built. The initial scope of the pool was 18'x36', and this has been reduced to dimensions of 16'x32' to help reduce the variance request for the rear setback. Mr. Cropp reiterated there are no other options for location of the pool on the property. The pool will be curved (kidney shape) to take advantage of the side, taking as little space in the back as possible.

Mr. Cropp informed the Board that he has spoken with all neighbors on the street, and everyone was in favor of the pool on his property. He did not speak to the rear neighbors; they are separated by a fence; and share a common driveway. He did not get to speak to neighbors on the right side on un-built land that is owned by a developer.

It was stated by Mr. Wilson that the hardship is the yard by the driveway side of the house is not an acceptable position for a pool due to the underground propane tank and the 30 foot easement for storm water runoff. The next logical location was the opposite corner of the lot.

Mr. Cropp said it was the next logical position without having to take advantage of the rear setback. If he put the pool right behind the house he would need additional feet from the rear. He wants a kidney shaped pool in the corner to take up the least space possible for the setback.

The reason for a pool was questioned by Mr. Wilson.

In response, Mr. Cropp said this is his family's dream house. He was naïve about the regulations, setbacks, etc. and when the house was purchased they wanted a pool. In hindsight he should have checked further into the regulations and it would have been part of the decision process. He would do an above ground pool but it is not permitted in the deed restrictions.

Ms. Schain visited the property, noted the lot to the right, and asked if it has been sold yet.

Mr. Cropp said it has not yet been sold. He noted there is an 8 foot fence in place already which extends the entire back yard.

If a variance is granted and the applicant builds a pool, Mr. Wilson said the future owner of the neighboring property to the right will have to gauge their decision based on current conditions. It is possible there could be a negative effect on someone.

Ms. Nero pointed out the purchasers of this property would know there is a pool on the neighboring lot.

Mr. Cropp stated there is also a tree line.

Ms. Schain noted there was a shed on the other side of the property, and that the pool is visible from the street. She asked about plants on the lot.

According to Mr. Cropp there is a hill, a good incline from the road, and the pool is not visible unless you are at the top of the hill up by the stop sign...this is several hundred feet away. There are also many established trees. The plants will be left there, with additional planting on the plans.

If the variance is granted, Mr. Wilson said that the applicant will adjust the plantings accordingly.

Ms. Nero visited the property. She asked about the high fence in the back...and beyond this fence is a shared driveway. In the applicant's yard she said you cannot see into the other yards at all.

Mr. Cropp reiterated the fact that behind the fence there is a shared driveway.

In the packet there was a drawing showing the subject property in the center, and Mr. Wilson said the blue line represents the fence. Directly behind that is a shared driveway serving #9, #65 and #64. It is a common driveway. The fence is visible from these yards.

There are a number of pictures in the packet which show the 8 foot fence and location of the proposed pool.

Mr. Devine asked about emptying water from the pool and the policy, i.e. does it flow away from the pool, go to the fence, or towards the storm water runoff line.

In reply, Mr. Cropp pointed out where the pool will be located. Water will be flowing away from the pool to the front yard down into the sidewalks to the storm drains next to the fire hydrant.

When a pool is installed, Mr. Wilson said there is a pump used to pump out water, and for the discharge, he asked if this is inspected by the building department to insure the runoff is proper.

According to Mr. Wilson it would be incumbent on the applicant and pool installer to insure the runoff from the pump does not push water onto someone else's property.

This is a concern for Mr. Devine as he sees no design showing where the pipes would be located. The applicant says there are coming into the front, but there is no identification or resolution of a problem.

Mr. Wilson stated the Board has approved many pools, but never put conditions on the applicant regarding runoff. He said the runoff for this pool will run to the street. The back of the property is fine; the street is low; and water pumped out will run into the street.

There is a question from Mr. Devine as to what happens if water runs to lot #1 and goes into the stream.

ZEO Kehoss said the questions are legitimate, but they are not a zoning requirement for a pool. There are blanket zoning regulations in place that apply for a pool to be complied with...they cannot pump water into a neighbor's yard.

Without a pool cover, Mr. Devine said the water level can go over and this water must go somewhere.

When there is heavy rain, Mr. Wilson said every pool level goes up and must be lowered. In the spring when the cover is off the water level is lower. There is a regulation requiring pool runoff to be controlled...but it is not a zoning regulation. Runoffs usually end up in the storm water drainage system.

In the zoning permit application, Mr. Kehoss said there is a requirement to drain the pool.

Ms. Schain asked about the depth of the pool.

Mr. Cropp said it is 4 feet across, with no deep end. Chesprocott has approved the pool installation.

Mr. Wilson explained that the applicant is here requesting an installation that is in the setback.

The Board was told by Mr. Cropp that there will be a safety cover across the pool, and it will be drained down below the skimmer level when closed, per the regulations.

#### PUBLIC QUESTIONS AND COMMENTS

Joseph Holtstein, 341 Cornwall Avenue, Cheshire CT, wanted to make sure that questions asked have been answered satisfactorily for the Board, especially regarding utility of the lot, inability to place the pool in any other area of the property. The exposure to the front of the lot is 10 feet from the road. As mentioned the developer put all the lots into drainage areas on the side to prevent runoff going into adjoining properties. The runoff from the pool would flow towards the front of the house and be confined within the boundaries of the property due to the swales designed to prevent water flowing into other lots. For the subject property it is very distinct. You can see the two yards coming together at the pitch, opposing each other, creating a gully where the draining system exists. In looking at the rest of the developed lots each has been designed this way. Mr. Holtstein wanted to make sure this was brought to the attention of the Board.

For these properties (2010 to 2013) Mr. Wilson said the drainage, storm water runoff for the lots were carefully calculated. The drawings show catch basins in the street and yards, to control runoff. We are dealing with a precise water runoff method defined by the soil scientists and civil engineers.

According to Mr. Holtstein the 10 foot section could have a swale, and with plantings and shrubs against the fence there will be a natural barrier, and be eco friendly. There will be water absorption as opposed to a 6 inch wide spacing of aluminum posts. Along the side there is the taller 8 foot vinyl fence across the entire back. He commented on one of the houses built and recognized for efficiency design. One house has had a pool installed; the house across from #80 has future plans for a pool; but the situation related to wetlands is unknown. The easement to the town has a gate for access.



Discussion

Mr. Wilson commented on other applications, his struggle with hardships, and the applicant meeting the criteria for a hardship. He said this is a good project, meets some of the criteria, i.e. not conferring significant advantage to others in the neighborhood, does not harm or diminish from the rest of the neighborhood. For those ways it meets the criteria.

Ms. Nero stated the application meets the definition of hardships. Part of the land is taken over by the town and is not usable to him. He has the propane tank situation, the septic system situation, and house so far back he is limited to location for the pool. Ms. Nero said the applicant is not encroaching on anyone as there is a large fence and shared driveway behind his property. She sees no problem with this application.

Ms. Schain is inclined to vote in favor of the application because there is no injury to the neighborhood or the public. No one has objected to the application. Because of the utilities the applicant is prohibited from locating the pool where he might want it to be.

Ms. Nero pointed out the fact that the applicant cannot have an above ground pool, and this is another hardship.

Ms. Schain concurred with this statement of fact.

Ms. Cianci noted this is an upscale neighborhood that does not allow an above ground pool. There are hardships with the septic system, propane tank etc. She said the in-ground pool will look nice with this house.

Mr. Pepper said the easement is on the west side; it matches the setbacks; and the hardship could be construed as the setback in the model home. He is inclined to say this is not a hardship.

Ms. Nero and Ms. Cianci were agreeable about hardships.

Chairman Wilson has mixed feelings about this application.

MOTION by Ms. Nero; seconded by Ms. Schain.

MOVED that the Zoning Board of Appeals grants a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 20 foot rear line variance of the required 40 foot rear line setback in an R-40 Zone for property located at 20 Baxter Court, Cheshire CT 06410. The resulting rear line setback requested is 20 feet for an in-ground pool. Based on the evidence presented at the public hearing and the general knowledge of the members of the Board, it is hereby found that a hardship exists to the property which is not applicable to other properties in the district. To strictly apply the zoning regulations would deprive the applicant of rights commonly enjoyed by other property in the same district under the terms of the zoning regulations. The hardship does not appear to be the result of actions of the applicant. Granting of the application will not

confer upon the applicant any special privilege. The variance will not result in injury to the neighborhood or public welfare, and granting the variance will be in harmony with the general intent and purposes of the regulations.

VOTE            In favor - 4; Opposed 1. The motion passes and the variance is Approved.

The variance is granted; the variance is not official until filed on the land records of the Town of Cheshire; and this is the responsibility of the applicant.

**IX. OTHER ZONING BOARD OF APPEALS BUSINESS**

**A. CHAIRMAN'S REPORT**

The "ZBA Alternate Member" meeting schedule was submitted to the Board members.

**X. ADJOURNMENT**

MOTION by Mr. Pepper; seconded by Ms. Schain

MOVED to adjourn the meeting at 8:30 p.m.

VOTE            The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk