

MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS MEETING  
HELD ON MONDAY, OCTOBER 3, 2011 AT 7:30 P.M. IN COUNCIL  
CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present

Board members Joseph Bartoli, Chairman; Vincent Lentini, Agnes White, Marion Nero,

Alternates: Jackie Cianci, Gerald Devine and Zachery Wilburn

Absent: Ken Wilson

Staff: David Kehoss, Zoning Enforcement Officer/Wetlands Agent.

Ms. Cianci and Mr. Devine were the alternates for this meeting.

**I. CALL TO ORDER**

Mr. Bartoli called the meeting to order at 7:32 p.m.

**II. ROLL CALL**

Mr. Lentini called the roll.

**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 – OCTOBER 3, 2011**

MOTION by Mr. Devine; seconded by Ms. White

MOVED that the minutes of October 3, 2011 be approved subject to corrections, additions, deletions.

VOTE The motion passed unanimously by those present.

**VI. COMMUNICATIONS**

**VII. PUBLIC HEARING**

Chairman Bartoli explained the procedures for a public hearing of the ZBA.

**1. Application 11-11-01**

**Appeal to the Cheshire Zoning Board of Appeals**

**Kerry Al Buechele**

**1321 Half Moon Road**

**Section 24 Non Conformities**

**PH 11/7/11**

**MAD 1/11/12**

Mr. Lentini read the call of public hearing.

The appeal to the Cheshire Zoning Board of Appeals by Kerry A. Buechele, 1321 Half Moon Road, Cheshire CT, appealing the order from the Zoning Enforcement Officer regarding the placement of a shed roof built off the back of the garage, property located at 1321 Half Moon Road, Cheshire CT 06410, as generally shown on Assessor's Map No. 86, Lot No. 44 in an R-80 zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

Kerry Buechele, the applicant, explained to the Board that he built a new garage to replace the one he lost during the winter storms. He had materials left over and decided to put the shed onto the garage for storage of wood, farm equipment and gardening items. Mr. Buechele said he built this shed on an existing foundation on the property since 1939, and did not realize he was imposing on the zoning regulations. He has learned of his infringement on the zoning regulations, and said he was sorry about this, but asked that he be able to keep the shed and roof.

According to Mr. Buechele his neighbor has no complaints about the shed, and there are no other homes which would be affected by the shed.

The Board was informed by Mr. Buechele that the existing foundation of the original barn was 212 feet, and parts of the slab have been removed over the years, with a large foundation piece still there. He built on what was already there, and has not intentions of building anymore.

With regard to the shed roof, Mr. Buechele noted that it is very well built, is sturdy, has hurricane hangers, is aesthetically pleasing, and is not visible until you walk beyond the garage.

ZEO Kehoss advised that Mr. Buechele came to the Planning Department for a zoning permit to reconstruct his garage which was taken down in the winter storms. The garage was a nonconforming structure within the setbacks, and a permit was issued under the "casualty clause". The Building Inspector visited the property and saw the addition of the lean to attached to the garage structure. The applicant had a permit to only build a garage. The lean to structure is an expansion of a nonconformity and made the entire structure larger. Under the zoning regulations, approval was not given.

At this time, the applicant comes before the ZBA for an administrative decision because the applicant does not believe this is an expansion of a nonconformity because the slab/foundation was already there. Mr. Kehoss stated that if the appeal is approved the Board would be overturning the decision of the ZEO about building the lean to on the property.

Chairman Bartoli asked if the applicant could get a permit that is retroactive to allow for this structure.

Mr. Kehoss stated that a zoning permit is needed to allow for this type of structure. The ZBA can decide that the lean to is not an expansion of a nonconforming structure because the foundation/slab was already there. The ZBA must decide whether this is an existing foundation, with a vertical addition, and favors overturning the ZEO's decision. In that case a zoning permit would not be required.

The "casualty clause" was explained by Mr. Kehoss. When someone has a nonconforming building there are circumstances under which it can be rebuilt. In the Buechele case, the existing garage was lost due to the severe winter storms, and the applicant was allowed to reconstruct in the nonconforming status without any additional expansion.

#### PUBLIC COMMENTS AND QUESTIONS

Phil Altieri, 1318 Half Moon Road, said he helped the applicant with rebuilding his garage. The total square footage of the garage is 24 x 48 feet, and with the lean to/roof shed it is 24 x 58 feet. Mr. Altieri is the nearest neighbor, about 50 to 60 feet from the applicant's property, and he supports the applicant's request for approval.

Mr. Lentini asked how far back the slab goes on the property.

In response, Mr. Buechele said it goes back with another 50 x 24 feet where the chicken coops were located on the property.

From a zoning point, Mr. Lentini asked where there was an alternate place on the property for a storage shed which would not require Board approval.

Mr. Kehoss stated it would not be on the slab being used. The slab is existing and within setbacks.

It was stated by Mr. Buechele that he looked at moving the structure to the north side but he would have to destroy everything that is there and it would very expensive. He built the lean to without a permit, and built the garage with a permit. The builder was on the property, and had extra materials, and the decision was made to build the lean to structure.

Mr. Devine questioned the hardship created by this effort on the part of the applicant.

Chairman Bartoli explained to the applicant the he is requesting a variance for the lean to structure, and there must be a hardship involved.

In reply, Mr. Buechele said the hardship would be losing the storage facility for his equipment, wood and farm machinery. The garage he built was for three cars.

Mr. Devine asked about building the garage further onto the slab covered by the lean to, and the cost involved.

According to Mr. Buechele the additional cost would have been \$1500. With building materials and cost to build the lean to it was about \$1500. To tear down the lean to structure would cost about \$500 and loss of all the materials. He also said that there are no wetlands on this property.

Phil Altieri said he is the closest neighbor, about 50 to 60 feet, from his barn to this shed. His house is set further back from the subject property. The hardship might be the founding being there and the applicant deciding to use it.

If the garage was built at 58 feet, Mr. Bartoli asked if it would still be under the casualty clause.

Mr. Kehoss explained that the size of the garage which came down was the size to be built, and there was no approval for expansion of the nonconformity. The position of the applicant is that the slab/foundation was already there; part of it was not being used by the former garage; he rebuilt the garage; and built the lean to shed for his use. If the Board approves the appeal, then the applicant does not need a permit. The foundation was already there and is still there, and the garage footprint is the same as the original garage.

The Board was informed by Mr. Buechele that the original barn was 212 feet long on the foundation.

Mr. Wilburn asked about the original nonconforming structure, and how long it was down.

Mr. Buechele replied that over the years the original barn structure collapsed, was unsafe, and taken down. This took place before zoning laws were in effect.

Mr. Devine commented on the original barn being 212 feet long on the footprint, and asked if this was outside compliance.

Stating his interpretation that this is expanding an existing nonconformity, Mr. Kehoss said that the applicant's argument is that the slab was there and he built on a nonconforming foundation and is not in violation of the zoning laws. The foundation and garage are nonconforming, and the garage was rebuilt using the same size as the one that came down.

For this application, Mr. Devine said the hardship is financial.

Mr. Kehoss stated that the Board is being asked to review the decision of the ZEO. Someone cannot get a permit to expand an existing nonconformity. The position of the applicant is that the foundation was there, and he built on it vertically. If the Board agrees with the applicant, then he can keep what he has already built. Mr. Kehoss advised that a person has one year to rebuild a structure under the casualty clause.

The Board was informed by Mr. Kehoss that all decisions he makes as ZEO are reviewed with the Town Planner.

Mr. Buechele stated his appreciation for being able to get a permit and rebuild his garage after the last winter storms destroyed the original garage. He said he was sorry he went too far with building the shed, and it was an oversight on his part.

There were no further comments or questions. The public hearing was closed.

## **VIII. DECISION MAKING SESSION**

### **1. Application 11-11-01**

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Mr. Lentini said this application has all the makings of a denial because there is a nonconformity. He looked at the size of the property and the structure could have been built elsewhere on the site. It is close to the neighbor's property line, and he said it is sinful to allow this to happen. He has concerns about outside storage of equipment. If a new neighbor were to move in this structure might not be appreciated. He sees where the foundation is there, and would not be against approving the application with the neighbor being okay with it. Mr. Lentini said the ZEO did the right thing, and the shed should be taken down, but part of him could approve it staying in place.

Ms. White stated she does not like to overturn decisions of the ZEO. But, she sees the applicant's pain. She visited the property but could not see the shed, and does not believe it will create problems. She would approve the application.

Ms. Nero visited the property and could not see the shed from the road. The shed does not affect the neighbors because it is a distance away. Ms. Nero could go with the idea that there was an existing foundation and nonconforming building which the applicant did not make any bigger than the existing foundation. There is no effect on anyone because of the amount of land the applicant has, and she would be in favor of overturning the ZEO decision.

Mr. Wilburn commented on the applicant having lots of land to move the shed and build it elsewhere. He agrees the foundation was existing and the applicant did not build outside of it, did not expand the building interior, and he would approve overturning the decision of the ZEO.

Stating he understands the ZEO's decision, Mr. Bartoli said the applicant did expand beyond what the permit allowed him to do. The question is whether he could build on a foundation that existed for many years. Aesthetically it is a good structure, is not an eyesore to another property, and the shed is well built and solid. He would favor overturning the decision of the ZEO.

A question was posed to Mr. Kehoss by Mr. Lentini, who asked if a variance would have been needed if the applicant came to the Planning Department with plans for the garage and shed.

In response, Mr. Kehoss said that the applicant could have requested a variance or administrative decision of the Board. He chose to come to the ZBA. No surveys would have been required for an application. With inclusion of the lean to structure the applicant would not have received a building permit. For a variance the application would have required a hardship.

MOTION by Ms. Nero; seconded by Ms. White.

MOVED that the Zoning Board of Appeals approves overturning the decision of the Zoning Enforcement Officer on the appeal of Kerry A. Buechele, 1321 Half Moon Road, Cheshire CT.

VOTE The motion passed 4 -1; In favor – Bartoli, Nero, White, Wilburn; Opposed – Lentini.

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

Mr. Kehoss stated that the Board has the ultimate decision to overturn the decision of the ZEO. It is up to the local boards on whether there was an expansion or not. This is a gray area and it is good for the boards to make the final decisions. He believes this decision was the right one to be made.

**X. CHAIRMAN'S REPORT**

Chairman Bartoli stated that this was his last meeting and thanked Board members for their hard work and dedication and being so easy to work with during his tenure as chairman.

**XI. ADJOURNMENT**

MOTION by Mr. Lentini; seconded by Mr. Devine.

MOVED to adjourn the meeting at 8:15 p.m.

VOTE The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk