

MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS MEETING
HELD ON MONDAY, DECEMBER 5, 2011 AT 7:30 P.M. IN ROOM 115, TOWN
HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present

Vincent Lentini, Agnes White, Marion Nero, John Pepper, Ken Wilson

Alternates: Jackie Cianci, Gerald Devine.

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

I. CALL TO ORDER

Acting Chairman Wilson called the meeting to order at 7:30 p.m.

II. ROLL CALL

Acting Secretary 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 – NOVEMBER 7, 2011

MOTION by Mr. Lentini; seconded by Mr. Devine

MOVED that the minutes of November 7, 2011 be approved subject to corrections, additions, deletions.

VOTE The motion passed unanimously by those present.

Mr. Wilson commented on the fact that the application at the November meeting was for reversal of a decision of the Zoning Enforcement Officer. In this type of application, a hardship is not required to be discussed or determined by the Board.

VI. ELECTION OF OFFICERS

MOTION by Mr. Wilson; seconded by Mr. Lentini.

MOVED that Marion Nero be nominated for Secretary of the Zoning Board of Appeals.

Nominations were called three times, and there was no other nominee.

VOTE The motion passed unanimously by those present.

MOTION by Ms. Nero; seconded by Mr. Lentini

MOVED that Ken Wilson be nominated as Chairman of the Zoning Board of Appeals.

Nominations were called three times, and there was no other nominee.

VOTE The motion passed unanimously by those present.

VII. APPROVAL OF 2012 MEETING DATES

MOTION by Mr. Lentini; seconded by Ms. White

MOVED that the following meeting dates be approved for 2012.

JANUARY 3, 2012, Room 207-209; FEBRUARY 6, 2012, MARCH 5, 2012, APRIL 2, 2012, MAY 7, 2012, JUNE 4, 2012, JULY 2, 2012, AUGUST 6, 2012, SEPTEMBER 5, 2012 (Wednesday), OCTOBER 1, 2012, NOVEMBER 5, 2012, DECEMBER 4, 2012 (Tuesday, Room 207-209) and JANUARY 7, 2013.

VOTE The motion passed unanimously by those present.

Chairman Wilson stated that if a Board member is not present at a meeting, an elected alternate will be the voting member for that meeting. He proposed that names of alternates will be listed alphabetically in rotation for meetings.

VIII. COMMUNICATIONS

IX. PUBLIC HEARING

- | | |
|---|--|
| <p>1. Application 11-12-01
<u>JAD PARTNERS, LLC</u>
435 Highland Avenue
Requesting a variance of Section 33.4
Construction & Maintenance of the Zoning
Regulations
Requesting to allow a maximum gradient of 5% in an
Off-street parking area for construction of office
Building with associated parking.</p> | <p>PH 12/5/2011
MAD 2/8/2011</p> |
|---|--|

The rules and procedure for a public hearing before the Zoning Board of Appeals was cited by Chairman Wilson. He stated that four affirmative votes are required for approval of a variance.

Secretary Nero read the legal notice.

The application of JAD Partners LLC c/o Matthew Ducsay, Milone and MacBroom, Inc. 99 Realty Drive, Cheshire CT 06410, requesting a variance of Section 33.4 Construction and Maintenance of the Zoning Regulations. The variance requested is to allow a maximum gradient of 5% in an off street parking area, property located at 435 Highland Avenue, Cheshire CT 06410, as generally shown on Assessor's Map No., 50, Lot No. 5, in an R-20A zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

Chairman Wilson stated that an A-2 Survey was included with the application.

Darin Overton, P.E. Milone and MacBroom, represented the applicant, JAD Partners, LLC for a variance of Section 33.4 *Construction and Maintenance* of the Zoning Regulations, for a maximum gradient of 5 percent in an off street parking area for construction of an office building with associated parking.

Mr. Overton advised that a conceptual plan is included in the application packet.

Mr. Overton informed the Board that the property is at 485 Highland Avenue, the former Stoneworks property site, and it has been abandoned since Stoneworks left the site. The frontage of the property is along Route 10, with Mountain View Terrace to the north, and properties to the back have frontage on Maple Avenue. There is existing residential along Mountain View Terrace to the north, and Maple Avenue to the west, and commercial development to the south. Across the street is the Cheshire Police Station, Highland School, and other businesses.

The property is located in an R-20A zone, with commercial uses permitted in this zone. The applicant is proposing a combination of a professional office building and medical professional use, both of which are allowed per the zoning. As designed, the plan allows for development of two buildings with grade at the lower level in front. There will be a two story façade showing out onto Route 10, with the grade rising in the rear of the building, with access to the back. Handicapped access is provided easily to the building. The grade on the site, from Route 10, gently rises towards the back through an excavated area which was part of Stoneworks. There is a steep slope with the natural grade continuing to the back property line. This allows making the grade change from front to back, fitting in with the natural landscape that is there.

From the proposed plan, Mr. Wilson noted numbers of 229, 228 across the back at the highest point in the parking area, and then there is 217 in the front. This is about an 11 foot variance between the sidewalk and parking spaces that would be against the back wall.

Stating that is correct, Mr. Overton said to the edge of Route 10 it gets down to about 215 along the entrance drive. This drive, based on traffic configuration

which DOT will want to see on the State highway, will require the entrance to be matched up to the road across the street. The grade is set at the entrance, and a typical office building will have from a 10 to 12 foot floor to floor difference to provide for the structural and mechanicals. In this building, it is squeezed down from a 12 to 11, and in order to make that grade up there, the applicant must go to a 5% grade through parts of the parking lot. In front it is less, at 2%, to the front door access, with sloping going up and around a portion on the side to 5%. At the handicapped spaces, to meet ADA standards, there is 2% gradient. There is careful analysis of the grades on this site, and he is working with the architect to make everything work out with all the site constraints and the floor to floor separation.

In looking at the plans, Mr. Wilson said on the left side where it goes from 222 up to 227, this is probably the steepest grading. He asked about the north side of the second building, and if it was the same. There are handicapped spaces in the back center of each building.

Mr. Overton said it is the same for both buildings.

Mr. Wilson said the zoning standard is in Section 33.4, and he read an excerpt from the section into the record. He noted that you cannot get to the 3% without lowering the back side by another 2 or 3 feet. If the back property was lowered where it says flush and flush down to 227 or 226, the construction could be done within the 3%.

Mr. Overton stated that it would be about 2 feet lower, and the floor separation could not be achieved, or some elaborate ramping system would be required to be done to provide handicapped access. The ramps can be built at 5% without rails or landings, but not the parking lot. Along the sides the grade is at 5%. The road up the center is a 10% gradient, and there is no parking along that access way. For circulation purposes, both the client and traffic engineers felt an access up the middle would help with circulation to the building, and STC permit. The only way to make this work since there is no long run around the building is to make up the grade somehow. Generally, 10% would be the maximum grade, and this is consistent with the driveway standards in the zoning regulations.

The variance being requested is the 5% on the north and south end, and Mr. Wilson asked if this variance has anything to do with the homeowners to the west or the north. He said there will be a slight slope at the parking level at 224 to 226 or 228 on the north, and asked if this will be a wall.

Mr. Overton said that getting the variance of 5% cuts down on the earth work. One way to do it is to provide two story buildings on all sides and just flatten and cut it down further. This way the applicant can meet the handicapped accessibility, with a parking lot about 2%, and end up with a two story building on both sides. A lot of earth would have to be removed from the site and trucked

out. This would end up with retaining walls, double the height seen on the plans. These walls would have to wrap around the side of the property line. At this time there are no walls shown for the north and south end, but there is a little slope on both ends. There will be some refinement with a wrap around of a short distance on the corners.

It was noted by Mr. Wilson that the ZBA is not here to approve walls, the plans, parking lot, spaces etc. These issues go to Planning and Zoning Commission for official approval, with traffic studies and specifics related to the application for PZC approvals. Topics of parking, slopes, or impact on neighbors is not part of the ZBA review, only the 5% grades on the north and south end.

Without the variance approval, Mr. Lentini asked if the actions of the applicant would be to level it out and do the two story buildings.

According to Mr. Overton the standard approach for commercial buildings is a nice flat parking lot, without concern about earth work, and this is one way to develop this site without a variance. The applicant considers this a less desirable design because the regulations say, in an R-20A zone, that buildings should be residential in character. The applicant is trying to match the residential character of surrounding homes. There is a retaining wall in front of one existing residence, and the applicant is trying to match it to be similar with a smaller retaining wall in back, rather than a double height wall. The applicant wants to make the development harmonious with the neighborhood by asking for the variance. Going to plan B for this retaining wall, the height would be about 8 feet, or possible more.

Mr. Wilson said that ZBA cannot hold an applicant to drawings or proposal, and this can only be done by PZC. Safety access and other safety concerns are handled by the Fire and Police Departments.

Mr. Overton stated that the maximum grade is 5% for a parking lot. There are several design standards which allow parking lots up to 10%, but in a winter area it is not appropriate to go that steep. Standards are written for licensing of landscape architects and 5% is the maximum set for parking grades. The ADA standards allow ramping up to 5% without handrails or landing areas, and it can go up to 8.3% with handrails and landing areas. Mr. Overton noted that the applicant is designing to reasonable standards.

The hardship issue was raised by Mr. Wilson who said it is in the front of the decision process. The applicant has written that the hardship is the topography of the site. If required to comply with the 3% grade, the applicant would have to remove more dirt and create steeper inclines to the neighboring properties.

Mr. Overton replied that this was correct.

Mr. Wilson said this does not appear to be a hardship, as the buildings can be built in the foot print with a two story building on front and back, with handicapped access by an elevator.

The hardship comes down to the shape of the lot and topography, and Mr. Overton said lots developed to the south have narrow width along Route 10 and have more depth to work with. With the subject development there is less room to grade, and the applicant is locked in with its access point in the middle which divides the property in half. This creates another site constraint.

It was stated by Mr. Overton that the hardship is the shape of the lot in relation to the topography, which makes this lot unique compared to those further to the south in similar developments.

Mr. Devine asked about the impact on the lots to the north side, and if the wall will be 8 to 16 feet, staying within the 3% as opposed to the 5%. If a wall is built he questioned what this will do to people's property.

In reply, Mr. Overton said that along the property line the grade matches in with the adjacent grade.

For the proposed design, Mr. Wilson said there is no wall. If the variance is rejected there will be a wall on the north side and a bigger wall across the west side. The paved area will be below the adjacent properties.

Mr. Overton said the existing grade is steeper than 5%, and the matching grade is closer to the property line mid point. Moving to the west, it slopes down from the existing property line to the parking lot, and this will be the opposite moving towards the front. Some fill will be placed in areas.

Mr. Wilson said properties at 216 and 218 and parking paved area at 221 is about 5 feet higher, so there will be water runoff. He wants to make sure that the water runoff, management and water storage plan proposed is not part of the ZBA discussion and purview. These issues are handled by PZC and IWW and the Engineering Department. ZBA should not be considering parking areas or water issues, and should only consider the issue of the 5% gradient. The Board must decide the impact if the applicant lowers the gradient by 8 feet.

PUBLIC STATEMENTS

Pam Ludford, 495 Highland Avenue, resident for 38 years, pointed out her house on the plans. She said that when Stoneworks was at the location she had water problems, called Town Hall, and the issue was never addressed. At the present time she had a dry basement, has put in a new driveway, and asked about her recourse if she has problems to be addressed.

Mr. Wilson explained that the town engineer and the applicant's engineers will make a detailed presentation on the water management system. He stated that notices of public meetings are in the *Cheshire Herald*, and he encouraged people to stay involved in the process.

Mr. Ludford said she is willing to work with anyone, wants something in writing that when all this is done she does not get water in her basement and runoff on her property. She is willing to look at buffers rather than a parking lot.

John Sopko, 495 Highland Avenue, said that the 3% to 5% gradient does make a difference. With 3% grade it gets lower in the front, and water runoff would not be a problem.

The front of the parking lot is fixed based on the street level and Mr. Wilson said that no matter what the Board votes on, this will stay where it is. The ZBA decision will determine how high the high level will be. There is sloping on the street level at 215, and there is sloping up gently from there. The applicant has a proposed plan that shows from the street to the sidewalk to the beginning of the parking spaces is what is considered normal, about 30 feet from the street. He restated that the applicant must go to PZC with a detailed plan for this development.

For his summary and rebuttal, Mr. Overton has seen photographs after storms on this property, and the prior owner had flooding due to earth work and flattening a portion of the site. There was a swale which directed the runoff to a crude storm water basin, sort of a sediment trap, which does not hold enough water to function adequately. Milone and MacBroom went back and looked at the 1970's topo map of this property before grading was done, and there was runoff into the two culverts across Route 10. When the earth work was done in recent years it directed the water to an area where there is no drainage.

The ZBA was informed by Mr. Overton that a public information meeting was held with the property owners to review the issues of concern and the proposed development. One key point is that all the parking lot will be curbed, and water will be intercepted in the storm water management system. Whether the parking lot is 3% or 5% the runoff from the paving will still be collected.

Mr. Wilson stated there will be a landscape plan and if the property owners want barriers between the properties the applicant will consider this.

According to Mr. Overton there is room for plantings type barrier and the applicant is willing to supplement this based on neighbor's interest.

Mr. Wilson noted that the ZBA cannot put any conditions on the 5% request which deal with water runoff or landscaping.

Mr. Overton stated that the shape of the lot in relation to the topography creates the hardship and this is the reason why the variance is being requested. The variance will give the ability to design the site in harmony with existing buildings in the area. The proposed use is permitted in the zoning regulations. The variance is requested in the grade of the parking lot up to an established standard of 5% in order to make this development fit better into the landscape.

The public hearing was closed.

X. DECISION MAKING SESSION

1. **Application 11-12-01** **PH 12/5/2011**
JAD PARTNERS, LLC **MAD 2/8/2011**
435 Highland Avenue
Requesting a variance of Section 33.4
Construction & Maintenance of the Zoning
Regulations
Requesting to allow a maximum gradient of 5% in an
Off-street parking area for construction of office
Building with associated parking.

Secretary Nero read the legal notice.

The application of JAD Partners LLC c/o Matthew Ducsay, Milone and MacBroom, Inc. 99 Realty Drive, Cheshire CT 06410, requesting a variance of Section 33.4 Construction and Maintenance of the Zoning Regulations. The variance requested is to allow a maximum gradient of 5% in an off street parking area, property located at 435 Highland Avenue, Cheshire CT 06410, as generally shown on Assessor's Map No., 50, Lot No. 5, in an R-20A zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

Chairman Wilson said that the ZBA is considering a variance for the current maximum allowed of 3% with the applicant looking to go to 5%. It may end up being more or less than 5%. This property has had variances going back to 1958 and has had many variances.

Mr. Lentini stated he is in favor of granting this variance. The applicant has been well prepared in its presentation, and the 5% is more than adequate and doable.

Ms. Nero stated she was in favor of granting the variance, noting that without the variance there would be extensive earth removal required.

Ms. White said she is in favor of the variance request, noting that the presentation was informative and well done.

Mr. Pepper stated he was in favor of granting this variance, and that the 5% would be a safer grade for this property.

Mr. Wilson looks at the hardship and does not believe there is a valid hardship for granting this variance. The applicant has stated that the hardship is the topography of the land, and this is usually the only hardship stated. The applicant can use the property as intended, but this could do more damage. He does not see this as a unique or undue hardship. If the applicant does not move forward for any reason, Mr. Wilson stated that the 5% gradient stays with the land.

MOTION by Mr. Lentini; seconded by Ms. White.

MOVED that the Zoning Board of Appeals grants a variance of Section 33.4 of the Zoning Regulations, Construction and Management, for a 5% maximum gradient in an off-street parking area, for construction of office buildings with associated parking. The variance is granted without conditions. The variance is granted based on the general knowledge of the Board and evidence presented at public hearing. The hardship is found based on the topography which exists to the land and property which is not applicable to other properties in the district. To strictly apply the zoning regulations will deprive the applicant of the rights commonly enjoyed by other properties in the district. Granting of the variance will not confer upon the applicant any special privilege; that the variance is the minimum variance that will make possible the reasonable use of the land; and the variance will not result in injury to the neighborhood or public welfare. Granting of the variance will be in harmony with the general intent and purpose of the regulations.

VOTE The motion passed unanimously by those present.

No variance granted shall become effective until it is filed with the Town Clerk, and this is the responsibility of the applicant.

XI. OTHER ZONING BOARD OF APPEALS BUSINESS

XII. CHAIRMAN'S REPORT

Chairman Wilson encouraged Board members to take advantage of training classes on land use issues which are available and paid for by the Town of Cheshire.

XIII. ADJOURNMENT

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

MOVED to adjourn at 8:57 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk