

**MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS MEETING  
HELD ON MONDAY, MAY 7, 2012 AT 7:30 P.M. IN COUNCIL CHAMBERS,  
TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

Ken Wilson, Chairman; Marion Nero, Secretary; Vincent Lentini

Alternates: Jackie Cianci, Gerald Devine.

Absent: John Pepper, Agnes White and Alternate Mr. Welburn

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

**I. CALL TO ORDER**

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

Chairman Wilson read the emergency fire notice.

Ms. Cianci was the alternate for this meeting.

**II. ROLL CALL**

Secretary Nero 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 – MARCH 8, 2012**

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

MOVED to accept the minutes of March 8, 2012 subject to corrections, additions, deletions.

VOTE           The motion passed unanimously by those present.

**VI. COMMUNICATIONS**

**VII. PUBLIC HEARING**

Mr. Wilson explained the procedures for a public hearing of the ZBA.

Secretary Nero read the call of public hearing.

The application of Krzysztof and Joanna Jakubowski, 15 Suffield 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 and a 5 foot side line variance of the required 30 foot side line setback for an in-ground pool, property located at 15 Suffield Court, Cheshire CT, as generally shown on Assessor's Map No. 21, Lot No. 58 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. Application 12-05-01** **PH 5/7/12**  
**Krzysktof & Joanna Jakubowski** **MAD 7/11/12**  
**15 Suffield Court**  
**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**  
**And a 5 foot side line variance of the required 30 foot**  
**Side line setback for an in-ground pool.**

Mr. Wilson stated that the applicant has requested a waiver of an A-2 Survey. The Board members reviewed the application and plans submitted and the following motion was made.

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

MOVED to grant a waiver of an A-2 Survey to Krzysktof & Joanna Jakubowski, 15 Suffield Court, Cheshire CT 06410.

VOTE The motion passed unanimously by those present.

Mr. Jakubowski addressed the Board and advised that he wants to build an 18 ft x 36 ft. inground swimming pool on his property, without any raised structures surrounding the pool. The hardship for this application is the complex septic system and configuration of the terrain, which makes the proposed location the only suitable site for a pool. Mr. Jakubowski stated that his property has a 20 foot ravine and nothing can be built in that area of the site. There is a lot of privacy in this area but nothing can be built there. Because of the complex septic system he wanted to be sure the reserve area for this system could be moved to another location on the property. Soil sampling was done; he spoke with Chesprocott; and there was a design for a new reserve area. The pool will be abutted by wooded areas and does not impose on any of the neighbors. It will be close to an area of his neighbor's property that is not used.

If the variance is granted, Mr. Jakubowski said that Chesprocott will approve the relocation of the reserve for the septic system. The pool will not interfere with the existing septic system.

The issue of a prior application on this property was raised by Mr. Wilson. He noted that the map in the file does not include this addition.

In response, Mr. Jakubowski said this was three years ago to add onto the living room by 12 ft. x 10 ft. It required a variance which was granted. This addition is in the northwest part of the property opposite the driveway entrance.

Mr. Jakubowski pointed out this addition on the map for the Board.

It was stated by Mr. Wilson that the proposed variance is on the same side as the prior variance. He summarized the hardship as being the unusual topography of the land, noting the large gulley which makes this part of the land unusable. The site has a complex sewer system. The proposed location for the pool is at the highest point on the property and the only logical place to built a pool. Mr. Wilson noted that letters were sent to all neighbors about the variance request, and this is part of the file.

Mr. Kehoss informed the Board there were no responses or communications from the neighbors about this variance request. He also asked how close the pool will be to the neighbor's house.

The pool will be about 50 feet, and Mr. Jakubowski said it will face the neighbor's garage. From their angle the neighbors will not see the pool, unless they are near their garage.

Mr. Lentini asked about the wooden fence on the property.

This came with the property and Mr. Jakubowski said it separates his property from the Martone property, and the fence is about 6 feet high.

Mr. Wilson asked about the pool impacting any of the trees on the property.

According to Mr. Jakubowski the trees will not be impacted.

Mr. Kehoss asked about illumination around the pool area.

Mr. Jakubowski stated the only illumination will be in the pool itself.

From the proposed pool area, Mr. Devine asked where the ground starts sloping and how close this is to the pool.

Mr. Jakubowski said there is a line which designates 300 ft and 298 ft. and another 209 ft.; and, that part of the property is fairly flat but rapidly slopes down.

The Board was informed by Mr. Kehoss that one of the complaints received in the Planning Department is late night activity at pools, and this is why he asked

about lights being installed. He asked what Mr. Jakubowski would say if neighbors heard activity at night.

Stating he has a small family and few friends in the area, Mr. Jakubowski said he will not be entertaining at the pool in the evenings. The pool is for the family's use and he expects that neighboring children will also enjoy the pool. He will fence in the pool area; will change the existing fence on the property which is not appealing; and this is in progress at this time for privacy and containment.

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

Secretary Nero read the call of public hearing.

The application of DeSimone Company LLC c/o John B. Torello, Architect, 368 Maple Avenue, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 30 foot rear yard variance of the required 30 foot rear line setback for existing construction and recognize existing construction and new construction of roof dormer, property located at 20 East Mitchell Avenue, Cheshire CT 06410, as generally shown on Assessor's Map No. 57, Lot No. 265, in an R-20A/R-40 zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

2. **Application 12-05-02** **PH 5/7/12**  
**DeSimone Company LLC** **MAD 7/11/12**  
**20 East Mitchell Avenue**  
**Requesting a variance of Section 32, Schedule B**  
**Dimensional Requirements requesting a 30 foot rear line**  
**Variance of the required 30 foot rear line setback for**  
**Existing construction and recognize existing construction**  
**And new construction of roof dormer.**

John Torello, Architect, 368 Maple Avenue, Cheshire CT 06410, represented the applicant, DeSimone Company LLC. He submitted additional documentation to the Board regarding the application.

The Board was informed by Mr. Torello the Louis DeSimone died a few years ago as a result of a car accident, and his survivors want to rehabilitate the property at 20 Mitchell Avenue. He displayed photographs of the property in its present condition. The problems with the property began when a building official learned that work was being done on the property without permits. The property has now been vacant for a long time, and the survivors are trying to put together a plan for the mess created by Mr. DeSimone. The Board was told by Mr. Torello that over the years, Mr. DeSimone would go to the property at night, and

do work which was not permitted and which he was not totally capable of undertaking.

There are several hardships with this application and many go with the land. Mr. Torello reviewed the many additions to the house over the years, pointing them out on the photographs. This lot is 40 ft. wide; you cannot built to the property setbacks; and this is an unusable lot. The property is in an R-40 zone and R-20 zone due to combining the lots. The current owners are still interested in purchasing the property in between the two lots for a commercial development on Highland Avenue. But, this will not happen soon. The house is a Cape Cod style structure; has one bedroom on the 2<sup>nd</sup> floor; and the owners intend to have a two bedroom, one bathroom house. In order to get the building permits the owners need this variance. When the property was surveyed the surveyor did not note the setbacks on the property lines. The hardships on this property have existed for a long time, and this house was never in compliance.

Mr. Wilson said the street setback is 10 feet and the setback is zero for the rear corner line and it encroaches about 0.8 feet. This is a nonconformity built on a nonconforming lot and the applicant wants to improve it by going up with a second floor.

According to Mr. Torello the applicant wants to remove some of the unusual additions to the house. Because of the placement of this building relative to the house next door the privacy is not compromised. The buildings are off set. The back of the house has a few windows. The dormer will be built out to the original building; the existing building must be re-roofed; and the dormer will have a bedroom and bathroom. The new plans are to have 2 bedrooms and 1 bathroom on the second floor, with all living space on the first floor.

Mr. Kehoss asked for clarification on the house on the land, noting a little section was added on without a permit.

This section was pointed out on the photographs, and Mr. Torello stated that Mr. DeSimone would just square off and build onto the house. Every part of the house is nonconforming.

Mr. Wilson commented on nonconforming structures and going up, and the ZBA has heard cases like this. He said the subject house will be rebuilt to make appendages smaller, and the variance is for the second story dormer addition on the nonconforming building.

Mr. Torello said the dormer will not have windows facing the adjacent property to insure the neighbor's privacy. It will have windows on he side facing Highland Avenue.

Ms. Nero asked about the many additions and questioned moving the one over the hatch way.

In response, Mr. Torello said these are additions done over the years by Mr. DeSimone, and he showed the Board the various additions done in the photographs.

Mr. Devine commented on the many problems with this house and starting over as the nonconformity could create a problem for sale of the property.

Right now, Mr. Torello said the septic system is done on the R-40 piece. The long term goal of the new owners is to combine with the other property and develop a commercial property. There is much land which is undeveloped and this is a split zone piece of R-20 and R-40. The applicant will be going over the original foundation for the new structure; a new truss roof system could be created; and everything depends on getting permits which depends on getting the variance.

Mr. Torello commented on the fact that the original owner, Louis DeSimone, was difficult to work with and the survivors want to improve this house, and either rent it or sell it. But, the long term goal is to combine the properties for commercial development. It is better to repair this house, and rent it rather than sell it.

Mr. Wilson said that with the condition to restore the back of the house to the original condition, it will still be nonconforming.

On the plans, Mr. Torello pointed out the parts of the house which have a basement and where there is just a crawl space.

Ms. Nero commented on this house being built with nothing between the two houses.

Mr. Torello believes that Mr. DeSimone built straight across in 1921; along the years the bedroom addition was built; and does not believe they knew where the property line was located. The applicant owns lot #262/

Mr. Devine asked if there were any comments from the people whose property they are on.

Mr. Torello said no, but there are things to be straightened out.

Without the variance, Ms. Cianci asked what the applicant would do.

In response, Mr. Torello said the house will remain vacant as it has been for many years.

On the part of the building without a permit, Mr. Kehoss asked if the building inspector has looked at this.

Mr. Torello said yes, he has, and there are many things in need of repair and to come up to code.

Mr. Wilson said the building official will look at the entire building and inspect it.

Mr. Kehoss advised he has discussed this with the building official and asked how much has to be inspected. He was told the additions must be inspected.

In that regard, Mr. Torello said the surviving owners want everything inspected.

Mr. Kehoss explained that the Board can stipulate that the building official inspect the entire house. A certificate of occupancy would be part of the process since there is no c/o at this time.

Mr. Torello said the proper permits will be in place and the owners will adhere to whatever is workable.

#### **VIII. DECISION MAKING SESSION**

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| <p><b>1. Application 12-05-01</b><br/><b><u>Krzysztof &amp; Joanna Jakubowski</u></b><br/><b>15 Suffield Court</b><br/><b>Requesting a variance of Section 32, Schedule B</b><br/><b>Dimensional Requirements requesting a 20-foot rear</b><br/><b>Line variance of the required 40 foot rear line setback</b><br/><b>And a 5 foot side line variance of the required 30 foot</b><br/><b>Side line setback for an in-ground pool.</b></p> | <p><b>PH 5/7/12</b><br/><b>MAD 7/11/12</b></p> |
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Secretary Nero read the call of public hearing.

The application of Krzysztof and Joanna Jakubowski, 15 Suffield 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 and a 5 foot side line variance of the required 30 foot side line setback for an in-ground pool, property located at 15 Suffield Court, Cheshire CT, as generally shown on Assessor's Map No. 21, Lot No. 58 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.

Board Discussion

Mr. Lentini stated his support for this variance request, as this pool will fit in without any problems.

Mr. Devine stated his support of the variance request, especially because he looked at the property, and saw the proximity of the trees and severe slope of the land.

Ms. Nero said she was in favor of the variance request, and was surprised at the number of pools in this neighborhood. She said that the land configuration makes it difficult to put the pool anywhere else on the property.

Ms. Cianci stated she would support this variance request since there were no negative comments from neighbors.

Mr. Wilson said the variance is reasonable for the pool. He wants a stipulation that this variance is only for the pool and no more work at the home which encroaches into the setback.

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

MOVED that the Zoning Board of Appeals grants variance of Section 32, Schedule B, Dimensional Requirements, for the 20 foot rear line variance of the required 40 foot rear line setback, and a 5 foot variance of the required 30 foot side line setback for property at 15 Suffield Court, Cheshire CT, subject to the following conditions. The variance applies only to an in-ground swimming pool. This is based on the evidence presented at the public hearing and the general knowledge of the Board. It is found that the hardship that exists is to the property which is not applicable to other properties in the district. And, by strictly applying the zoning regulations it would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning regulations. Granting of the variance will not confer upon the applicant any special privilege, and the variance will not result in injury to the neighborhood or the public welfare.

VOTE The motion passed unanimously by those present.

Chairman Wilson advised the applicant that a variance does not become effective until it is filed on the land records of the Town of Cheshire and this is the responsibility of the applicant.

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| <p><b>2. Application 12-05-02</b><br/><b><u>DeSimone Company LLC</u></b><br/><b>20 East Mitchell Avenue</b><br/><b>Requesting a variance of Section 32, Schedule B</b><br/><b>Dimensional Requirements requesting a 30 foot rear line</b></p> | <p><b>PH 5/7/12</b><br/><b>MAD 7/11/12</b></p> |
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**Variance of the required 30 foot rear line setback for Existing construction and recognize existing construction And new construction of roof dormer.**

Secretary Nero read the call of public hearing.

The application of DeSimone Company LLC c/o John B. Torello, Architect, 368 Maple Avenue, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 30 foot rear yard variance of the required 30 foot rear line setback for existing construction and recognize existing construction and new construction of roof dormer, property located at 20 East Mitchell Avenue, Cheshire CT 06410, as generally shown on Assessor's Map No. 57, Lot No. 265, in an R-20A/R-40 zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

Discussion

Mr. Wilson stated that this is an unfortunate situation – the size of the properties, the existing structure built in the 1920's is a nonconforming nightmare. This is one of the worst seen by the Board with zero setbacks. This is an undesirable situation for the owners as well as for the Planning Office to try and manage something which is this far out of compliance. In the past the Board had vertical encroachment on a nonconforming property. The applicant in the subject application is not making the problem worse, and this is why he is in favor of granting the variance. The applicant is trying to make the house usable by adding the second bedroom upstairs, but it will still be an unusual structure with one bathroom on the second floor. It will be a hard sell for someone buying the home. The applicant is trying to make the best out of a terrible situation and the right thing to do is grant the variance request to give the homeowner a chance to make the property usable in a positive way.

If the Board gives a positive vote for this application, Mr. Devine said there are stipulations which should be included, and he asked Mr. Kehoss how this can be handled.

Mr. Kehoss read an excerpt of Section 60 into the record, and said the Board can stipulate that the building official inspect the house and bring it up to standards.

Under the law, Mr. Devine said the building official only has to look at the new part, not the existing part of the house.

Mr. Wilson said the Board could place conditions stating that the two un-approved additions must be brought up to code and inspected by the building inspector as part of this project.

Ms. Nero said she will support the variance request. This is one of the most difficult to come before the Board. The owner could make the house safe and habitable and this is a benefit.

Mr. Lentini agrees that getting the property redone is a benefit, and he supports the idea of the building official inspection to be done for the entire structure. He also likes the idea of no windows on the north side and this should also be a stipulation because it is beneficial to the neighbors. Without the appearance of the neighbors at the meeting, it is assumed they are okay with the variance request and the project.

With regard to language for the building official to inspect the entire structure, Mr. Kehoss asked if this was okay with the applicant.

Mr. Torello said it was absolutely okay.

With a stipulation in the motion for the building official, Mr. Kehoss said when the applicant applies for the building permit, there will be a zoning permit attached, and he will touch those bases with the building official to make sure that everything is done.

Ms. Cianci is in favor of this application. But, she would prefer to tear the house down. As long as there are stipulations in the motion, she will approve the application.

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

MOVED that the Zoning Board of Appeals grant a variance of Section 32, Schedule B, Dimensional Requirements, for the property at 20 East Mitchell Avenue, Cheshire, CT, Map 57, Lot No. 265, in an R-20A/R-40 zone, for a 30 foot rear yard variance of the required 30 foot rear line setback for existing conditions, and recognizes the existing construction and new construction of roof dormer. This approval is granted subject to the following conditions: The Building Inspector will inspect the entire building; and there are to be no windows on the north side of the structure. This is based on the evidence presented at public hearing and general knowledge of the members of the Board. Granting of the variance will not confer upon the applicant any special privilege, and the variance will not result in injury to the neighborhood or the public welfare. And, granting the variance will be in harmony with the general intention and purpose of the regulations.

VOTE           The motion passed unanimously by those present.

Chairman Wilson advised the applicant that a variance does not become effective until it is 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**

**X. CHAIRMAN'S REPORT**

Mr. Wilson commented on the March 12<sup>th</sup> meeting with the town attorney and the good discussion. The Board learned it was okay to put stipulations in a variance approval, even though some stipulations will be difficult to enforce. He noted that both variances which were approved at this meeting had stipulations attached.

Mr. Kehoss commented on the link to the stipulations as being between the Planning Department and the Building Department.

**XI. ADJOURNMENT**

MOTION By Mr. Devine; seconded by Ms. Nero.

MOVED to adjourn the meeting at 9:00 p.m.

VOTE The motion passed unanimously by those present.,

Attest:

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Marilyn W. Milton, Clerk