

**MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS MEETING
HELD ON MONDAY, JUNE 4, 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, John Pepper, Agnes White.

Alternates: Jackie Cianci, Gerald Devine and Alternate Scott. 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.

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 – MAY 7, 2012

MOTION by Mr. Lentini; seconded by Ms. White

MOVED to accept the minutes of May 7, 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 1437 Highland Avenue LLC c/o Anthony Fazzone, Esq. One Town Center, Cheshire CT 06410, requesting a variance of Section 32, Schedule B, requesting a 15 ' foot side line variance of the required 30' foot side line setback, for an industrial building for electrical contractor's business, located at 1437 Highland Avenue, Cheshire CT

06410, as generally shown on Assessor's Map No. 19, Lot No. 14 in an I-1 Zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410

- 1. Application 12-08-01 PH 6/4/12
1437 Highland Avenue MAD 8/8/12
1437 Highland Avenue
Requesting a variance of Section 32,
Schedule B, Dimensional Requirements
Requesting a 15 foot side line variance
Of the required 30 foot side line setback
For an industrial building for electrical
Contractor's business.**

Attorney Anthony Fazzone represented the applicant. Also present was Robert Casner, principle of 1437 Highland Avenue.

Attorney Fazzone stated that the plan is to build an industrial building for G.C. Electric Company, a related entity to the applicant. He displayed photographs showing the parcel is occupied by a single family residence, and the intent is to utilize the residence by converting it into office space. If the variance is approved the applicant will add an industrial building to the site. The existing house is in front and the industrial building will be built in the rear.

Applicant's Exhibit #1 – is three pages of information as a result of research of the Town records with respect to the existing building and the lot on which it exists.

The Board was informed by Attorney Fazzone that there is nothing in the records which shows exactly when the house was built, but it is thought to be after 1950.

The first record sheet has the ZEO signing off on the building permit for a two car garage, granted on 4/7/59.

The second sheet is a copy of the card in the Building Department for Milldale Road, February 1959, when the property owner received a side line variance to permit construction of the two car garage.

The third sheet has notes related to the property on the permit taken out on old zoning; the foundation was in; the garage was not built. When the house was built a foundation was put in, and there was no variance required for the side line, and a garage could have been built at this time. The third line states that the side lines became different. In 1954 a new set of zoning regulations went into effect, and the property was formerly in a residential zone and the lot complied with these requirements. Now, the property is I-2, and this is the reason for the need for the variance.

Attorney Fazzone pointed out all these facts for the purpose of the fact that when this house was built and the lot was in existence (since 1942), with the exception of the garage, was done within the confines of regulations at that time.

The plan of the applicant is to take down the garage so there is a way to comply with zoning to get to the back of the property and build the industrial building.

To further complicate the situation, Attorney Fazzone noted that the zoning laws were changed in 1983 and the zone was changed to I-2 (from I-2) which makes the lot more in keeping with the regulations. I-2 zone requires 3 acres of land and I-1 requires 1 acre of land. In 1984 the zoning in this whole industrial area was changed again and prohibits all residential uses in the industrial zone.

In looking at the main table, Section 32, the permitted uses are stated, and residential uses are not, generally and almost 100%, allowed in the I-2 zone. This comes down to the fact that the current use of the property as a residence and the setback are nonconforming to today's zoning requirements.

With approval of the variance, Mr. Fazzone said it would allow termination of the nonconformity which the garage presents. By changing the zoning to industrial and removing the residential use the zoning authorities have concluded that the best use of the properties in this area are industrial category, and this is exactly what the applicant proposes.

Attorney Fazzone reviewed and recognized that granting a variance on one property does not constitute a precedent which binds the ZBA. But, he said it gives the Board some insight as to what has happened in this area.

The property immediately to the north is occupied by Copeland Auto, and in the past by Strollo Automotive. In 1980 that property did receive two side line variances to permit a building to be built on a lot about 100 feet wide. Attorney Fazzone explained that the 30 feet would have reduced this property to 40 feet wide which is not practical or feasible to build a building, and ZBA granted a variance of two 15 foot side line variances to both sides of this building.

Applicant Exhibit #2 – Minutes of the February 4, 1980 ZBA meeting.

This exhibit showed that, if the subject variance is granted, it would not change the character of the neighborhood.

Attorney Fazzone showed a photograph of the building to the south of the applicant's property (MicroTech), which is also close to the side line. This showed that granting the subject variance will not change the character of the neighborhood.

The ZBA is authorized to find the requisite hardship if that arises from a change in the regulations or a change in the zoning district, as has happened with this application. Attorney Fazzone said there was both – the property change from residential to industrial, and use of residential eliminated from the industrial zones. In this case the PZC recognized that in the I-1 Zone the ideal shape is to be 200 feet wide at the building line, and the lots in this area of the zone were not 200 feet wide, and the narrowness of them in the I-1 zone makes it impractical to build an industrial use building. With the 30 foot setback and 200 feet you end up with 140 feet of usable property; and with 100 feet you end up with 40 feet meeting the 30 feet on each side.

According to Mr. Fazzone it is the applicant's contention that the Connecticut Zoning Laws and court interpretations have held that hardship can be found in the changes of the zoning regulations and classifications. For this application, there is the narrowness of the lot, invalidly created at the time, and its use and measurements drastically changed with the change in the zoning regulations.

In conclusion, Attorney Fazzone stated that when this parcel of land was created it was valid in all respects with zoning laws. The philosophy of zoning is to try to get rid of nonconforming uses, and if there was industrial use in a residential neighborhood this would be more obvious to get rid of. Here we have a residential use in an industrial zone, and the use of the property is not desirable from a residential point of view.

COMMENTS AND QUESTIONS

Mr. Wilson asked about the dimensions of the proposed building, and how many bay doors.

Robert Casner, 1155 Jarvis Street, stated the dimensions to be 45 feet x 110 feet. There will be two overhead garage doors, and one access door on the back.

If this variance is approved, Mr. Wilson asked if the project goes through the PZC normal process.

Attorney Fazzone said the application will go through the PZC process. In an I-1 zone this is by special permit, so a complete site plan, drainage, building elevations, complete drawings, etc. will be presented to the Commission.

Mr. Pepper asked about the 1959 variance being applicable today with the change in the classification.

It is applicable, and Mr. Fazzone said it is only with respect to the garage, and once the garage is down, the variance would be abandoned.

Mr. Pepper asked why the building is set north versus centered on the property.

Attorney Fazzone said this is for maneuvering of vehicles, delivery vehicles coming into and out of the property.

Mr. Wilson asked about the plans being reviewed by the Fire Department.

The Board was informed by Attorney Fazzone that all special permits must receive approval from the Fire, Police, IWW, and Town departments once the plans are filed. Six sets of plans are required to be submitted for Town comments.

Mr. Casner advised that most of the vehicles coming in and out of the property are vans and work trucks, and one bucket truck. Deliveries are received from a 24 foot box truck.

Ms. Nero asked about the existing house being converted to office space.

Mr. Casner said that the garage will be demolished and the front of the house will be office space.

Mr. Pepper asked about getting the square footage if the setback was observed, and just lengthened the building.

In response, Mr. Casner said this would be difficult to do because the building would be pushed so far back that a vehicle would have to drive around the building to come back around to gain access. Access with a van would be difficult as there would not be enough room.

Attorney Fazzone noted there will be employee parking and zoning regulations require a certain width in the drive and property line to allow vehicles in front of the doors (pointed out on the plans), and getting to the back parking lot.

Mr. Wilson asked about leaving the south side of the building where it was so there was the 35 foot clearance and limited back side of the building making it skinnier fitting into the existing setback line, and if this was considered and why it was rejected.

In reply, Mr. Casner said the main issue was getting vehicles into the space. It would be difficult to maneuver vehicles, and space could be better utilized and easier under the proposed plan. The building will have a pitched roof.

Mr. Pepper commented on part of the hardship being that this is a parking lot of sorts with employees parking parallel to the building.

Mr. Casner said this was correct and he explained (on the plans) the movement of vehicles on the property.

Attorney Fazzone pointed out the zoning regulations requiring drive areas to be separate and distinct from the parking areas. With loading spaces and truck parking, there is still 15 feet needed to get past and go back to the parking area, and that cannot be located immediately adjacent to a property line.

Zoning Enforcement Office Kehoss informed the Board that notices were sent to abutters, and there were no responses.

VIII. DECISION MAKING SESSION

Secretary Nero read the call of public hearing.

The application of 1437 Highland Avenue LLC c/o Anthony Fazzone, Esq. One Town Center, Cheshire CT 06410, requesting a variance of Section 32, Schedule B, requesting a 15 ' foot side line variance of the required 30' foot side line setback, for an industrial building for electrical contractor's business, located at 1437 Highland Avenue, Cheshire CT 06410, as generally shown on Assessor's Map No. 19, Lot No. 14 in an I-1 Zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410

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| 1. Application | 12-08-01 | PH 6/4/12 |
| <u>1437 Highland Avenue</u> | | MAD 8/8/12 |
| 1437 Highland Avenue | | |
| Requesting a variance of Section 32,
Schedule B, Dimensional Requirements
Requesting a 15 foot side line variance
Of the required 30 foot side line setback
For an industrial building for electrical
Contractor's business. | | |

Mr. Lentini said he was in favor of granting this variance, and agrees with the applicant and counsel that this is the best use of the property. The elimination of the residential use in the industrial zone will enable the property to blend with the rest of the area.

Ms. White stated she favors approving the application, and that it will enhance the area.

Mr. Wilson agreed that there is a hardship for the application which is not created by the applicant, and was created by the change in the zoning. This has been a nonconforming lot for a long time since the north side has been at 11 feet from the property line. This was made worse by the 1959 application for the garage on the other side, and the hardship is due to the particular shape and

characteristics of the land. It will not confer any benefit to anyone else. He will be in favor of granting this variance request.

Ms. Nero stated she is in favor of granting the variance request for this type of business, and the proposed intended use. The hardship lies with the land not being presented easily with what the applicant proposes to do with it.

Mr. Pepper does not see a history of the change in zoning as being affected because of the recent purchase. He thinks use could be adapted within zoning, without such an intrusion, putting everything behind the house. However, everything will be behind the house, and in light of the other properties nearby he is inclined to approve the variance.

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

MOVED that the Zoning Board of Appeals grants the variance request of 1437 Highland Avenue, Cheshire CT 06410, for a 15 foot side line variance of the proposed 30 foot side line setback, in an I-1 Zone, under Section 32, Schedule B, Dimensional Requirements. This variance is granted subject to the following conditions. That the size and scope of this variance is limited to the specific plan submitted in the associated application. Based upon the evidence presented at the public hearing and general knowledge of the members of the Board, it is found that a hardship does not appear to result from the actions of the applicant. Granting the variance will not confer upon the applicant any special privilege. The variance will not result in injury to the neighborhood or public welfare, and 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.

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

XI. ADJOURNMENT

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

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

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk