

**MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS MEETING
HELD ON MONDAY, OCTOBER 1, 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
Alternate: Gerald Devine, Jackie Cianci and Scott Welburn
Absent: John Pepper and Agnes White
Staff: David Kehoss, Zoning Enforcement Officer/Wetlands Agent.

I. CALL TO ORDER

Chairman Wilson called the meeting to order at 7:35 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 – September 5, 2012

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

MOVED to accept the minutes of September 5, 2012 subject to corrections, additions, deletions.

VOTE The motion passed unanimously by those present.

VI. COMMUNICATIONS

VII. PUBLIC HEARING

Chairman Wilson explained the procedure for a public hearing before the Zoning Board of Appeals.

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|----------------------------------------------------|-----------------|--------------------|
| 1. Application | 12-08-01 | PH 8/6/12 |
| <u>Breina Schain</u> | | PH 9/5/12 |
| 62 Hilltop Road | | PH 10/1/12 |
| Requesting a variance of Section 32, | | MAD 12/5/12 |
| Schedule B, Dimensional Requirements | | |
| Requesting a 20 foot street line variance | | |
| Of the Required 40 foot street line setback | | |
| For a Gazebo. | | |

Secretary Nero read the legal notice.

The application of Breina Schain, 62 Hilltop Road, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements requesting a 20 foot street line variance of the required 40 foot street line setback, for a gazebo, property located at 62 Hilltop Road, Cheshire CT 06410, as generally shown on Assessor's Map No. 77, Lot No. 106 in an R-20 zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

Chairman Wilson advised that the applicant has requested a waiver of an A-2 Survey.

The Board members looked at the drawings submitted by the applicant, on which the applicant drew in the house, gazebo and fence. The drawings show that this is an odd shaped lot.

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

MOVED that the ZBA grant the waiver of an A-2 survey for the application of Breina Schain.

Discussion

Chairman Wilson stated that he is not pleased with the drawings submitted because it is unclear where the gazebo will be located on the property. He assumes the gazebo is going to be on the side of the driveway.

VOTE The motion passed 4-1; Wilson opposed.

Ms. Schain, the applicant, clarified the drawings for the Board and pointed out the location of the proposed gazebo. In speaking with ZEO Kehoss, she said that she was told to add three different measurements. She had the contractor do the measurements so they were correct, and pointed out the garage, shed and driveway on the plans. The gazebo will be located to the left of the driveway.

According to Ms. Schain the gazebo will be 20 feet from the street; there is 126 feet to the road in the front; and 58 feet to the setback. Ms. Schain distributed copies of photographs of the 8 ft. x 12 ft. gazebo for the Board to review. The gazebo will be constructed by Carefree Small Buildings Company, West Haven, CT. There is a fence in the yard, and the proposed location for the gazebo is the only place where it can be located and look aesthetically nice. Ms. Schain has taken down three trees in the location which opened up the area for the gazebo.

With regard to the hardship for this application, Ms. Schain said that Hilltop Road is the narrowest street in Cheshire and the lot is unique, and it is circularly surrounded on three sides. The existing Hemlock Trees will prevent the gazebo from being visible from the road. Her goal is to improve the quality of the property and its appearance. This gazebo is not a permanent structure, has no foundation, and will be anchored into the ground. It can be moved in the future; it will be 19.6 feet from the road.

Ms. Schain informed the Board that she spoke to her six neighbors who all approved of her getting a variance for the gazebo, and three neighbors submitted written approval letters.

Exhibit A – Photographs of the gazebo.

Exhibit B – Three letters from neighbors in support of the variance.

Mr. Wilson said the stated hardship is because the building lot has three fronts; one must be identified as in the rear; and the other two are considered front setbacks.

It was stated by Mr. Kehoss that the way the property is configured there are street lines on three sides, and the applicant would have to abide by the 40 foot street line on three sides. He said this is an unusual situation and very restrictive for the property owner.

Ms. Schain said there is shed in the back of the property, and this is a tight neighborhood, and trees make things broader between the street and the house.

Regarding the trees, Mr. Devine asked if they were on the applicant's lot.

In response, Ms. Schain said "yes" and one was taken down, and she paid for this work.

On the drawings, Mr. Devine said that many of the trees are not on the subject property, and if they were cleared out the line could go to the street.

Ms. Schain noted that without the trees you can see right into her back yard. She pays to have these trees sprayed twice a year, and likes the aesthetic look of the trees.

Mr. Devine said the tree line is part of the property.

The Board was told by Ms. Schain that there is no map of the property available at Town Hall, and the contractor had to search for the well which was found in the middle of the garden. When she purchased the property she brought the well and septic system up to code.

It was stated by Mr. Wilson that the street is a very narrow width and not within the Town's standards for street width.

Mr. Kehoss commented on the fact that this is the challenge with this application, knowing where the property line and Town property lines are located. The variance is from the required normal 40 foot property line setback. The street line means the property line. The Town is repaving this road.

Ms. Schain said that sidewalks and widening the road would ruin the country character of this area of Town. There is no permanent border between Ridgecrest and Hilltop Roads, and the barrier is open only for emergencies.

In her closing comments, Ms. Schain said she wants to build the gazebo, the road will remain the same, and the only place for the gazebo is the location she has proposed. Her neighbors are in agreement with her plans, and the gazebo will add to the beauty of the neighborhood.

There were no other Board of public comments or questions. Mr. Wilson closed the public hearing.

2. Application 12-10-01 PH 10/1/12
Appeal to the Cheshire Zoning Board
Of Appeals
Denali Cheshire LLC
155 Highland Avenue
Interpretation of Section 32.9b2(1)

Secretary Nero read the legal notice.

The appeal to the Cheshire Zoning Board of Appeals by Denali Cheshire, LLC, c/o Christopher Howe, 1 Shoreline Drive, Unit 7, Guilford, CT 06437, subject of the appeal: The interpretation of the zoning regulations relative to the size of a wall sign Section 34.9b2(1) the property located at 155 Highland Avenue, Cheshire CT 06410, the reason for appealing is that this portion of the regulation should include a roof line peak if it is an integral part of that wall. The file is available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

Chairman Wilson explained that the applicant is appealing the action taken by Mr. Kehoss, Zoning Enforcement Officer. It is the responsibility of the Board to overturn or agree with the ZEO decision. For this application there is no definition of hardship and it does not come into play.

Mr. Kehoss clarified that the Board will decide if there has been an error on the application for a sign by the applicant. A decision was made by the Town

Planner, Mr. Voelker, for interpretation of the wall sign size in the regulation. The appeal is to decide whose interpretation is correct – the applicant or the Town Planner. For the sign, the rectangular area of the façade is included, but not the peak of the roof.

Christopher Howe, 21 Court Street, New Haven, CT, stated he is owner of Denali Cheshire, LLC, which is an outdoor sporting goods store to be located in the former Rite Aid site in Maplecroft Plaza. Mr. Howe has met with Mr. Kehoss, and was advised to come before the ZBA for interpretation of the sign regulations. His store is the anchor store in this section of the plaza, and he believes his building should have a larger sign. From inside the building it does not even appear that the peak is there. Mr. Howe met with The Beautification Committee which would approve a larger sign, if the appeal is granted.

For the Board, Mr. Kehoss displayed the sign application and rendering of what the sign would look like. He has met with Mr. Howe regarding the sign application for the store. Under the regulations, for any multi-tenant building, one wall sign cannot exceed 5% of the wall. Each tenant is entitled to install a sign that is no more than 5% of the wall. A larger store could have a larger sign based on the linear feet. The question with this appeal is a 43 s.f. sign versus a 73 s.f. sign.

The Board looked at the two options for the sign. The smaller sign would be 22% smaller than the larger sign.

Mr. Kehoss stated that the measurement is the height and width of the sign, and this store has a peak over the wall in the front. The Board must decide whether 5% of the store frontage should include this peak. If the Board makes this decision, the sign would be 73 s.f. A standard application under the regulations would be the store front and height, excluding the peak. Mr. Kehoss said the peak is an architectural feature as opposed to the interior of the store. This raises some questions for all stores of this same size, and a store with a peak would have an unfair advantage for a larger sign. Historically, a peak has never been included in the height and width of a sign.

It was noted by Mr. Wilson that inclusion of the peak equates to 616 s.f. and this adds 2/3rds more area, which is a significant change in the size of the sign.

With regard to the sign at the former Rite Aid store, Mr. Kehoss explained that this store and sign were in existence before the sign regulations were enacted and enforced.

Mr. Devine said there is no regulation on peaks, and the Board will set a precedent on whether peaks can be included in a request for a sign on a building.

The question of how the Planning Department interpreted this regulation in this way was raised by Mr. Lentini. He said there is a lot of square footage there and he cannot understand why this is looked at this way.

In response, Mr. Kehoss stated that an interpretation of the zoning regulations goes to the Town Planner, Mr. Voelker, and his expertise is relied on. The Town Planner stated that this is the way the regulation is applied, and it goes by the linear foot of the store front. In this case it is 945 l.f. without the peak. By the regulations, the store can only have one wall sign. These regulations have been in effect since 2001, and businesses before that time do not have to be in compliance with the new sign regulations. Similar rules apply for businesses facing Route 10.

Mr. Wilson stated that with regard to the Planning and Zoning Commission (PZC) the sign law was specifically crafted and debated over the last 10 years.

For the subject building, Mr. Kehoss said this is one wall flush to the top of the peak.

PUBLIC COMMENTS AND QUESTIONS

Breina Schain, 62 Hilltop Road, looked at the sign proposed by the applicant, and said the larger sign would be more proportionate to the peak than a smaller sign. She supports the larger sign on the building with the larger name of the store. Ms. Schain said the Board must take the peak into consideration.

Mr. Howe expressed appreciation to the Board for consideration of his appeal. He wants his business to be successful in Cheshire, and not start out with a disadvantage. He noted that his property is already perpendicular to the road and his business is filling an important space in the shopping plaza. Whatever the decision of the Board, Mr. Howe said he would accept it, and again, thanked the Board for its consideration of his appeal.

It was pointed out by Mr. Howe that a store like Staples, which predates 2001, were to be rebuilt today, it has a 35 foot top to the building but is only 70 feet across while his store is 65 feet across. With the way the rules are written, Staples could have a sign as large as the one there now. But, for a space which has the linear footage not much larger than his store, and a space closer to the road, there is a larger sign. Mr. Howe reiterated that the peak was put there either originally or for Rite Aid, because it was a 8,000 s.f. space, and the anchor store for this section of the plaza.

Mr. Lentini asked whether this decision by the Board is a special case decision or whether it would affect future applications.

According to Mr. Kehoss there is another application on hold, and the ZBA decision will have a bearing on that application and an impact. It is the same

situation, and where there is one flush wall all the way to the top with no break for a façade or other architectural change, the decision will have an impact.

For further clarification, Mr. Kehoss said that the dimension of the sign in the more restrictive interpretation would be 3.1 feet by 14 feet, and the sign including the peak would be 4 feet x 18.2 feet.

VIII. DECISION MAKING SESSION

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|----|----------------------------------------------------|-----------------|--------------------|
| 1. | Application | 12-08-01 | PH 8/6/12 |
| | <u>Breina Schain</u> | | PH 9/5/12 |
| | 62 Hilltop Road | | PH 10/1/12 |
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Mr. Wilson said the lot shape is unusual, with three narrow streets on three sides of the property, and the variance is 20 feet of the street line.

Mr. Wellburn said he cannot see anything against the gazebo because it is a movable structure, and the base is 4x4 with stones, with pins as anchors. This is an odd lot with more restrictions on what can be done on the property. There is a hardship, and he would be in favor of the variance request.

Mr. Lentini stated his agreement with Mr. Wellburns' comments in that the hardship is the setbacks on three sides of the street, which makes it hard to put anything on the property. The concept that this is a movable structure, without a foundation, makes it easier to accept the variance request.

It was stated by Mr. Wilson that the Board could put a restriction on the approval of the variance request, that if the structure was changed to a permanent structure with a foundation, this would not be allowed. The next homeowner could not put up a shed with a concrete foundation.

Mr. Lentini said that this is done with in-ground pools, and he would welcome a restriction on the approval. There is an overgrowth of trees which will hide the gazebo, and there is neighborhood support. He would be in favor of the variance request.

Mr. Devine has a hard time with this application because it is not known where the property lines were, and the photographs and drawings do not show where the line is. There is another problem with the geography of the property, which is shaped by the Town when it built the road. This is out of the applicant's hands and the prior owners. This is the real conflict and hardship...that the Town has imposed limitations on her property and use with the narrow road. It is not known who owns the trees. If they are the Town's trees, this imposes a limitation on what utilization of the land the applicant has. He supports the variance request with a restriction on there being no permanent foundation in the future. If a new owner wants a permanent structure they would have to come before the Board. There should be a restriction which applies only to this gazebo structure, and not future structures on the property.

Mr. Devine commented on past issues before the Board where the Town imposed restrictions on the amount of land that could be utilized by a property owner. The cases should be taken one by one, without regulations being written in stone; and the Town has not taken into consideration written variables for the regulations. The subject application is a variable to be contended with, and the geography of the lot is a real issue.

Ms. Nero said the hardship is the road on three sides of the property, and not much can be done with putting the gazebo in without being in violation of the property lines. She is in favor of granting the variance.

Mr. Wilson said he has a problem in that the gazebo is not a guarantee or right to be taken to use the land. A variance is required if the condition prevents a property owner from using the land for its intended purpose. There is a problem with the side lines with 40 feet on three sides. With a restriction in the approval for this specific structure and no future buildings on the lot, it could be more palatable for him to approve this variance request.

It was pointed out by Mr. Devine that the road is very narrow and trees limit the applicant's ability to use the land. He noted that the Board has had to look at unique applications and make unique decisions.

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

MOVED that the Zoning Board of Appeals grants the 20 foot variance request of Breina Schain for property at 62 Hilltop Road, Cheshire CT 06410, Zoning Regulations, Section 32, Schedule B, Dimensional Requirements, subject to the

following conditions. This approval is for a gazebo only. Based upon the evidence presented at the public hearing and the general knowledge of the members of the Board, it is found that the hardship does not appear to be the result of the actions of the applicant. That granting of the variance will not confer upon the applicant any special privilege, and that the variance is the minimum variance that will make possible the reasonable use of the land. And, the hardship that exists on this property under the zoning regulations so affects it that the owners are deprived of any worthwhile rights or benefits of the land, and to fail to authorize the variance would be a practical confiscation and violation of the Constitution of the United States and the State of Connecticut.

VOTE The motion passed unanimously by those present.

Chairman Wilson informed the applicant that the variance becomes effective upon recording on the land records of the Town of Cheshire, and this is the responsibility of the applicant.

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|--------------------------------------------|--------------------|
| 2. Application 12-10-01 | PH 10/1/12 |
| Appeal to the Cheshire Zoning Board | MAD 12/5/12 |
| Of Appeals | |
| <u>Denali Cheshire LLC</u> | |
| 155 Highland Avenue | |
| Interpretation of Section 32.9b2(1) | |

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Mr. Wilson said this would set a precedence and a signal to the Planning Department on how this Board feels at the present time. In the past the Board has upheld past ZEO decisions, and has overruled them as well.

Ms. Nero has conflict with this appeal, and she does not want to set a precedence which will be used for other buildings and not in the best interests of the Town. She said the sign regulations are in effect for a long time, and in this case there is no break in the front façade of the building.

This is a unique situation with a building in place for many years, and Mr. Wilson said at first he thought the peak should be included. But, it gives future building designers the opportunity to make a taller building and get a bigger sign. The question is on the interpretation of the linear feet or square feet of the front of the building.

Mr. Devine is interested in change and as a liberal wants liberal interpretations, and in this case an exception could possibly be made. He is thinking of the economic development in Town. The Board would not be putting its best foot forward by restricting a sign for a company that could, probably, buy the Town of Cheshire. He thinks the Board can make an exception, still leaving the sign rules there, or send a recommendation to the PZC to decide on using linear or square footage. Mr. Devine is in favor of granting this variance request for a larger sign for the economic interest of the Town and setting a precedent. PZC can review their limitations in the regulations, which was written in cement and should have been written in sand. The ZBA should be fore farsighted than PZC, since buildings are getting larger as they are developed. The Board is giving a positive look to economic development and advertising for business.

It was stated by Mr. Lentini that the Town takes the sign regulations seriously and in his 12 years on the Board he has seen many fights with various business on sizes of signs. He does have concern about setting a precedent with the interpretation of the regulations because the uniqueness of the subject building will carry over into the interpretations of others and how things are done. The signs are only 5% of the linear footage of the façade. He agrees with the applicant that the façade is all one section and all one piece and the peak is part of it, with a lot of open space on the façade for a large sign. Limiting the sign size to the linear footage is something that should be looked at in this case and future cases. He would like to take what the Planning Department takes as its consideration, 5%, and take 50% of the extra space for determination of the sign size. Mr. Lentini said this could be the formula for the subject application, and it could also be used in the future. He does not think the applicant should have the entire consideration of the whole peak because a sign cannot be put all the way to the top. The sign is not much larger than what is permitted under the regulations, and it will look better on the store frontage, and a small sign gets lost. The new store will be the main store front in this section of the plaza and the larger sign should be allowed.

Mr. Wellburn agrees that this is similar space that is connected with nothing breaking it apart. But, there must also be a set standard which distinguishes this building from other buildings, and be fair to everyone as it relates to measuring the same way. He commented on what there is to stop a building with a flat roof from modifying it with a tall peak for a larger sign. There must be something consistent in the way the buildings are measured.

It was stated by Mr. Devine that the ZBA makes this decision and forces the PZC to adjust the sign regulations accordingly. It could be written in that this is an exception to the existing ordinance and there should be an update to the sign ordinance. The Planning Department would have to go with either linear or square footage, and this would remove encumbrances being forced on the Board tonight.

Mr. Kehoss stated that the ZBA decision is based on this application and will impact future applications. The emphasis is on store frontage without regard to the architectural feature of roof lines. This is the departmental interpretation.

After listening to other Board members, Ms. Nero said she is in agreement with Mr. Devine as far as the aesthetic benefits of a larger sign. The Town does not have that many buildings with the unique feature of a peak. She would be in favor of granting the appeal of the ZEO decision.

The Board was informed by Mr. Kehoss that there are 38 pages of sign regulations; it is not always black and white; and the Planning Department tries to apply the regulations as best as possible. Sometimes, there is an application that requires more help, with explanation to the applicant on the options available, including an appeal of a decision of the Planning Department.

Mr. Lentini asked about an applicant coming in to build a shopping center, inquiring about sign requirements, and if the person is told about the roof line, size of and placement of the signs.

Each application is different in that the facades on the buildings have many variables, and Mr. Kehoss said it depends on how they are designed. The design can raise a question on how part of the wall is figured in, and sometimes they are not flush which makes decisions easier. For the subject appeal, the ZBA's decision would uphold the department's application and interpretation of the regulations.

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

MOVED that the Zoning Board of Appeals overrules the decision of the Zoning Enforcement Officer in this specific application of 155 Highland Avenue - Denali Cheshire LLC, because of the uniqueness of this property – that is the peak and siding of the building.

Discussion

Mr. Lentini noted that he had mentioned taking only 50% of the peak which would limit people from building tall and flush facades as only 50% of the footage could be used.

VOTE The motion passed 4-1; Lentini opposed.

Chairman Wilson acknowledged that the decision of the Zoning Enforcement Officer for 155 Highland Avenue – Denali Cheshire LLC is over-ruled by the Zoning Board of Appeals.

Mr. Wilson stated that he believes the law allows the applicant to use the larger sized sign for the front façade of his building.

Mr. Kehoss said he will proceed to process the original application of Denali Cheshire LLC.

IX. OTHER ZONING BOARD OF APPEALS BUSINESS

X. CHAIRMAN'S REPORT

XI. ADJOURNMENT

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

MOVED to adjourn the meeting at 9:25 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk