

MINUTES OF THE TOWN OF CHESHIRE ZONING BOARD OF APPEALS
HELD ON MONDAY, FEBRUARY 4, 2013, AT 7:30 P.M. IN COUNCIL
CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE
CT 06410

Present

Ken Wilson, Chairman; Marion Nero, Secretary; John Pepper, Agnes White.
Alternates: Jackie Cianci and Gerald Devine
Absent: Vincent Lentini and Alternate Zachery Welburn
Staff: Dave Kehoss, Zoning Enforcement Officer

I. CALL TO ORDER

Chairman Wilson called the meeting to order at 7:31 p.m.

II. ROLL CALL

Secretary Nero called the roll.

III. DETERMINATION OF QUORUM

A quorum was determined to be present.

IV. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

V. ACCEPTANCE OF MINUTES – DECEMBER 3, 2012

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

MOVED to accept the minutes of December 3, 2012 subject to corrections,
additions, deletions.

VOTE The motion passed unanimously by those present.

VI. COMMUNICATIONS

1. Connecticut Federation of Planning and Zoning
Agencies Quarterly Newsletter-Vol. XVII, Issue 1
Winter 2013.

VII. PUBLIC HEARING

Secretary Nero read the call of public hearing.

The application of Paul A. Bowman, member, 205 Maple Avenue,
Cheshire CT 06410, requesting a variance of Section 33.1, Parking Space
Standards to locate parking 10 feet from the West Main Street street line
and 6 feet from a residential district boundary, and a variance of Section

32, Schedule B to permit the construction of a drive-thru canopy 23 feet from a residential district boundary, property located at 205 Maple Avenue and 219 Maple Avenue, as generally shown on Assessor's Map No. 57, Lot No(s) 205 and 204 in a C-3 zone. The application is on file and available for public inspection in the Planning Department 84 South Main Street, Cheshire CT 06410.

- 1. Application 13-02-01** **PH 2/04/13**
Paul A. Bowman **MAD 4/10/13**
205 Maple Avenue and 219 Maple Avenue
Requesting a variance of Section 33.1 Parking
Space Standards
To locate parking 10 feet from the West Main
Street street line & 6 feet from a residential
District boundary, and Requesting a variance
Of Section 32, Schedule B to permit the
Construction of a drive-thru canopy 23 feet from
A residential district boundary.

Paul Bowman, 387 Mount Sanford Road, owner of the subject property, presented his variance application to the Board. He advised that notices were sent to abutting property owners; he heard from two owners; and he has met with them to answer questions and resolve any concerns.

The Board was informed by Mr. Kehoss that the Planning Department has not heard from any abutting property owners about this application.

Mr. Bowman stated that this property is in a C-3 zone at the corner of Maple Avenue and West Main Street; it is two parcels of land at 219 and 205 Maple Avenue. He is seeking variances to develop the property for a bank with a drive-thru appendage. It would be a 4,500 sq. ft. building with a canopy to the west for a drive-thru.

Applicant's exhibit A – A2 Survey

Applicant's exhibit B – Map which shows the proposed development.

If the variances are granted, Mr. Bowman will apply to Planning and Zoning Commission (PZC) for a special permit with unified site plan to combine the two adjacent properties.

Mr. Bowman informed the Board about the properties and related hardships. There are two buildings on the 205 Maple Avenue parcel – a residential house built in 1900, and Enterprise rental car building built in 1971. All improvements to the property were done before Mr. Bowman purchased it 30 years ago. The building to the north is a two family house built in 1880. Part of the difficulty in development of the properties and moving the parking back is the demolition of

this house, which is being undermined by materials used in construction and the impact of traffic in the area. The house was originally a residence and is difficult to use on a commercial basis due to the structural issues, lead paint, and it would be hard to conform to a commercial use. Mr. Bowman noted that some of the photographs show the issues on the house.

Another hardship and unique situation to the property is the right-of-way for West Main Street which is about 65 feet wide. When the street was constructed it was never put in the center of the right-of-way. The lot has two front setbacks because of it being a corner lot; the property has two front lines, a side and rear line. If the lot conformed to current zoning regulations it would have to be torn down because it does not fit within the original set back area.

On the map, Mr. Bowman pointed out the non-conforming house; 5% of the house would be behind the building line; and the existing parking is non-compliant. The barn is also non-compliant and is too close to the rear line to the north.

Chairman Wilson stated that because this is in a C-3 zone the applicant is up against residential areas to the west.

Mr. Bowman distributed copies of the colored rendering of the site, noting that the gray area is the only place to build on the properties. He pointed out the fact that another hardship is that the lot is an irregular shape (rectangular) and the frontage is one half the area of the length. There are three trees in the front, a Magnolia tree and two Maple trees which the applicant wants to leave in tact.

Another issue raised by Mr. Bowman is that from the northeast corner of the property to the southwest corner there is almost a 10 foot change in grade and this is unique to this area. Other abutting property owners have high grade change but the subject property grade change is more severe and makes it more difficult to develop. The current curb cut is closer to the light and intersection, and moving to the north will improve traffic flow and standing traffic.

Chairman Wilson questioned the lot coverage being within current code for the zone, and the berm line and retaining wall.

In response, Mr. Bowman said the lot coverage is in compliance, and wall will be to the south of the property and go from 18 inches high to 2.5 to 3 feet at the top. This helps in a few ways. Any cars facing south will not have lights impact across the street, and this grading will be incorporated into the final plan.

With regard to the variances, Mr. Bowman stated that for the south property line, according to the regulations, parking must start 20 feet from this line. The variance request is to start within 10 feet. The property is further off the curb line than abutting property owners.

An aerial photograph of the subject properties was distributed to the Board by Mr. Bowman. From the property line to the curb line the smallest area is 22 feet. The abutting property owners – coffee shop is 16 feet; Getty station is 10 feet; and the post office is 12 feet. The proposed development is keeping the harmony in the neighborhood. From the curb line to the parking will be 32 feet if the variance is granted.

With the distances stated, Mr. Wilson said that the retaining wall will be needed.

According to Mr. Bowman this intersection is unique because the right-of-way is 65 feet wide and paved travel portion is 36 feet wide, with 5 feet on the south side and 31 feet on the west side. Some of the trees (5 or 6) will come down in the travel portion of the driveway.

Ms. Nero asked about the Town having proposed to install sidewalks in this area up to Maple Avenue.

This has been discussed for many years, but Mr. Bowman noted that the developer must install sidewalks to the next property line. No one has contacted him about the Town installing sidewalks, and he will not ask for a sidewalk waiver. When the Town does not enforce sidewalks, Mr. Bowman said this money should be taken and used for sidewalks within walking distances of schools for safe walking for children.

With regard to the area of the residential boundary district, Mr. Bowman is looking for two variances. One deals with parking because it is required to have 20 feet from the property line, and he is looking to do it at 6 feet. The 2nd variance is for the canopy which will be 23 x 22 feet, or 460 sq. ft. facing the west side of the property. He is seeking a 23 foot variance to change the setback line. The canopy is an appendage; the main building has been kept at the required 40 feet. The property further to the west is residential zoned and is being used as a two apartment residence at this time.

Mr. Pepper asked about there being a flat roof or low back canopy.

Mr. Bowman advised the roof would look flat but would be tapered, and it is similar to other banks, and it will have supporting posts.

Mr. Devine asked about the parking spaces for the bank.

When this application comes to PZC, Mr. Wilson said the parking will be looked at based on the square footage of the building. This will determine the number of real spaces and handicapped spaces required.

According to Mr. Devine, one variance could be eliminated if the applicant gets rid of the nodule in the corner getting back to compliance.

Mr. Bowman agreed to answer the question about parking. In a C-3 zone for this particular building, Mr. Bowman said it requires 25 parking spaces and the development is designed for 30 spaces. The applicant is 5 spaces over what is required from a zoning perspective.

PUBLIC COMMENTS AND QUESTIONS

Lynn Remley and John Remley, 233 West Main Street, abutting property owners, addressed the Board about the subject application.

Mrs. Remley noted that their house is right next to the coffee shop, and over the years the State has infringed on their front line three times. The line is not in the middle but almost on her front lawn. She has a concern about the reconfiguration and lights and changing her property from residential area to commercial area. She and Mr. Remley have visited the Planning Department regarding this application, and they have also met with Mr. Bowman. At the meeting, Mr. Bowman made some suggestions which would assist with the Remley's concerns about being in a residential rather than commercial part of town. Mrs. Remley advised the Board that Mr. Bowman listened carefully to their concerns, offered suggestions about landscaping which the applicant said would block car headlights coming onto their property.

If the variance application is granted, Mr. Wilson stated there would be more public hearings and a process to be followed. He encouraged Mr. and Mrs. Remley to continue to participate in the process for the subject application.

In hearing about the proposal for the subject property, Mrs. Remley said there were concerns about the parking lot being moved closer to her house.

Mr. Remley commented on meeting with Mr. Bowman and his offer to landscape his property if there is an issue. He said he and Mrs. Remley were grateful to him for this, and appreciated his reaction to their concerns. He noted that the proposed driveway will be across from his property at the eastern corner.

It was stated by Mr. Bowman that this application would have to be by special permit with a public hearing through PZC. In his meeting with the Remleys, they discussed parking, lighting drainage and other things which are the next steps in the process.

Mr. Bowman read a statement into the record of the meeting as follows:

"I feel the intended development is harmonious with the neighboring properties in use, size scale and existing dimensional setback requirements. I also feel the variance fits within the general purposes and intent of the regulations, and will not impair health, safety and general welfare of the community. If successful with ZBA, I recognize there are two abutting residential property owners that have concerns. I will meet with them upon submission of an application to the Planning and Zoning Commission to offer any type of hard scape screening

and/or buffering measures that are reasonable and conform to local, state and federal regulations.”

The Board was informed by Mr. Bowman that with the Stonegate development he was successful with building buffering areas. He offered that this would be a solution to the concerns on the eastern portion of the Remley’s property, and the Remleys visited this site.

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

VIII. DECISION MAKING SESSION

Secretary Nero read the call of public hearing.

The application of Paul A. Bowman, member, 205 Maple Avenue, Cheshire CT 06410, requesting a variance of Section 33.1, Parking Space Standards to locate parking 10 feet from the West Main Street street line and 6 feet from a residential district boundary, and a variance of Section 32, Schedule B to permit the construction of a drive-thru canopy 23 feet from a residential district boundary, property located at 205 Maple Avenue and 219 Maple Avenue, as generally shown on Assessor’s Map No. 57, Lot No(s) 205 and 204 in a C-3 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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A residential district boundary.

Chairman Wilson stated that the Board must consider the hardship in an application and how it applies to the requested variance. The applicant stated hardships based on topography, unusual shape of the lot where the center of the street was versus where the property line was. The Board must decide if the hardship is real and whether the approval will be based on the hardship. As a commercial developer, the applicant is trying to maximize the value of the land by putting a building that fits his proposed tenants. When this was first built, this was a residential area and property.

Mr. Devine said there is a hardship with the topography. Also, the town and state have set up that corner in such a way as to be a pain even with someone driving and trying to get off Main Street onto West Main Street. It makes it difficult for land use; this was a residential area and was changed to commercial; and the topography is an issue regarding the driveway, northwest corner where the 6 foot variance is requested. His question is whether the building could have been built closer to the south side and take away all the property down and bring it level. Mr. Devine stated we are stuck in the situation with the town and state causing the problems.

Mr. Wilson said there are two non-conforming buildings now; parking is too close to Maple Avenue; there is a proposed benefit to public safety if this parking is eliminated; and two non-conforming buildings are replaced by one building. The Board has dealt with these issues in the past on various applications. Because of the topography of the land, the existing West Main Street as structured, he said there is a hardship. There is a benefit to the land use by elimination of the two existing non-compliant structures (with 50 foot setback) and creation of one building which will almost fit. The applicant discussed landscaping on the west edge, and specifics about drainage, impervious areas, etc. are not part of the ZBA consideration and decision. Mr. Wilson would support granting this variance application.

Ms. Nero agreed that there is hardship as to the lay of the land. There are concerns and issues to be addressed by the DOT, PZC. She would be in favor of the application receiving the variance based on hardship.

Ms. White also agreed about the hardship related to the land, and would be in favor of granting the variance request.

Mr. Pepper commented on the double front lines and offset right-of-way being hardships, and he is in favor of granting the variances.

MOTION by Mr. Devine; seconded by Mr. Wilson.

MOVED that the Zoning Board of Appeals grants the variance request of Paul A. Bowman, for a variance of Section 33.1 Parking Space Standards, 20 feet from a street line and residential boundary line to 10 feet and 6 feet respectively, a 10 foot and 6 foot variance; and a variance of Section 32, Schedule B, to permit the construction of a drive-thru canopy from 40 feet to 17 feet, a 23 feet variance, distance from a residential district boundary, property located at 205 Maple Avenue and 219 Maple Avenue, Cheshire CT. The hardship exists due to the topography of the land and lot configuration on the property which does not exist on other properties in the district. To strictly apply the zoning regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning regulations. That, granting of the variance

will not confer upon the application any special privileges. This variance applies only to the two specific points of parking and the canopy.

VOTE The motion passed unanimously by those present.

Chairman Wilson stated that the variances have been approved. They do not become effective until filed on the land records of the Town of Cheshire in the Town Clerk's office. This is the responsibility of the applicant.

IX. Other Zoning Board of Appeals business

X. Chairman's Report

XI. ADJOURNMENT

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

MOVED to adjourn the meeting at 8:42 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk