

**MINUTES OF THE TOWN OF CHESHIRE ZONING BOARD OF APPEALS HELD ON MONDAY, MAY 6, 2013, AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE T 06410**

Present

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

**I. CALL TO ORDER**

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

Mr. Wilson read the emergency announcement.

**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 – MARCH 4, 2013**

MOTION by Mr. Devine; seconded by Ms. Nero

MOVED to accept the minutes of March 4, 2013 subject to corrections, additions, deletions.

VOTE The motion passed unanimously by those present.

**VI. PUBLIC HEARING**

Before the start of the public hearing, Chairman Wilson explained the procedures for a public hearing before the Board. He informed the public present that 4 affirmative votes (out of 5 voting members) are required for approval of a variance. He stated that hardship is the key to the application, and he read the explanation of hardship into the record of the meeting.

Mr. Wilson noted that the applicant met the requirement of informing abutting neighbors about the variance request. A list of abutting neighbors was in the file.

Mr. Kehoss advised that there were no responses to the Planning Department following this notification.

Mr. Wilson stated that the applicant has requested waiver of an A-2 survey.

MOTION by Mr. Pepper; seconded by Mr. Devine.

MOVED that the ZBA grant the waiver of an A-2 Survey to Laurene L. Baril, for property located at 212 Forest Lane, Cheshire CT.

Discussion

The Board reviewed the drawings submitted with the application. The subdivision map is from 1984 and is a Chesprocott map; the other drawing is from 1955 when the house was built; and there is a drawing from J.A.N. Building and Design, LLC of the proposed addition to the house. Mr. Wilson noted that on the drawings it is shown that there is a 100 foot front and back, 210 feet across the sides and 10 feet from the property line. The new addition will be 38.6 feet x 24 feet.

Following discussion and review of the documents, the Board concurred that a waiver could be granted.

VOTE The motion passed unanimously by those present.

There is another issue for Board consideration. Mr. Wilson advised that the applicant has requested a partial refund of the 2<sup>nd</sup> filing fee. The applicant paid \$320 for the first application, and it had to be withdrawn because of an illegal shed on the property. After the shed issue was resolved, the applicant filed for the 2<sup>nd</sup> time, and paid another \$320. This matter will be taken up, discussed and decision made later in the meeting.

- |           |   |                  |                    |
|-----------|---|------------------|--------------------|
| <b>1.</b> | <b>Application</b>                                | <b>13-05-01.</b> | <b>PH 5/6/13</b>   |
|           | <b><u>Laurene L. Baril</u></b>                    |                  | <b>MAD 7/10/13</b> |
|           | <b>212 Forest Lane</b>                            |                  |                    |
|           | <b>Requesting a variance of Section 32,</b>       |                  |                    |
|           | <b>Schedule B, Dimensional Requirements</b>       |                  |                    |
|           | <b>Requesting a 20 foot side line variance of</b> |                  |                    |
|           | <b>The required 30 foot side line setback</b>     |                  |                    |
|           | <b>For an addition</b>                            |                  |                    |

Secretary Nero read the call of public hearing.

The Cheshire Zoning Board of Appeals will hold public hearings on Monday, May 6, 2013, at 7:30 p.m. at the Cheshire Town Hall, 84 South Main Street, Cheshire CT 06410 to hear the following:

The application of Laurene L. Baril, 212 Forest Lane, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 20 foot side line variance of the required 30 foot side line setback, for an addition, property located at 212 Forest Lane, Cheshire CT 06410,

generally shown on Assessor's Map No. 85, Lot No (s) 175 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.

Ms. Baril, applicant, stated that the house is built 10 feet from the north property line, and to put an addition and keep it in line with the kitchen area, and even with the north side of the house, a variance is needed. The addition will be a bedroom, bathroom and closet for her elderly parents, and due to their medical conditions, it must be on the first floor of this split level house.

The hardship for this variance was stated by Ms. Baril. She said the goal is to have one level in the house for the kitchen, living room, and the parents bedroom and bathroom. In order to do this the addition must be lined up with the north side of the house. There are stairs to the 2<sup>nd</sup> level, an issue about load bearing for the structure, and for the addition to comply with the regulations it would have to be built in the middle of the house. In doing this it would not be near the kitchen and living room areas, but in the center of the house, directly into the 2<sup>nd</sup> level. The driveway is on the south side of the house.

Mr. Wilson commented on there being a non-conforming situation on this property today, and the variance issued in the past added a porch. This proposed addition will not make the non-conforming any worse, but will continue the house in the same line.

Donna Price, 212 Forest Lane, informed the Board that the porch will be removed, with this area extended out to make the addition. She cited the hardship as the house being built 10 feet from the north property line, and this is the reason for the variance. Her parents need to avoid stairs and the addition in the proposed area is the only place for it to be built.

Mr. Pepper asked about the 12 x 14 foot porch shown on the drawings.

The Board was told by Ms. Price that this is the porch that will be removed. It will be replaced by the addition.

Mr. Devine questioned the 10 foot variance at the time the house was built.

Stating the Board deals with this type of issue from other homes in this area of town, Mr. Wilson stated these homes are non-conforming. After they were built the zoning was introduced and then changed. In 1959 when zoning regulations were first in effect this was an R-20 area, and it was changed to R-40 zone when the regulations were updated and changed. There were no setbacks in force when this house was built.

Ms. Baril stated that the split level house is their family home; her parents are the 2<sup>nd</sup> owners, and they are ill and cannot get upstairs to their bedroom safely.

Chairman Wilson brought up the request for a partial refund of the fees for this application, and asked the applicant why the Board should consider an adjustment to the fees.

In response, Ms. Baril stated she understands there are fees associated with the public notices. On behalf of her parents, who are on a fixed income, she is asking for a partial refund of the 2<sup>nd</sup> fee. The first application was withdrawn because it was found that the shed on the property was an illegal structure and did not have a building permit. Once the applicant was aware of this violation, this shed was removed, a new shed with a permit was built in the middle of the property.

Mr. Wilson read an excerpt from the regulations which pertained to adjustment of a fee paid by an applicant.

Following this reading, Mr. Wilson said the applicant is looking for a refund of \$135.00, which they consider to be fair after covering the town's legal costs and public notice.

Mr. Devine asked if there were fees incurred with removing the shed.

There were costs incurred and Ms. Baril said the shed situation had to be taken care of before resubmission of the variance application.

With regard to the proposed addition, Ms. Price said only a small portion of the peak coming from the kitchen will be visible to the street. She noted that neighbors on the north and south of the applicant's house put on large additions after going through the variance process. The goal for the applicant is to have her parents stay in their home, and the only way to do this is for the addition on one level of the house. This house does not meet the zoning regulations, and it would be fair and compassionate to be able to move forward with the addition. Ms. Price hopes the Board will approve the variance.

THERE WERE NO FURTHER QUESTIONS OR COMMENTS. THE PUBLIC HEARING WAS CLOSED.

## VII. DECISION MAKING SESSION

- |   |  |
|---|--|
| <p>1. <b>Application</b>                      <b>13-05-01.</b><br/><b><u>Laurene L. Baril</u></b><br/><b>212 Forest Lane</b><br/><b>Requesting a variance of Section 32,</b><br/><b>Schedule B, Dimensional Requirements</b><br/><b>Requesting a 20 foot side line variance of</b><br/><b>The required 30 foot side line setback</b><br/><b>For an addition</b></p> | <p><b>PH 5/6/13</b><br/><b>MAD 7/10/13</b></p> |
|---|--|

Secretary Nero read the call of public hearing.

The Cheshire Zoning Board of Appeals will hold public hearings on Monday, May 6, 2013, at 7:30 p.m. at the Cheshire Town Hall, 84 South Main Street, Cheshire CT 06410 to hear the following:

The application of Laurene L. Baril, 212 Forest Lane, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 20 foot side line variance of the required 30 foot side line setback, for an addition, property located at 212 Forest Lane, Cheshire CT 06410, generally shown on Assessor's Map No. 85, Lot No (s) 175 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.

Mr. Wilson said we are dealing with a non-conforming situation and the applicant is looking to expand the footprint without making the non-conformance any worse.

Mr. Devine stated this situation is not the fault of the applicant, but the fault of town government which allowed the 10 feet, and then passed a rule changing the zone from R-20 to R-40. The town should not pass on the burden to the citizens as it was not their fault the house was put up the way it was. It is not centered on the property, but at the time it was built it conformed. This house is not in compliance because there was no zoning law until 1959.

Mr. Wilson said this house was non-compliant when the zoning laws were written.

It was stated by Mr. Devine that this was not the fault of the Baril family, and they should not be penalized for the zoning laws and subsequent changes. He noted there are other people in this same area of town who requested variances because of the zoning situation. The Board has been good about giving people benefit of the doubt, especially in this case with taking care of two elderly parents who are Cheshire citizens for a long time, and want to stay in their home. Mr. Devine supports the variance request.

Mr. Pepper stated his belief that this hardship is because of the zoning regulations and ensuing situation. He will vote in favor of the variance request because of this hardship.

Ms. Nero commented on the Board dealing with hardships, and in this case there is a dual hardship with the non-conforming situation to start with, and this being a split level house. To make the addition conforming it would have to be in the middle of the house. She will support the variance request because there is a definite hardship.

Ms. White concurred with the statements of other Board members, that the house is non-conforming since it was built, and now the situation is that the applicant has no choice. A variance is needed to build the addition, otherwise it cannot be built. She supports the variance request.

Mr. Wilson looks at a hardship to determine whether it was created by the applicant or their decisions. This is a non-conforming situation which will not be made worse by this addition. He believes adding on the modest 38 x 18 foot addition is not extreme, nor will it change the conformity of other buildings in the neighborhood. He will support the variance request.

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

MOVED that the Zoning Board of Appeals grants a variance of Section 32, Schedule B, Dimensional Requirements, for a 20 foot side line variance of the required 30 foot side line setback, for an addition, for property located at 212 Forest Lane, Cheshire CT 06410.

The variance is granted based on the evidence presented at the public hearing and the general knowledge of the Board. It is hereby found that a hardship exists to the property, land, structure, which is not applicable to other properties in the district, and that 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.

The scope of this variance is limited to that which is indicated in the plans and documents presented at this hearing dated May 6, 2013.

VOTE The motion passed unanimously by those present.

THE VARIANCE WAS GRANTED. THIS VARIANCE MUST BE FILED ON THE LAND RECORDS OF THE TOWN OF CHESHIRE IN THE TOWN CLERK'S OFFICE. THIS IS THE RESPONSIBILITY OF THE APPLICANT.

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

MOVED that the Zoning Board of Appeals grants the request of Laurene L. Baril for a \$135.00 refund since the Board is not in a position to make money for the town.

#### Discussion

Mr. Wilson commented on the first application being withdrawn due to a situation with a non-conforming shed on the property. The applicant remediated the shed issue, and resubmitted the variance application, with payment of a second fee.

VOTE The motion passed 4-0-1; Pepper abstained.

Mr. Kehoss stated he would work with the applicant on processing this refund, and the filing of the variance approval on the land records of the Town of Cheshire.

**VIII. ADJOURNMENT**

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

MOVED to adjourn at 8:18 p.m.

VOTE        The motion passed unanimously by those present.

Attest:

  
Marilyn W. Milton, Clerk

---