

**MINUTES OF THE TOWN OF CHESHIRE ZONING BOARD OF APPEALS HELD ON MONDAY, OCTOBER 7, 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; Vincent Lentini, John Pepper  
Alternates: Gerald Devine, Jackie Cianci and Zachery Welburn  
Absent: Agnes White  
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 – July 1, 2013**

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

MOVED to accept the minutes of July 1, 2013 subject to corrections, additions, deletions.

VOTE The motion passed unanimously by those present.

**VI. PUBLIC HEARING**

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

Secretary Nero read the call of public hearing for application #1.

The application of Xiaohai Jim and Fang Cao, 108 Talmadge Road, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting an 8 foot rear line variance. The resulting rear line setback requested is 32 feet of the required 40 foot rear line setback, to replace two existing decks with one deck, property located at 108 Talmadge Road, Cheshire CT 06410, as generally shown on Assessor's Map No. 66, Lot No(s) 21

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. Xiaohai Jin/Fang Cao 13-10-01 PH 10/7/13  
108 Talmadge Road MAD 12/11/13  
Requesting an 8 foot rear line variance  
Of the required 40 foot rear line setback  
The resulting rear line setback requested is  
32 feet for a deck replacement.**

The application included an A-2 Survey.

Mr. Jin explained that in the back of his house there are two small decks, and he wants to remove these two decks and build one larger deck for reasonable use of his property. He submitted photographs with the application. There is limited space in the back yard, and based on the size of the house, shape of the yard and rear setback lines, he needs an 8 foot variance to build the larger deck. Mr. Jin has lived in the house for just over one year; the house was built in 2007; and is a large house for this lot.

Chairman Wilson noted that the house faces Talmadge Road and is set back very far from this road, with a smaller back yard space, septic system in the front, and this is the reason the setback is where it is. The requirement is that there be 25 feet from the septic system.

Stating he was not familiar with setback requirements for septic systems, Mr. Jin said the back yard is too small, and his family wants a larger deck. He has spoken with neighbors who have no objection to his variance request.

When this house was built, Mr. Wilson said the builder realized he could not do a larger deck because of the setbacks and location of the house.

Mr. Kehoss advised that there were no responses from neighbors to the notification.

Mr. Devine believes the house is too big for the property, and this is why the setback line is a problem. He said the builder made a mistake putting the septic system in front, and built the house too far from the street. This produces a hardship for the owner to use the property.

According to Mr. Jin, and citing the photographs, he said one deck is off the dining room and the other off the family room. Both have doors – one is a French door and the other is a sliding door. The new deck will be about 16” high, with one step, and 16 x 48 feet long.

There were no further Board or public questions or comments; the public hearing was closed.

Secretary Nero read the call of public hearing for application #2.

The application of Francis Switajewski, c/o Scott A. Meyers, P.E. L.S. 60 Linden Street, Waterbury CT 06702, requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 15 foot rear line variance. The resulting rear line setback requested is 25 feet of the required 40 foot rear line setback, to construct a storage garage, property located at 1143 Summit Road, Cheshire CT 06410, as generally shown on Assessor's Map No. 24, Lot No. 5 in an R-80 zone. The application is on file and available for public inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410.

- 2. Francis Switajewski      13-10-02      PH 10/7/13**  
**1143 Summit Road      MAD 12/11/13**  
**Requesting a 15 foot rear line variance**  
**Of the required 40 foot rear line setback**  
**The resulting rear line setback requested is**  
**25 feet for a storage garage.**

Scott Meyers P.E. represented the applicant, and submitted photographs of the property, and a letter in support of the variance request.

Ms. Nero read the letter from Thomas D. Didomizio, 1119 Summit Road, Cheshire CT 06410, into the record of the meeting.

Mr. Meyers stated that the property of 1143 Summit Road is in a R-80 zone, is a non-conforming lot, and the location of the proposed garage will result in reduction of the non-conformity. The existing shed will be removed. The septic system encompasses most of the rear yard, and any structure must be 25 feet from the system, and the applicant's proposal is 30 feet from the system. There are wetlands on this site which are created by the Town's drainage system. This is the hardship for this application, along with the location of the septic system.

Chairman Wilson questioned the dotted line on the plans, the 50 foot setback area, and if the applicant is building within the regulated area. He said this application needs IWW approval.

Once the application receives ZBA approval and IWW approval, Mr. Meyers said the applicant can proceed with the proposed garage. There is a stone wall on the property which is a buffer to the wetlands. The garage will not be visible from Summit Road, and will not impact adjacent neighbors. It cannot be built on the setback line because a car could not make a swing into the garage. Mr. Meyers informed the Board that this garage will be used for storage of antique vehicles owned by the applicant, and there will be doors on the southeast side of the property. The garage will be brought closer to the stone wall where there is a grass area.

Mr. Lentini asked about the driveway going to this garage.

According to Mr. Meyers this driveway will not be paved, but will be processed materials. Moving the garage closer to the house makes it visible from the road; and, in order to get cars into the garage the driveway would have to be expanded into the regulated area.

Chairman Wilson stated that construction is in the controlled area; the driveway will not be paved; and IWW will take everything into consideration when hearing this application. He noted it is important to understand that the ZBA is not the final decision maker on this application, as IWW approval is required.

The Board was told by Mr. Meyers that the shed was built with the house in 1986, and the new garage will be better than this shed, as it is off to the side and not visible from the road. The garage will be built on a slab, without a foundation. There will be 30 feet of gravel to the new garage; the back area is grass and developed; and a foundation cannot be put into a wetlands area. This garage is in the regulated area. Mr. Meyers advised that the septic system line is reasonably accurate.

Mr. Pepper questioned the doors on the south side and turning into the garage at a 90 degree angle.

In response, Mr. Meyers said that you cannot drive over a septic system.

It was reiterated by Mr. Kehoss that the proposed use of this structure is storage of antique cars on the property, and this should be stipulated if there is an approval.

Mr. Lentini asked about moving the garage forward to the old driveway as part of the house, and if the variance is denied, does the applicant have plan B.

The Board was told by Mr. Meyers that there is a septic system there, and 25 feet is required. There is no plan B. Mr. Meyers said the rear neighbor supports the variance request, and is the property impacted by the setback variance.

Mr. Pepper asked about sufficient land to place this garage in another place on the property.

There is an area, but Mr. Meyers noted it would infringe on the stone wall and trees, making the garage more visible from the street.

The situation was summarized by Ms. Nero who stated that you cannot go over a septic system; cannot go right because of stone wall and trees; cannot infringe on the wetlands; cannot be too close to the house and garage; and the wetlands are situated so the proposed location is the only place to build this garage.

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

Secretary Nero read the call of public hearing for application #3.

The application of Joseph and Anna Ferry, c/o A.M. Napolitano, 1076 South Main Street, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 13.6 foot street line variance. The resulting street line setback requested is 26.4 feet of the required 40 foot street line setback for a garage, property located at 224 Jinny Hill Road, Cheshire CT 06410, as generally shown on Assessor's Map No. 79, Lot No. 21, 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.

- 3.     Joseph & Anna Ferry     13-10-03                     PH 10/7/13**  
**224 Jinny Hill Road                                     MAD 12/11/13**  
**Requesting a 13.6 foot street line variance**  
**Of the required 40 foot street line setback.**  
**The resulting streetline setback requested**  
**Is 26.4 feet for a garage.**

Robert Elliott, 74 Jinny Hill Road, represented the applicants, stating he is a good friend and neighbor, and speaks for them due to a caregiver situation. The application includes an A-2 Survey.

Mr. Elliott stated that this is a ranch style home built in the 1950's. The house does not sit square on the lot; the rear topography is drastic and steep; and a garage to the rear would be on the embankment and not look nice. It would also create safety issues trying to enter and exit onto Jinny Hill Road. The reason for this garage project is a caregiver situation, handicapped accessibility, and a garage with storage and wheelchair accessibility. The applicants have lived in the home for over 20 years, and never had a garage on the property.

It was stated by Mr. Wilson that a garage on the opposite end would be a problem with propane tanks and leaching systems.

Mr. Elliott informed the Board that Chesprocott did a perk test to the front and there is approval for the front yard being a backup area for the leaching field. There is a Bilco door on the side of the house, and the addition was done a year after this house was built. The applicants are trying to accomplish having a new back door for people to enter the house, and a ramp inside the new structure for handicapped accessibility.

The hardship was cited by Mr. Elliott as being the topography of the land and concerns about water problems and handicapped access.

Mr. Pepper asked about the height of the back wall fitting within the setback.

Mr. Napolitano, builder of the proposed garage, noted the topography lines, and stated the garage would be at the 218-220 mark. The retaining wall will be higher than the gutter line of the garage, and he would make the front at 208 marker.

There were no further comments or questions from the Board or public; the public hearing was closed.

## VII. DECISION MAKING SESSION

Secretary Nero read the call of public hearing for application #1.

The application of Xiaohai Jim and Fang Cao, 108 Talmadge Road, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting an 8 foot rear line variance. The resulting rear line setback requested is 32 feet of the required 40 foot rear line setback, to replace two existing decks with one deck, property located at 108 Talmadge Road, Cheshire CT 06410, as generally shown on Assessor's Map No. 66, Lot No(s) 21 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.

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|---|-----------------|---------------------|
| <b>1. Xiaohai Jin/Fang Cao</b>                      | <b>13-10-01</b> | <b>PH 10/7/13</b>   |
| <b><u>108 Talmadge Road</u></b>                     |                 | <b>MAD 12/11/13</b> |
| <b>Requesting an 8 foot rear line variance</b>      |                 |                     |
| <b>Of the required 40 foot rear line setback</b>    |                 |                     |
| <b>The resulting rear line setback requested is</b> |                 |                     |
| <b><u>32 feet</u> for a deck replacement.</b>       |                 |                     |

For this variance application, Mr. Lentini sees a hardship which was not created by the applicant. He referred to the layout of the septic system and where the house is set back so far as to lose reasonable use of the rear yard. The 8 foot variance request is not excessive; the deck will not be intrusive; and there were no negative comments from neighbors. Mr. Lentini stated his support of this application.

Mr. Devine commented that he supports the variance request, and said it this is a topographical issue with the rise of the land. The parcel is too small for such a large house, and this was the builder's mistake, not the property owner. He is in favor of granting this variance.

Ms. Nero expressed her support of the variance request, noting that the hardship is the layout of the land.

Mr. Pepper sees a hardship in the position the builder took with construction of the house in the rear, and will support the variance request.

Stating he has a problem with decks as a right or privilege, Mr. Wilson is not convinced a deck is needed. The 8 foot variance request is a small intrusion on the setback; 32 feet will be remaining to the back property line; and the variance will not affect the integrity or character of the neighborhood.

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

MOVED that the Zoning Board of Appeals grants the 8 foot variance of Section 32, Schedule B, Dimensional Requirements, of the required 40 foot rear line setback, for property located at 108 Talmadge Road, Cheshire CT, shown on Assessor's Map No. 66, Lot No. 21, in an R-40 zone. The variance is granted under the following conditions. The scope of this variance is limited to that which is indicated in the plans and documents presented at this hearing on October 7, 2013, for construction of one deck. Based on the evidence presented at the public hearing and the general knowledge of members of the Board it is hereby found that a hardship exists due to various conditions such as topography and location of structures. The hardship does not appear to be the result of 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 the public welfare.

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.

Secretary Nero read the call of public hearing for application #2.

The application of Francis Switajewski, c/o Scott A. Meyers, P.E. L.S. 60 Linden Street, Waterbury CT 06702, requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 15 foot rear line variance. The resulting rear line setback requested is 25 feet of the required 40 foot rear line setback, to construct a storage garage, property located at 1143 Summit Road, Cheshire CT 06410, as generally shown on Assessor's Map No. 24, Lot No. 5 in an R-80 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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| <b>2.</b> | <b>Francis Switajewski</b>                          | <b>13-10-02</b> | <b>PH 10/7/13</b>   |
|           | <b><u>1143 Summit Road</u></b>                      |                 | <b>MAD 12/11/13</b> |
|           | <b>Requesting a 15 foot rear line variance</b>      |                 |                     |
|           | <b>Of the required 40 foot rear line setback</b>    |                 |                     |
|           | <b>The resulting rear line setback requested is</b> |                 |                     |
|           | <b><u>25 feet</u> for a storage garage.</b>         |                 |                     |

Chairman Wilson summarized the variance request for a storage/garage structure for antique cars, removal of the existing shed, garage built on a slab, and the fact that this application still requires IWW approval.

Ms. Nero favors approval of this request, noting that the hardship includes the septic system in the front of the house, wetlands in the rear, driveways in another area, and ZBA approval is the first step in the process. This application requires IWW approval before the structure can be built.

Mr. Lentini agrees there is a hardship with the wetlands area. The problem is that just because someone wants to build something does not mean the property can hold it. The request is for something other than a normal garage or deck which is beyond the reasonable use of the land. He will support the application because wetlands are a considerable amount of the property; there is no opposition from neighbors; and IWW approval is required.

Mr. Devine stated the applicant should be able to build a storage garage because of the variety of issues pointed out during the public hearing. The request is the best use with the least amount of impact on the wetlands. He is in favor of this application.

Mr. Pepper questioned the other locations on the property for this large structure, and said there are other areas for this large structure. He does not see a hardship and is opposed to this variance request.

Chairman Wilson expressed mixed feelings about this application as one half of the square footage is wetlands or restricted area, and anything the applicant wants to do would require IWW approval. The hardship is, maybe, self generated as the applicant has antique cars and wants a large storage garage. He would support the variance request with restrictions and approval of IWW. The existing shed will be removed; it is taking away a 5 foot setback, giving a 25 foot setback which is a positive move; and IWW will decide on wetlands encroachment.

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

MOVED that the Zoning Board of Appeals grants the 15 foot variance of Section 32, Schedule B, Dimensional Requirements, of the required 40 foot rear line setback, for property located at 1143 Summit Road, Cheshire CT, shown on Assessor's Map No. 24, Lot No. 5, in an R-80 zone. Based on the evidence presented at the public hearing and the general knowledge of members of the Board it is hereby found that a hardship exists due to various conditions such as unusual lot configuration, inland/wetlands, placement of septic system exists to the property which is not applicable to other properties in the district; and, 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 on October 7, 2013, for construction of a garage for storage only of antique vehicles, with removal of the existing shed.

VOTE           The motion passed 4-1; Pepper opposed.

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.

Secretary Nero read the call of public hearing for application #3.

The application of Joseph and Anna Ferry, c/o A.M. Napolitano, 1076 South Main Street, Cheshire CT 06410 requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 13.6 foot street line variance. The resulting street line setback requested is 26.4 feet of the required 40 foot street line setback for a garage, property located at 224 Jinny Hill Road, Cheshire CT 06410, as generally shown on Assessor's Map No. 79, Lot No. 21, 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.

- 3.     Joseph & Anna Ferry     13-10-03                     PH 10/7/13**  
**224 Jinny Hill Road                                     MAD 12/11/13**  
**Requesting a 13.6 foot street line variance**  
**Of the required 40 foot street line setback.**  
**The resulting streetline setback requested**  
**Is 26.4 feet for a garage.**

Chairman Wilson stated that a handicapped ramp will be replaced by a garage so the applicants make it from the garage to the house in an enclosed area. The two car garage will encroach on the front line setback.

Ms. Nero stated support of this variance request. The Board has dealt with hardships regarding a garage and it has been the feeling that garages fit into the category of necessity. She believes that the layout of the land and slope is a hardship, and entering and exiting Jinny Hill Road is a safety issue.

Mr. Pepper stated that the traffic situation on Jinny Hill Road is difficult, and looking at maps, the location in the front of the house, it is not impractical, and he does not see a hardship.

It was stated by Mr. Devine that it is amazing a house was built on this topography. The hardship is there; the topography is an issue; and the residents/applicants are handicapped; and they need as much help as possible.

Mr. Lentini stated agreement with comments made, and believes there is a genuine hardship with this application. He would like less infringement on the setback, but will be in favor of granting this application.

There is a hardship and Mr. Wilson said the topography in the rear makes it impossible to place the garage further back. Putting the garage on either end is not practical due to the septic system placement. He supports this variance.

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

MOVED that the Zoning Board of Appeals grants the 13.6 foot variance of Section 32, Schedule B, Dimensional Requirements, of the required 40 foot street line setback, for property located at 224 Jinny Hill Road, Cheshire CT, Assessors Map no. 79, Lot No. 21, in an R-40 zone. The resulting street line setback will be 26.4 feet. Based on the evidence presented at the public hearing and the general knowledge of members of the Board it is hereby found that a hardship exists due to the topography, the line in the rear is too steep to allow placement of the garage in another location, which is not applicable to other properties in the district; and, 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 hardship does not appear to be the result of the actions of the applicant. Granting the variance will not confer upon the applicant any special privilege. The variance is the minimum possible to use the land and structure; and will not result in injury to the neighborhood or public welfare. Granting the variance will be in harmony with the intent and purpose of the regulations. The scope of this variance is limited to that which is indicated in the plans and documents presented at this hearing on October 7, 2013, for construction of a garage.

VOTE The motion passed 4-1; Pepper opposed.

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.

**VIII. Other Zoning Board of Appeals Business**

**IX. CHAIRMAN'S REPORT**

**X. ADJOURNMENT**

MOTION by Mr. Pepper; seconded by Mr. Lentini

MOVED to adjourn the meeting at 8:50 p.m.

VOTE The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk