

MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION PUBLIC HEARING HELD ON MONDAY, JANUARY 13, 2014, AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present

Earl Kurtz, Chairman; Sean Strollo, Vice Chairman; Lelah Campo, S. Woody Dawson, Edward Gaudio, John Kardaras, Vincent Lentini, Gil Linder, Louis Todisco
Alternates: Jon Fischer, Diane Visconti; Absent: Leslie Marinaro
Staff: William Voelker, Town Planner; Town Attorney Alfred Smith, Murtha & Cullina

I. CALL TO ORDER

Mr. Kurtz called the public hearing to order at 7:31 p.m.

Mr. Kurtz read the fire safety announcement.

II. ROLL CALL

Mr. Strollo 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. BUSINESS

Before the start of the public hearing, Mr. Voelker informed the Commission that the application of Core Development has been withdrawn, and Attorney Fazzone has confirmed this, in writing.

(Mr. Kurtz was recused from applications 1 & 2; Ms. Visconti was the alternate)

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| 1. | Waiver request of Section 11.1 of the
Subdivision Regulations
<u>Karen A. Reims</u>
27 East Ridge Court
Requesting waiver of Section 5.6 CUL-DE-SAC
STREET OR DEAD END STREET LIMITATIONS
Subsection 5.6.1 | PH 12/9/13
PH 01/13/14
MAD 03/19/14 |
| 2. | Special Permit Application
<u>Karen A. Reims</u>
27 East Ridge Court
Two dwelling units in one dwelling | PH 12/9/13
PH 01/13/14
MAD 03/19/14 |

Attorney Anthony Fazzone represented the applicant who is requesting a waiver of the subdivision regulations dealing with the number of units on a cul de sac (Permitted Use section). He gave a brief background on the history of the property, stating the applicant seeks approval for a second dwelling unit which was not properly permitted when built. The main house was built in 1985; the addition was built in 2004; and the addition complied with the requirements of a second dwelling unit as set forth in Schedule A, para. 4. The property is 97,000 sq. ft., meets setbacks, has an as-built survey showing it meets all setbacks, and certification showing feasibility for the septic system to handle the additional unit. The owner, Jack Zima, was a respected builder in Cheshire, is the father of the applicant, and dealt with the Building Department for many decades.

According to Mr. Fazzone there is no explanation as to why the building permit was not properly acquired, but Mr. Zima died shortly after the project was completed.

The waiver of the Subdivision Regulations relates to the maximum of 16 units on a cul de sac, and this unit would be the 17th unit. The waiver regulation requires certain standards to be met. One is the condition needs to be generally applicable to other lots in the area, but most of the lots on East Ridge Court do not have enough acreage for a second dwelling unit. The addition does not create an oddity, has been in existence since 2004, there have been no issues with the property, and there are photographs submitted showing the unit is not discernable from the street. Taxes have been paid on the addition; there is nothing in Section 11.1 which would prevent the Commission from granting the waiver. The A-2 Survey exhibit shows the property complies with the regulations.

Mr. Voelker read comments from the Fire Department into the record.

In response to the comments, Attorney Fazzone said this property is not at the end of the cul de sac, which extends hundreds of feet beyond the subject house. The house has been there since 2004 without incident or issues with access to the property.

Mr. Todisco asked whether the permit was issued when the house was built.

There was a permit issued for the main house, and Mr. Fazzone stated there was no permit for the second dwelling. Per the regulations the dwelling is the building, separate entities that make up a living space, and there was a building permit taken out for the house as a whole. The building permit for the addition did not show a kitchen, and this permit remains open, with a certificate of occupancy issued for the addition.

In looking at the regulations, para. #4, Mr. Fazzone said the question is why no building permit was issued as the addition met all the requirements. Looking further it was found that this would have been the 17th unit on the cul de sac. There is a permit for the structure but not for the interior with a kitchen.

Mr. Todisco asked about kitchen facilities in the addition now, the addition functioning as an independent home, when it was added, and if the two units are still connected by a portico.

There is a functional kitchen facility and Mr. Fazzone said the two units are connected. The kitchen was added in 2004.

Ms. Campo commented on a knowledgeable builder building something no one else is allowed to do, with the Commission now being asked to approve it. She noted the house is for sale, there could be a different use and ownership, with possible issues going forward. Ms. Campo said that without a 3/4th vote of the Commission, no more than 16 units can be on a cul de sac. She asked if she heard correctly that the 2nd dwelling unit meets the new zoning requirements.

It was stated by Mr. Voelker that this is a separate part of the regulations that has not changed, and the other reason is that it is on the cul de sac. Otherwise it would have been allowed by special permit. Had the matter come before the Commission, it is assumed it would have been approved, as it would have been demonstrated that the lot and home concur with the regulations. The recently adopted regulation was to allow a second separate dwelling to be on the same property. This regulation is for a two family house to be allowed on the property.

Mr. Fazzone said the applicant met the regulation in 2004, and meets it today.

With regard to the other lots on the cul de sac, Ms. Campo commented on the statement that not many can support a duplex...and she asked how many can support a duplex.

According to Mr. Fazzone, it would be 2 or 3 lots.

If the Commission approves this waiver request, Ms. Campo asked how it could deny any other application the same ability.,

The Commission has the special permit and waiver requirements and Mr. Fazzone said that with variance issues before the ZBA, this type of waiver would not set a precedent. In this particular section, the number of lots on a cul de sac, was waived by 3/4 vote for a property on Inverness Court, with more than 17 units on the cul de sac allowed. The facts were different, but this is not the first time a waiver issue has come before the Commission.

Mr. Todisco asked if the two units could be sold separately. One person now owns the lot, and he asked about a third party purchasing one of the units.

In reply, Mr. Fazzone said "no" as separating would not meet the setbacks between the two properties. The main unit could be rented to someone not of the immediate family.

If the waiver is granted, Mr. Todisco asked if the unit could be rented. Mr. Fazzone said that was correct.

Mr. Voelker asked what would preclude a common interest ownership where there could be some type of condo association formed. This would be unusual, but possible.

Right now, one individual owns the property and Mr. Todisco questioned how the property is used now.

In that regard, Mr. Fazzone said the 2nd unit for approval is vacant, but is connected to the 1st unit. It was legally used with Ms. Reims' son living there, and this is definition of immediate family, with or without a kitchen. It is likely the use could be in-law use, which was probably the intention of Mr. Zima when he built the house.

Mr. Fazzone informed the Commission that the main structure is about 3,000 sq. ft.; the addition is 1,200 sq. ft.; with a total of about 4,391 sq. ft.

Regarding penalties for someone after granting a waiver, Ms. Visconti asked if they are in place, to guarantee this does not happen again.

Mr. Fazzone said the Zoning Enforcement Officer could issue a Cease and Desist Order.

Mr. Voelker advised there are no penalties, and the Commission does not have this authority under Connecticut statutes.

The question of practical effects of denial of the waiver was raised by Mr. Kardaras.

Mr. Fazzone replied that it would have to be utilized strictly for a family as defined in the regulations...in-law arrangement or take out the kitchen.

Mr. Linder asked if any reason was stated why the waiver is requested, or is it a matter of bringing the property up to regulations.

It is a matter of trying to bring the property to the regulations, and Mr. Fazzone said the practical matter is that the owner is trying to sell the property, with issues hanging over them. There are people interested in the property, in-law apartment possibility, but with the open building permit and without certificate of occupancy, this cannot be done.

If the waiver is granted Mr. Linder asked if the property can be sold as a two family house and rented out or used as an in-law arrangement.

Mr. Fazzone said that is correct.

Mr. Dawson stated this would change the characteristics of the neighborhood.

Ms. Campo asked if the 17th unit waiver would be needed for in-law use rather than a duplex; if the size of the living quarters could be reduced to 750 sq. ft. putting some of the size back to the main house.

They are separate and Mr. Fazzone was unable to answer the question.

The Commission was informed by Mr. Voelker that with an in-law apartment there must be a connection and door between the units. The in-law apartment is an accessory portion of the main home.

Ms. Campo stated her protest in granting something retroactive which cannot be granted to other people. She said it is frustrating for the Commission to decide on whether to cause a new family to absorb large costs for an illegally permitted use.

Mr. Todisco commented on the fact that one family could live there, utilize both parts of the house, without any changes.

According to Mr. Fazzone this could be done.

An excerpt from Section 11.1.1 was read into the record by Mr. Todisco.

Mr. Fazzone said there are two other properties out of the 16 units with enough acreage to create a 2nd dwelling. There are rare cases under the ZBA variances where there are economic issues, and to require a kitchen to be taken out creates an issue of financial waste.

It was stated by Mr. Dawson that the ZBA does not grant any variances for financial hardship.

Without approval of the waiver, Mr. Gaudio clarified that the kitchen in the 1,200 sq. ft. unit would have to be removed.

If the waiver is denied and the property used as a single family home, Mr. Voelker said there would be insistence on a building permit for the kitchen, and certificate of occupancy, after inspection, for use as a one family home.

Mr. Dawson said that once the kitchen is in there is sheet rock, painting, plumbing, wiring that cannot be inspected. The owners would have to go to the Building Inspector, and in some cases the walls would have to be ripped out to check wiring, etc. to know the house is safe.

The 2004 building permit shows the inspections were made of the rough plumbing, etc. and Mr. Fazzone said the inspector might want to see behind an area where a stove is placed.

Mr. Dawson said the Commission must be more astute, have dialogue, and read all reports on applications.

There were no public comments. The public hearing was closed.

(Mr. Strollo was recused from applications #3 and #4; Ms. Visconti was the alternate)

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| 3. Earth Removal/Filling or regrading permit
<u>225 Blacks Road LLC</u>
225 Blacks Road | PH 12/9/13
PH 01/13/14
MAD 03/19/14 |
| 4. Site Plan Application
<u>225 Blacks Road LLC</u>
225 Blacks Road
Contractor's warehousing and storage building | PH 12/9/13
PH 01/13/14
MAD 03/19/14 |

Ryan McEvoy, P. E. Milone and MacBroom, represented the applicant for the earth removal/filling, and site plan applications. The subject property is on the south side of Blacks Road, is 23.7 acres, is a vacant residential home, in an I-2 zone. He showed an aerial map and pointed out the site on the map. It is adjacent to a self storage facility owned by the applicant. To the west is an existing residential lot; to the south is a vacant lot; and to the north additional self storage properties.

Mr. McEvoy stated the site drains towards the self storage facility. The applicant proposes to construct a 19,500 sq. ft. storage building in the I-2 zone. There is access to the site from the northeast corner; there is a loop access driveway around the building for 360 degree access; and there are not identified tenants at this time. RWA comments state there are no activities in violation of the aquifer regulations. The site has 27 parking spaces for 41 employees. There are utilities, storm water management basins, the drainage ties into the existing drainage system, and plans have been reviewed by the Town Engineer and everything conforms to Town standards.

Regarding the earth removal activities, there is 50,000 cubic yards to be excavated. All vehicles will exit to Route 10; landscaping has been added to the front of the site along with buffers; and there is no increase in runoff on the site. A detailed operational and post management schedule was added to accommodate the RWA. There will be no more than 10 delivery trucks to the site each day, and some days there will be fewer trucks. The site is sand and gravel, and standard excavation activities will take out the material.

Mr. Voelker read Fire Department comments dated 12/6/13 and Engineering Department comments dated 1/9/14 into the record.

Mr. McEvoy stated that the applicant takes note of these comments.

A question was raised by Mr. Dawson regarding the number of truck loads and hours of operation.

Mr. McEvoy said the trucks will be 16 cubic yard capacity trucks, and about 3,000 vehicles will exit the site. Hours of operation are 8 a.m. to 5 p.m. which is consistent with the zoning regulations.

The property to the west is much higher and Mr. Gaudio said this would be graded down. He also asked about sight lines.

Mr. McEvoy said that was correct. The sight lines will be 430 feet once the right-of-way is graded, and this is identified on the grading plan. The Town will be provided with a snow shelf.

Ms. Visconti asked about the tenant and materials to be at the site.

At this time there is no exact tenant in mind, and Mr. McEvoy believes it will be a storage facility for a company. There will be no storage of chemicals as this is prohibited under the aquifer regulations.

Regarding the aquifer regulations, Mr. Dawson asked about restrictions such as engines leaking. He noted there is one company in the area now with parked trucks.

In response, Mr. McEvoy said the aquifer regulations identify 35+ non-permitted uses, and they will not be used on the property. In the future, another tenant would be subject to review by the Commission for those uses. Mr. McEvoy said the applicant will market the property and may construct a building.

There were no public comments. The public hearing was closed.

VI. ADJOURNMENT

MOTION by Mr. Dawson; seconded by Mr. Kardaras.

MOVED to adjourn the public hearing at 8:25 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk

