

MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION PUBLIC HEARING HELD ON MONDAY, MAY 23, 2016 AT 7:30 P.M. IN COUNCIL CHAMBERS, 84 SOUTH MAIN STREET, CHESHIRE CT 06410

Present

Sean Stollo, Vice Chairman; Members: S. Woody Dawson, Edward Gaudio, John Kardaras, Vincent Lentini, Gil Linder, Louis Todisco, David Veleber.

Alternates - James Jinks, Jeff Natale

Absent: Earl J. Kurtz and Jon Fischer (Alternate)

Staff: William Voelker, Town Planner

I. CALL TO ORDER

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

II. ROLL CALL

The clerk 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

Secretary Veleber read the call of public hearing for all the applications.

1. **Special Permit Application** **PH 5/9/16**
Cheshire Academy Inc. **PH 5/23/16**
10 Main Street/Academy Road **MAD 7/27/16**
Reconstruction and relocation of Cheshire
Academy's Facilities Building and Construction
Of 13 new Faculty Housing Units.
SCHEDULED FOR JUNE 13, 2016

Commissioner Veleber was recused from Application #2. Mr. Natale was the Alternate.

2. **Special Permit Application** **PH 5/23/16**
BFAM Investments LLC **MAD 7/27/16**
129 Mountain Brook Circle
Rear Lot Access Way

Attorney Anthony J. Elia and David Nafis, PLES, represented the applicant.

Attorney Elia submitted exhibits for the record.

#1 - Declaration of Easements, Covenants and Restrictions.

#2 - Warranty Deed

#3 - Notice to Rich Riccitelli

#4 - Special Warranty Deed; History of the Property

#5 - Letter to Atty. Joseph Schwartz, 12/22/15, from Attorney Elia, about Reservation of Rights.

Attorney Elia reviewed the history of the property, the reason for submission of the application under Reservation of Rights, and why the application should be granted regardless of the difference of opinion on the interpretation of the regulations. He submitted an exhibit which showed approval of the subdivision by the PZC on February 28, 1977, and identified the lot as #31. This lot was subdivided; a re-subdivision plan was approved by the PZC on April 25, 1994; lot #31 was subdivided into 2 separate building lots -- #31 A (125 Mountain Brook Circle) and #31B (129 Mountain Brook Circle). For access to lot 31-B, a rear lot access was approved on April 25, 1994.

Exhibit A -copy of the PZC minutes for approval of the rear lot access and Resubdivision Application; lot does not have enough frontage on Mountain Brook Circle.

Exhibit B - shows areas of Lot 31-A and Lot 31-B with existing house and driveway as depicted on Map 3144.

The PZC could have just approved the rear lot access application, and Attorney Elia would agree with Mr. Voelker that this would expire in 5 years. Mr. Elia said the commission went a step further and approved the special permit because of the frontage problems and also granted the subdivision approval. The applicant is now protected by all State statutes that protect subdivisions. It was stated by Mr. Elia that the applicant is in disagreement with Town Planner Voelker that the 5 years has expired and the applicant has to be at this Commission meeting. On May 27, 1994, one month after the special permit and Resubdivision approvals, there was a PZC amendment to Section 15 of Section 5.5 of the rear lot regulations, adding the words..."or have a grade in excess of ten percent (10%) at any point." Mr. Elia pointed out that the application met all the requirements of Section 5.5 in existence at the time it was approved, and grade requirements did not exist.

Exhibit 1 - sets forth the mutual driveway agreement for Lots 31-A and 31-B. Lot 31-A is owned by Mr. and Mrs. Riccitelli and they own the right-of-way; lot 31-B is owned by BFAM with rights for egress and ingress; and this speaks to mutual responsibility for maintenance of the right-of-way.

Exhibit #3 - Notification to Mr. Riccitelli.

Attorney Elia reviewed the history of Lot 31-A, stating the Clearys (1/15/08) had a plot plan prepared for septic system and leeching field placement. On March 6, 2008, Lot 31-A (applicant's lot) was sold to Ms. Linda Cleary and Donald Pritchard; the septic system plan was approved by Chesprocott; in 2008 Lot 31-B was quit-claimed from

Cleary to Pritchard; 1/3/2013 a deed was executed by Mr. Pritchard (in lieu of foreclosure) to Wells Fargo which became the owner in 2013.

In anticipation of purchasing the subject lot, Mr. Onofrio went to the Building and Zoning Departments, and was told this was an approved building lot. Plans had been submitted to Chesprocott for the septic system and leeching filed with issuance of approval of the plans from 2009. The approval was brought back to the Building Department. Subsequently, Mr. Onofrio was the successful bidder on the property from Wells Fargo, and purchased it in January 30, 2013 (exhibit 4, special warranty deed). A few months later, Mr. Onofrio applied for a building permit; it went through the normal channels; when it reached the Town Planner's office, Mr. Voelker identified the problem and his interpretation of the expiration of the special permit. The applicant's position is that even though the regulation is in place at that time, it was followed up with the subdivision approval, which would not expire in 5 years. It would only expire if public improvements were not made, and public improvements were made long ago on this particular subdivision.

In his letter dated 12/22/15, Mr. Elia outlines the applicant's position on why this improved subdivision lot is allowed under State law. This letter points out the lot being governed by regulations in effect at the time of the subdivision approval, and obtained without the 10% grade limitation requirement.

Attorney Elia stated the subject application should be approved. He cited the fact that it is identical to the special permit application for the rear lot access approval of 4/25/1994. There are no substantial or material changes made to those plans, and technically, the application should be approved under Section 40.8 and 40.6 of the zoning regulations. All of the requirements, under which the applicant is appealing, for the waiver of the 10% grade requirement, are met under Section 11.1.

The applicant did receive a copy of Mr. Voelker's memo, and Attorney Elia said the memo points out no minimum requirement at the time of the approval (10% grade) in 1994. The memo also points out there is no practical way for the access to be constructed in compliance with the new regulations...and this identifies legal hardship for the application. There is no alternate location for street access.

Attorney Elia read an excerpt from Section 11.1. into the record.

According to Attorney Elia this lot is unique because of the grading, the history and the fact it was approved prior to the grading requirement...and it should be grandfathered in.

The only real public health or safety issue is the grade of the driveway, and Attorney Elia informed the Commission that the applicant is trying to work with Mr. Riccitelli to improve this situation. The applicant believes things will be made better.

Attorney Elia read an excerpt from Section 11.1.3 into the record.

This subdivision is in place since 1977, and the road which the applicant will tie into has been in place since 2006 when Mr. Riccitelli purchased the property. The applicant will be tying into the existing driveway. All requirements will be met from when the approval was given, including a cul de sac area (turn around) and Mr. Elia pointed this out on the plans. It was stated by Mr. Elia that Mr. Voelker's recommendation is to have crushed stone on each side of the existing driveway. The applicant has no problem with this requirement imposed by the Commission.

Attorney Elia noted there would only be 7 voting Commission members at this meeting, and a super majority must exist for application approval. He requested the right to continue the public hearing to June 13, 2016 when the full Commission would be present.

Mr. Voelker stated the applicant must submit further information to the Commission for review prior to the June 13th meeting.

Attorney Elia read an excerpt from Section 11.2 into the record.

Mr. Elia stated the subdivision was approved in 1994. He respectfully disagrees with Mr. Voelker's opinion, and said the Commission cannot impose the 10% grading requirement.

Mr. Nafis, P.E. explained the hardship involved with the slope. On the plans he pointed out the biggest issue, grading of the driveway, and he pointed out the setbacks. The house cannot be moved; it would require a septic system to the back of the lot to pump it up; and this would not work well. There is a gas transmission right-of-way, and Mr. Nafis said the original plan had some minor grading. The applicant will eliminate all the grades in this right-of-way. Another thing looked at was bringing the driveway on its own lot, but there were some problems, steep grading.

On a graph, Mr. Nafis showed the existing road (green) and the 10% driveway grade (red). With 10% grade there would be a 16 foot cut at the gas transmission line. He looked at using the existing driveway as far as it could come up, with turn around area for emergency vehicles, creating a new driveway into the lot, at no more than 10%. The turn around is a 25 foot radius going around.

Mr. Voelker stated, by regulations, the radius must be 25 feet.

Mr. Voelker read Cheshire Fire Department (CFD) comments dated 5/15/16 into the record.

It was stated by Mr. Voelker that the PZC is being requested to approve a rear lot access way; there is no home currently constructed on the lot; and CFD makes observations due to a future home and residents.

Attorney Elia commented on Exhibit 5, letter to the Attorney, and Exhibit C is what Mr. Voelker talked about, and he referred to the CFD memo.

It was restated by Mr. Elia that at the time of the approval There were no grading requirements for the application, and it met all of the other standards. The following month the PZC imposed the 10% requirement, and this is after the approvals were obtained. If there were problems with the subdivision, under State law, the Commission should have put something on the land records about the expiration taking place. This would have been known by the new owners at time of purchase. During the title search this was a building lot.

Mr. Kardaras asked if this is a legal and buildable lot.

Attorney Elia said there is an estoppels argument to be made, a variety of legal issues, and practical confiscation that could take place.

Mr. Natale commented on Mountain Brook Circle with a 15 foot driveway, grade of 22%, all the way to the house. The applicant wants to build a formal cul de sac and have a driveway at 10% from the cul de sac for the new house.

On the plans, Mr. Nafis pointed out where the two lots are, 22% existing driveway up to the house in the back, and the 10% area.

Mr. Todisco said the driveway to the existing lot is 22%, and the subject house would use the driveway to the turn around to the house.

On the graph, Mr. Nafis explained the green line is the existing driveway.

The current owner is using the 22% grade, and Mr. Todisco said emergency vehicles would have to use this grade to get to the existing house.

Mr. Nafis said this is correct.

The cul de sac will be built, and Mr. Todisco said the purpose is to have light emergency vehicle access...there could be vehicles passing each other.

In the winter with snow falling, Mr. Nafis pointed out where a fire truck could go.

Exhibit 2 - Mr. Elia commented on his memorandum to the Commission, with exhibit 2 attached.

Regarding the cul de sac, Mr. Linder asked if the proposal is for a standard cul de sac.

Mr. Elia said this is a requirement for the rear lot access approval. In the regulations there must be a cul de sac established, 25 feet in diameter...it is called a turn around.

This is a rear lot access way, and Mr. Voelker said this application came in as a 2-lot subdivision, and the rear lot access way is a mini cul de sac. He believes the 5 years has expired, and the applicant must come in under the regulations.

Two houses will share the driveway and Mr. Linder noted maintenance is under the declaration. He said the existing house has access to the 22% grade, and now this grade is not good enough for a new house to be built.

Attorney Elia explained the applicant's lot is in front of the existing house, and a CFD truck could run a 100 foot hose to the house. It is a less dangerous situation than the existing house, and the driveway is 250 feet. Regarding the CFD, he said it is not a matter of disputing them, but indicating to the Commission that these concerns were in place when the approval was obtained. The lot is still a buildable lot. In 1994 the Commission approved the application; the applicant purchased the lot; and cannot build on it, resulting in practical confiscation.

Without life safety concerns, Mr. Todisco said he would have no problem approving this application. The CFD has some issues. He asked about a cistern on the lot for water in case of a fire.

Many things could be done and Mr. Nafis said this would be discussed with the developer. The Fire Marshal mentioned residential sprinkler systems in the house. He noted the distance from the existing house to the proposed house is 100 feet maximum.

According to Mr. Elia the proposed turn around would make the rear lot safer than it now exists. There is improvement; the fire trucks can come in, and run a hose to the rear lot. The required turn around would help the rear lot also, and will make it better not worse.

The distance from the cul de sac to the rear house is about 350 additional feet.

PUBLIC COMMENTS AND QUESTIONS

Rich Riccitelli, 125 Mountain Brook Circle, informed the Commission that he has had good discussions with Mr. and Mrs. Onofrio. He understands why there are now grading requirements, and said approval of both lots was a bad decision. The best thing to do is to make things safe. There are more concerns; the situation is not being improved but made worse; there will be increased traffic; and driving down the hill, he will lose the run away zone. The grade would clearly cut down trees; ground water will escape; and there will be creation of ice spots. He has discussed ways to deal with water issues; there is a way around all of this...going up and down the hill, with creation of two driveways with curbing. Mr. Riccitelli has more concerns about every day safety with his family driving up and down the hill, especially with 3 months of winter weather. With a 15 foot driveway, he said you cannot pass 2 vehicles without difficulty. He hopes people can work together to make the situation better.

Mr. Lentini asked about traffic both ways and whether cars can go up and down at the same time...is it passable, does a car have to back up or what.

In response, Mr. Riccitelli said there is an area where they break off...it does happen...and now we are talking about backing down a steep driveway.

As part of the requirements, Mr. Elia said Mr. Voelker will require 6 feet of crushed stone on each side of the existing driveway, so this concern is taken care of.

In that regard, Mr. Voelker pointed out it is not "he" but the regulations that cite this requirement. The applicant may need a waiver of what the regulations state, not what he says. There may have to be modification of the requested waiver of the regulations...two driveways in and out is a major change of the regulations. This would be in the application. Mr. Voelker noted the matter can be continued over 65 days, with the applicant adding to the application as needed.

A hypothetical issues was raised by Mr. Dawson of one land owner building and then another building, with none of the current situation happening. He will consider the right-of-way and do more research. Mr. Dawson has lived on a private road and it worked out well, but there were no grading issues.

THE PUBLIC HEARING WAS CONTINUED TO JUNE 13, 2016.

**3. Earth Removal, Fill or Regrading
Nosal Properties of Cheshire LLC
Lot 3, Fieldstone Court
SCHEDULED FOR JUNE 13, 2016**

**PH 5/23/16
MAD 7/27/16**

VI. ADJOURNMENT

MOTION by Mr. Dawson; seconded by Mr. Lentini.

MOVED to adjourn the public hearing at 8:22 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk

