

MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS, MEETING HELD ON WEDNESDAY, OCTOBER 5, 2016 AT 7:30 P.M. IN ROOM 207-209, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410.

Present

Ken Wilson, Chairman; Marion Nero, Secretary; Breina Schain, John Pepper, Agnes White

Alternates: Jackie Cianci, Gerald Devine and Robert Formica

Staff: David Kehoss, Zoning Enforcement Officer

I. CALL TO ORDER.

Chairman Wilson called the meeting to order at 7:31 p.m. and read the fire safety announcement for the record.

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. ACCEPTANCE OF MINUTES - September 7, 2016

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

MOVED to accept the minutes of September 7, 2016 subject to corrections, additions, deletions.

VOTE The motion passed unanimously by those present.

VI. PUBLIC HEARING

Chairman Wilson explained the procedure for a public hearing of the ZBA. He advised that four (4) affirmative votes are required for a variance approval.

Secretary Nero read the call of public hearing for the applications.

The application of The Nevar Company, c/o 677 South Main Street, Cheshire CT 06410 requesting a variance of Section 32.2.5 Accessory Building, requesting to allow an existing barn or rear of property seeking a variance of 560 SF and 6 feet in height (remove rear shed) property located at 674 West Main Street, Cheshire CT 06410, as generally shown on Assessor's Map No. 49, Lot No. 203, in an R-20 Zone. The application is on file and available for inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410. The resulting rear line setback requested is 5 feet.

1. **The Nevar Company 2016-10-01** **PH 10/05/16**
674 West Main Street **MAD 12/09/16**
Requesting a variance of Section 32.2.5
Accessory Building-Requesting to allow an
Existing barn or rear of property seeking a
Variance of 560 SF and 6 feet in height.
The resulting rear line setback requested is 5 feet

Chairman Wilson noted there was an A-2 Survey received on September 15, 2016, which was part of the original subdivision application in July 2015.

Mr. Kehoss stated this A-1 Survey is satisfactory for the application, and the drawing is for this particular lot.

The issue of "hardship" is important to the Board and Mr. Wilson said a variance is granted based only on hardship. He read the definition of "hardship" into the record.

A staff memo on the Nevar Company application, authored by Town Planner Voelker, was read into the record by Secretary Nero.

The subject application received approval by the Planning and Zoning Commission with a condition that the barn be removed from the property. Chairman Wilson asked about the Board having the minutes from the PZC meetings available for review.

Mr. Kehoss stated the minutes were not available at this meeting, but would be available to the Board, the applicant and the public, if requested. He said there would be a total of five (5) lots on the property; three (3) in the rear; and one (1) lot is behind the barn.

Dean Fiske, Nevar Company, stated that the property was subdivided in 2015 into five (5) lots. There are two (2) existing homes on their own lots #4 and #5, all conforming to the regulations. He brought the full subdivision map for the Board to review. The subdivision application went through the normal process for the R-20 zoned property with city water and sewers. Lot #5 is a front lot with an existing old home and a deck off the back, with the barn on this lot. Mr. Fiske said he looks at the barn as an accessory structure, and the intent was to have this barn demolished.

In looking at the 2015 plans, Mr. Wilson said they include demolishing the barn, and staff (probably) told the applicant the barn was too close to the property line and had to come down.

Stating "yes", Mr. Fiske commented on an accessory structure being allowed closer to a rear yard on a certain square footage. The property is now under a purchase contract with Mr. Nassra who wants to keep the barn on his lot. To accommodate the potential

homeowner, Mr. Fiske said this is why the matter is before the ZBA with a variance request to keep the barn.

In the past year, Mr. Wilson said the property has been sold, and the application is being made under Dean Fiske, as the property has not yet been conveyed to Mr. Nassra.

Mr. Fiske said he is still the property owner as the property has not been conveyed yet. This barn is structurally sound, in good condition, and not in a condition that it needs to be demolished. Mr. Fiske said the lot behind is 28,000 sq.ft. and the front yard is 60 feet. He wants to make conditions to keep the barn but would not want to sacrifice a building lot for the barn, and this was stated during the PZC application process. This is an old Cheshire barn. Everything is coming through the request of Mr. Nassra.

In looking at the staff memo, Mr. Wilson noted it states that demolishing the barn is a condition of PZC approval in 2015.

With regard to the PZC condition, Mr. Kehoss said the ZBA could interpret it as a "condition". Before building permits can be issued under the approved plan, the barn is to be removed.

Mr. Fiske reviewed the site plan with the ZBA Members. On the plans he pointed out the common driveway, and said the existing house will be refurbished. Lot #3 has a 60 foot front yard, which is larger than what is required. The driveway will be a private road accessing the subdivision lots. Mr. Fiske does not look at this as a rear yard issue and considers the barn an oversized accessory structure.

PUBLIC COMMENTS AND QUESTIONS

Oliver Nassra, 389 City Hill Road, Naugatuck CT, informed the Board he is the purchaser of the two houses. He and his wife want to keep the barn; it is in good shape; will be used for storage while they live in the first house #4; and the second house #5 will be a rental property.

Mr. Devine commented on the facts with the 2015 PZC application and stipulation of approval with removal of this barn. It is now a year later, the barn has not been removed, and before the property was sold there was a stipulation to remove the barn.

It was stated by Mr. Wilson that the potential owner is approaching the Board through Mr. Fiske for a variance to keep the barn.

Mr. Devine pointed out that Mr. Fiske is still the property owner, and had a stipulation from PZC to remove the barn before the property was sold. He further noted that Mr. Nassra does not own the property right now, as it has not been conveyed to him. He asked Mr. Fiske why the barn was not removed to meet the PZC stipulation.

Mr. Kehoss answered for Mr. Fiske, stating that this is not unusual when you have a subdivision, with a structure slated to come down. It does not, necessarily, have to come down yet...it will have to come down at an appropriate time to be determined.

According to Mr. Wilson the timing of the granting of the subdivision approval and removal of the barn is not fixed by any law and does not have a timeline. In the timeline, there is now a potential owner who wants to keep the barn.

It was restated by Mr. Devine that the agreement was to remove the barn as a condition of the PZC approval.

When he went through PZC, Mr. Fiske said the plan was to remove the barn, and he is now trying to accommodate the new property owner.

Mr. Wilson explained that when an applicant realizes their design plan needs a variance, they come to ZBA before going to PZC. For the subject application, if the applicant learned there was an interest in keeping the structure, they could have come to ZBA requesting a variance.

In response to a question about who will build the subdivision, Mr. Fiske informed the Board he will be the builder.

Ms. Cianci commented on the barn being an historical structure and the possibility of making it into a carriage house.

This cannot be done without ZBA variance approval, and Mr. Wilson said the barn would be left where it is now. In the drawings for the PZC application he noted it was stated the barn would come down.

Mr. Kehoss expanded on this issue. He said the subdivision would not have been approved without the barn being removed. A subdivision cannot be approved without respecting setback requirements and lot lines.

A question was asked by Ms. Schain about going back to PZC regarding this barn. She noted it is not an historical barn, and is not in the historical district.

In reply, Mr. Kehoss stated there are zoning regulations with minimum requirements for lot size, and they must be in compliance by the applicant. If there was room, the applicant might be able to move the lot line to accommodate the setback.

The Board was told by Mr. Fiske that he cannot achieve this because of the 60 foot requirement. He does not want to sacrifice a building lot for a barn.

Ms. Nero commented on the barn and big house being close together, with little room between them, and everything hinging on the lot behind the barn.

Mr. Nassra said his wife loves the barn, wants to keep it and clean it up, and he wants it as part of his purchase of the property.

The Board was told by Mr. Fiske the size of the barn is 22' x 32'.

Nicole Kurker-Stewart, 90 Westmore Road, asked about where this property is located and how it aligns with her property. Her property has an unpaved road.

On the site plan, Mr. Fiske pointed out the Stewart property/house and his property.

Having visited the property, Mr. Schain asked about the lots behind the barn and roadway to get to these houses.

On the plans, Mr. Fiske pointed out the private driveway for the subdivision.

Steve Pickus, 90 Westmore Road, commented on the private driveway mentioned in the variance application, and if it would be connected to Westmore Road.

Mr. Fiske advised this road would be joining West Main Street.

In closing comments, Mr. Fiske talked about "hardship". He said the hardship is the barn being an oversized structure, an old Cheshire structure, and it would be a shame to take it down. His intent is to accommodate the buyer of the property.

THE PUBLIC HEARING WAS CLOSED.

VII. DECISION MAKING SESSION

Secretary Nero read the call of public hearing for the applications.

The application of The Nevar Company, c/o 677 South Main Street, Cheshire CT 06410 requesting a variance of Section 32.2.5 Accessory Building, requesting to allow an existing barn or rear of property seeking a variance of 560 SF and 6 feet in height (remove rear shed) property located at 674 West Main Street, Cheshire CT 06410, as generally shown on Assessor's Map No. 49, Lot No. 203, in an R-20 Zone. The application is on file and available for inspection in the Planning Department, 84 South Main Street, Cheshire CT 06410. The resulting rear line setback requested is 5 feet.

- 1. The Nevar Company 2016-10-01
674 West Main Street
Requesting a variance of Section 32.2.5
Accessory Building-Requesting to allow an
Existing barn or rear of property seeking a
Variance of 560 SF and 6 feet in height.
The resulting rear line setback requested is 5 feet**

PH 10/05/16
MAD 12/09/16

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

MOVED, that based upon the evidence presented at the public hearing and the general knowledge of the members of the Zoning Board of Appeals, it is hereby found that the request for a variance at 674 West Main Street to leave an existing barn within 5 feet of the required 30 foot rear yard setback line established in Section 32, Schedule B of the Cheshire Zoning Regulations as shown on the site plan presented by the applicant is consistent with the following standards.

1. That a hardship exists to the property 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.
2. That the hardship does not appear to result from the actions of the applicant.
3. That granting of the variance will not confer upon the applicant any special privilege.
4. That the variance is the minimum variance that will make possible the reasonable use of the land.
5. That the variance will be in harmony with the general intent and purpose of the regulations.

Discussion

Mr. Pepper stated that #2 relating to "hardship" does clearly appear to be the result of the action(s) of the applicant. Regarding #3, Mr. Pepper said approval would confer special privilege. He does not see any hardship, and will not support approval of the variance request.

Chairman Wilson stated he sees no hardship for this variance application based on the definition of "hardship". The variance could be approved if the Board was removing the applicant's ability to use his land as it was intended. This structure/barn/historical barn/out building...does not deprive the property owner for the intended use of his land. Mr. Wilson said he would be in opposition to the variance request because there is no hardship.

Ms. White would like to keep the barn on the property but under the zoning regulations she does not see a hardship. She noted the barn has been there a long time, before regulations were in place. She is conflicted on this application.

Ms. Shain read the standards to measure a variance against a hardship, and said the only one in favor of the applicant is #5. This is a beautiful barn and a shame to

demolish it. But, there is no hardship stated. If the owner felt strongly about the barn being left there, he would have made the lots in conformity to keep the barn. This can still be done, going back to PZC with new map drawings in order to keep the barn. There is no clear hardship, and it would be incorrect for the Board to vote in favor when there is no hardship.

Ms. Nero believes the barn is a beautiful structure, probably an historic barn. She is conflicted about this variance request and its approval.

The Board was informed by Mr. Kehoss that there were no responses from abutting neighbors about this application.

VOTE The vote was 0 in favor; 3 opposed (Wilson, Pepper, Schain)
 2 abstentions (Nero and White).
 THE MOTION FAILED TO PASS; THE APPLICATION IS DENIED.

VIII. OTHER ZONING BOARD OF APPEALS BUSINESS

IX. CHAIRMAN'S REPORT

The Board will have a special meeting/training/informational session on October 19th, 7 p.m. Room 207-209 with the Town Attorney. The session will focus on definitions of hardship, Connecticut State laws governing zoning boards, and zoning regulations.

X. ADJOURNMENT

MOTION by Mr. Pepper; seconded by Ms. Nero

MOVED to adjourn the meeting at 8:35 p.m.

VOTE The motion passed unanimously by those present.

Attest:


Marilyn W. Milton, Clerk