MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS MEETING
HELD ON MONDAY, AUGUST 2, 2010 AT 7:30 P.M. IN COUNCIL
CHAMBERS, TOWN HALL, CHESHIRE CT 06410

Present
Chairman Joseph Bartoli; Secretary Ken Wilson; Vincent Lentini, Marion Nero
Alternates: Gerald Devine and Jackie Clanci
Absent: Agnes White and Lou Murray.
Staff: Rob Librandi, Zoning Enforcement Officer

I. CALL TO ORDER
The meeting was called to order at 7:32 p.m. by Mr. Bartoli.

II. ROLL CALL
The roll was called.

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
JANUARY 4, 2010

MOTION by Mr. Lentini; seconded by Mr. Wilson.

MOVED to accept the minutes of January 4, 2010 subject to corrections, deletions, additions.

VOTE The motion passed unanimously by those present.

VI. COMMUNICATIONS

VII. PUBLIC HEARING
Chairman Bartoli explained the procedures for a public hearing of the Zoning Board of Appeals.

The legal notice for each application was read into the record by Secretary Wilson.

1. Application 10-07-01
   Lucinda D. Beaty
   9 Pleasant/650 Highland Ave.
   Requesting a variance of Section 24.4
   Nonconformities-Enlargement to increase
Expansion by 213 square feet which would
Total 44.19% of the non-conforming floor area
Where 25% is allowed for inventory related to
“Recover with Confidence” program.
APPLICATION WAS WITHDRAWN

The application of John and Theresa Addesso, c/o 441 Wild Flower Place,
Cheshire, CT 06410, requesting a variance of Section 32, Schedule B,
Dimensional Requirements, requesting a 20 foot side line variance of the
required 40 foot side setback, for an in-ground pool, property located at 441 Wild
Flower Place, Cheshire CT 06410, as generally shown on Assessor’s Map No.
86, Lot No. 75, 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. Application 10-07-02
John and Theresa Addesso
441 Wild Flower Place
Requesting a variance of Section 32,
Schedule B, Dimensional Requirements,
Requesting a 20 foot side line variance of
The required 40 foot side setback for an
in-ground pool.

John Addesso and Theresa Addesso, applicants, were present for the public
hearing. Mr. Addesso stated that they are looking for a 20 foot variance of the
required 40 foot side setback for an in-ground pool on the property.

Mr. Wilson reported that he drove by the subject property, saw the house on the
north side, and where the pool is to be located is invisible to the street. He is
unsure what the visibility would be for the neighbors.

According to Mr. Addesso there are pine trees on the property line to the north
and these trees will not be touched.

Mrs. Addesso said that the neighbors to the north of their property sent a letter in
support of the variance request for the pool.

Secretary Wilson read a letter from William and Sue Stanley, 445 Wild Flower
Place, Cheshire CT 06410 in support of the variance request into the record.

Exhibit A-1 Letter from William and Sue Stanley.

Mrs. Addesso submitted photographs of the property showing the pine trees on
the property line.
With regard to the location of the pool, Mr. Wilson asked if other alternative locations had been considered. He noted the lines of the property and the wetlands in the rear, and asked whether there are wetlands behind the gravel drive.

Mrs. Addesso said this is a wetland. The septic system is there and there are setbacks there as well. There is no feasible alternative location, and the pool would be more visible if it were located elsewhere on the property. The grove of trees would also be affected. Also, with another location a variance would be required for the other side of the property.

Mr. Wilson asked about the hardship for this application.

Mr. Bartoli also asked about the hardship.

Mrs. Addesso stated that the hardship is the location of the septic system, and if they had built this house they would not have placed the system in its present location. She informed the Board that the applicants had several pool companies visit the site and there was agreement that the proposed location is the only one for this pool.

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

The application of Robert F. Polito, 262 Forest Lane, Cheshire CT 06410, requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 16 foot side line variance of the required 30 foot side setback for a car port, property located at 262 Forest Lane, Cheshire CT, as generally shown on Assessor’s Map No. 85, Lot No. 179 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. Application 10-07-03
   Robert F. Polito
   262 Forest Lane
   Requesting a variance of Section 32,
   Schedule B, Dimensional Requirements,
   Requesting a 16 foot side line variance of
   The required 30 foot side setback for
   A carport.

Robert F. Polito, applicant, was present for the meeting along with James Jamele, 173 Mountain Road, Cheshire CT, who will assist him in construction of the car port.
MOTION by Mr. Wilson; seconded by Mrs. Nero.

MOVED that the Board approve a waiver of the A-2 Survey for this application.

Discussion
Mr. Lentini commented on this being small lot, and with the information provided in the file, he would approve the waiver.

Mrs. Nero, Mrs. Cianci, Mr. Bartoli and Mr. Wilson concurred.

VOTE The motion passed unanimously by those present.

Mr. Polito explained that the lots in this area of Town are very small, are nonconforming lots. He said that many neighbors already have car ports or garages, with some 20 feet apart and another 60 feet. He wants to build a 16 foot car port to conform to the regulations.

Mr. Wilson stated that the applicant has a driveway without a car port or garage now, and he questioned the 14 foot x 25 foot space on the map and if this was ever a garage.

It was stated by Mr. Polito that there was a garage which he turned into a bedroom about 25 years ago. Now, he needs a car port to be built to the left of the house, as he is older, and has difficulty with removal of snow and ice in the winter time.

The hardship for this application was questioned by Mr. Wilson who said car ports and garages are not guaranteed.

The hardship is the lot size with all of the house to one side of the lot, and Mr. Wilson said when he purchased the house the driveway was to one side 15 feet from the line. He had more footage on the other side. However, the lots are all nonconforming.

On the map, Mr. Wilson noted that the house is 22 feet from the west boundary, and 44 feet on the other side. It was offset to the west.

Mr. Polito informed the Board that 8 other people in the neighborhood have had variances approved.

There is already a nonconformity on the west and Mr. Wilson said there would now be another nonconformity on the other side.

James Jamele, 173 Mountain Road, Cheshire, CT, informed the Board he would assist Mr. Polito in constructing the car port. He went to the Zoning Office, and there was 30.7 feet from the line to the side of the house. A variance is needed
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for the car port. The applicant also went to Chesprocott, checked the septic system in the rear, and there could be connection to the sewers if there was ever a problem with the septic system.

Mr. Wilson stated that this car port would not prohibit another homeowner from connecting to the sewers.

According to Mr. Jamele, a 12 foot variance would be sufficient for the car port.

Mr. Polito advised that six (6) neighbors were notified of the variance request by form letter and he submitted a copy of the letter and the list of neighbors for the record. There were no responses from these neighbors on the application.

Mr. Wilson read the form letter and list of neighbors into the record.

Exhibits A-1 through A-5 Assessor’s Card, maps and related information.

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

VIII. DECISION MAKING SESSION

1. Application 10-07-01 PH 8/2/10
   Lucinda D. Beaty MAD 9/9/10
   9 Pleasant/650 Highland Ave.
   Requesting a variance of Section 24.4
   Nonconformities-Enlargement to increase
   Expansion by 213 square feet which would
   Total 44.19% of the non-conforming floor area
   Where 25% is allowed for inventory related to
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   APPLICATION WAS WITHDRAWN.

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   John and Theresa Addesso MAD 9/9/10
441 Wild Flower Place
Requesting a variance of Section 32,
Schedule B, Dimensional Requirements,
Requesting a 20 foot side line variance of
The required 40 foot side setback for an
In-ground pool.

Mr. Wilson commented on the fact that from the side, no one could see this pool, and it will not affect other neighbors on the street. All neighbors were given notice of the application, and the one most affected by the pool submitted a positive response in support of the variance application.

Mr. Lentini stated that the neighbor who will see the pool and who will be most affected by its location has no objection to the variance for the pool location. He does not consider in-ground pools to be a structure, but something which can be put somewhere without too much distraction. He is in favor of granting the variance request.

Mrs. Nero said her only concern was the neighbors. With the letter submitted in support of the variance request, and the fact that the applicants had more than one company on the site to survey the property and advise that the location proposed is the best one, she would support the variance request.

Mrs. Cianci stated she was in support of the variance application, and it appears that the closest and most affected neighbor has no objection, and will probably even use the pool.

One negative discussion point was raised by Mr. Wilson who said that pools are not a right for property owners to have. We have building lots with homes and a pool is not a hardship.

Chairman Bartoli said he likes in-ground pools. When people purchase a home they do not know what they will do with the property in the future. The applicants have the right to make use of their land without hurting other people. In this case, the applicant presented information that there is no other suitable location for the pool. There are no complaints from neighbors, and he would support granting the variance.

MOTION by Mrs. Nero; seconded by Mr. Lentini.

MOVED that the Zoning Board of Appeals grants the variance request of John and Theresa Addesso, 441 Wild Flower Place, Cheshire CT 06410, for a 20 foot side line variance of the required 40 foot side setback, under Section 32, Schedule B, Dimensional Requirements, for an in-ground pool for the subject property. The hardship does not appear to be the result of the actions of the applicant.
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VOTE  The motion passed 4-1; Wilson opposed.

Chairman Bartoli stated that the variance request has been approved. The variance does not take effect until it is filed in the Town Clerk's office and on the Land Records of the Town of Cheshire. This is the responsibility of the applicant.

The application of Robert F. Polito, 262 Forest Lane, Cheshire CT 06410, requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 16 foot side line variance of the required 30 foot side setback for a car port, property located at 262 Forest Lane, Cheshire CT, as generally shown on Assessor's Map No. 85, Lot No. 179 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. Application 10-07-03 PH 8/2/10
   Robert F. Polito MAD 9/9/10
   262 Forest Lane
   Requesting a variance of Section 32,
   Schedule B, Dimensional Requirements,
   Requesting a 16 foot side line variance of
   The required 30 foot side setback for
   A carport.

Mr. Lentini stated he was not in favor of this variance request because the hardship has not been proven that a car port should be there. The hardship is with the land when reasonable use of the property cannot be made. This land owner made use of the property, had a garage, turned it into a bedroom, and now wants a car port. He said the applicant could have done a better presentation, showing the variances received by other property owners in the area. Also, the lot is too small for another use than what is already there.

Stating he has mixed feelings about this application, Mr. Wilson expressed sympathy with the homeowner having a small lot in a nonconforming situation. The property was built in the 1950's. He does not believe a car port is a given use of a property.

It was pointed out by Mr. Lentini that there was no specific information from the neighbors and the notification, and this is a concern for him. He is not sure how the neighbors feel about this application.

Mrs. Nero expressed sympathy for homeowners with small lots, and understands the applicant wants a car port for safety reasons and less snow removal. She looked at the area, and there not much which can be done with small lots. She supports the variance request.
Mrs. Cianci agreed with Mrs. Nero, and stated the hardship is the age of the homeowner and the problems in the winter time getting snow and ice off his car, and there are safety considerations. Without any objections from the neighbors and the fact there are other car ports in the neighborhood, she has no objections to granting this variance.

Although the applicant could have done a better presentation, Chairman Bartoli said it is not their job to prepare a presentation for the Board and the Board members must understand this. His biggest concern was no certified notification to the neighbors. This is a nonconforming lot with a home built before zoning regulations went into effect. The proposed car port is not an obstructive structure and would not detract from the neighbors in any way. Mr. Bartoli said he supports the variance request.

It was noted by Mr. Wilson that the Board has voted on many car ports and garages, with many closer to the edge of the property, and these structures affected the area.

Mr. Lentini said this property owner had a garage, turned it into a bedroom, and he could do the same with the car port.

Mr. Wilson stated that this action would require a building permit, and a car port does not have footings, etc. as would a building.

MOTION by Mr. Wilson; seconded by Mrs. Cianci.

MOVED that the Zoning Board of Appeals grants a 16 foot side line variance of the required 30 foot side setback to Robert F. Polito, 262 Forest Lane, Cheshire CT 06410, under Section 32, Schedule B, Dimensional Requirements for the subject property. The variance is granted without any conditions and is based on the evidence presented at the public hearing and the general knowledge of the Board members. The hardship does not appear to be the result of the actions of the applicant and will not confer upon the applicant any special privileges.

VOTE The motion passed 4-1; Lentini opposed.

Chairman Bartoli stated that the variance request has been approved. The variance does not take effect until it is filed in the Town Clerk’s office and on the Land Records of the Town of Cheshire. This is the responsibility of the applicant.

IX. CHAIRMAN’S REPORT

Mr. Wilson commented on the January 4, 2010 meeting with the land use attorney and the Board. He noted that during this meeting cases were reviewed
in which variances were overturned by the Court. He believes most variances
granted by the Board would be turned over in Court if they were challenged.

At the land use workshops and sessions he has attended, Mr. Devine said he
learned that most variances could be overturned by the Court.

Mr. Wilson said that at this August 2010 meeting the variances which were
approved did not prove a true hardship. He believes the Board should be
tougher on itself in making decisions.

Mr. Devine said he was concerned about the wetlands on the property for the
pool application. He visited the property last month and could not see anything
but has concerns about the close proximity to the wetlands.

The Board was informed by Mr. Librandi that when an application is submitted
the wetlands are checked out. If there are wetlands and a problem is noted, the
application goes to the Inland Wetlands and Watercourses Commission (IWW).

For the Forest Lane application, Mr. Devine said the hardship was the small lot
size.

According to Chairman Bartoli, the ZBA has set precedent in many areas.

Mr. Wilson stated that every application must be treated individually, and the
Board cannot look at precedents. According to the attorney at the workshop, the
Board cannot set a precedent.

Mr. Librandi commented on the fact that no property is the same.

The issue of a medical hardship was raised by Mrs. Cianci.

Mr. Wilson stated that the hardship is to the land, not the person, and finances
cannot be taken into consideration either. He commented on the Highland
Health Care application and said the Board must be conscious of whether a
facility is covered under the Americans with Disabilities Act.

For the Forest Lane application, Mr. Lentini said it was a small house and small
lot. A garage was built, turned into a bedroom, and this was a decision of the
homeowner. Now, he wants a car port. The person already had use of his land,
and with a small property you can only do so much with it. Just because
someone wants to do something on their property, this is not a hardship.

X. ADJOURNMENT

MOTION by Mr. Devine; seconded by Mrs. Nero.
MOVED to adjourn the meeting at 8:32 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk