MINUTES OF THE CHESHIRE ZONING BOARD OF APPEALS MEETING
HELD ON MONDAY, SEPTEMBER 7, 2010 AT 7:30 P.M. IN ROOM 210,
TOWN HALL, CHESHIRE CT 06410

Present
Chairman Joseph Bartoli; Secretary Ken Wilson; Vincent Lentini, Marion Nero
Alternates: Gerald Devine and Jackie Cianci
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 – August 2, 2010

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

MOVED to accept the minutes of August 2, 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.

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

1. Application 10-09-01 Marcel and Betti Gauthier
   67 LeClerc Avenue
   Requesting a variance of Section 32, Sch. B.
   Dimensional Requirements, Requesting a
   14’ foot side line variance of the required
   30 foot Side Setback for a deck.
   PH 9/7/10
   MAD 11/11/10
The Cheshire Zoning Board of Appeals will hold public hearings on Tuesday, September 7, 2010, at 7:30 p.m. Cheshire Town Hall, 84 South Main Street, Cheshire CT 06410 to hear the following:

The application of Marcel and Betti Gauthier, 67 LeClerc Avenue, Cheshire CT 06410, requesting a variance of Section 32, Schedule B, Dimensional Requirements, requesting a 14’ foot side line variance of the required 30’ foot side setback for a deck, property located at 67 LeClerc Avenue, Cheshire CT 06410, as generally shown on Assessor’s Map No. 34, Lot No. 90, 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.

Mr. Devine was the alternate for this public hearing.

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

MOVED that the Zoning Board of Appeals grant the waiver of an A-2 Survey for the application of Marcel and Betti Gauthier, 67 LeClerc Avenue, Cheshire CT 06410.

Discussion
Mr. Wilson looked at the maps, sketches and drawings submitted by the applicants for the proposed deck in proportion to the house and septic tank. He does not see a map clearly showing the location of the house in reference to the lot. He questioned if a map was missing which would show this location of the house. Mr. Wilson noted that the lot is 88 feet; the house sits 20 feet from one property line and 5 feet from the other property line. He asked if the map shows the distance between the front of the house and the street, and said there is no marking from the back of the deck to the back property line. The information is less than what the Board usually has, but Mr. Wilson would waive the A-2 Survey requirement, and said he would ask more details during the public hearing.

VOTE The motion passed unanimously by those present.

Mr. Gauthier presented the application for the variance to build a small deck, using the inside corner of the garage to the mud room as guideline. When he met with Chesprocott he had requested a 16 foot variance, and now it is 14 feet off the back of the house to keep 5 feet from the original septic tank. He based the distance on the 20 feet and 12 feet, which is the approximate distance from the mud room. The house is a single family ranch, with the garage built 5 feet from the property line. The 12 foot mud room was built after the fact. The ranch house sits about 3.5 feet high, and the mud room is about 12 inches from grade. Mr. Gauthier was going to request a 13 foot variance because it is 17 feet from the property line to the edge of the deck.
Chairman Bartoli asked about the hardship for this application.

Mr. Gauthier said he is trying to keep the deck following the lines of the house. The upper deck is the actual living space and the lower deck is something he wanted, to have a two level deck. The distance from the back of the house to the property line is about 82 feet; now it is 84 feet from the property line to the deck; and the deck would be 14 feet.

Mr. Wilson said there is no issue with the back of the deck.

The Board was informed by Mr. Gauthier that the back of his property is Consolidated Industries. There is about 15 feet of flat, and a sheer drop off down to the Ten Mile River. The east property is also owned by Consolidated. Lot #7 has been extended with an extra 50 feet which is part of his property, and it is land locked. Because of the noise he is not sure a building would be put there, and the rear is undeveloped at this time.

The hardship was questioned by Mr. Wilson, who asked if the applicant was obligated to live within the law, what is the hardship for the application.

With the existing garage 5 feet away, Mr. Wilson said he can now come 17 feet with the proposed deck, without encroachment on any present or future homeowner.

Mr. Wilson said the definition of hardship is, that by living within the zoning laws, the applicant be prevented from living on the property. With the upper deck built 14 ft x 20 ft. a variance would not be needed. He noted that the applicant is saying the house is inside the setback.

Chairman Bartoli stated that the house, garage, and breezeway are non-conforming. The hardship could stem from the property being built before zoning regulations were in effect.

Regarding the 14 foot deck being built within the zoning regulations, Mr. Lentini asked how this could be done, i.e. the deck could be turned and go out 20 feet.

Stating “no”, Mr. Gauthier said the sketch shows the septic system in the upper left corner, and this is why he changed from a 16 foot to 14 foot deck. To comply with the law it would be a trapezoidal deck, which is angles, watching clearances, including the septic tank. There are no issues with the leaching fields. He plans on 3 or 4 steps between the two decks. Part of the plan is aesthetics, and to build the deck not going to the corner of the house would look like poor planning.

On the maps, Mr. Wilson said the septic system is about 21 feet from the house. It is unlikely there will ever be sewers in this section of town.
Exhibit A-1 – notification letter sent to the neighbors by the applicant, dated 6/22/10.

Mr. Librandi advised there were no responses to the notification letters from the neighbors.

In looking at the application, Mr. Lentini noted that the applicants want to build two decks, one will be 11’ x 12’ and the other will be 14’ x 20’. The upper deck could be done without a variance.

Mrs. Cianci commented on there being two sliders which the applicant is working off.

According to Mr. Gauthier, one slider is off the breezeway. There is a 2\textsuperscript{nd} septic system installed in 1982. The original is shown on the map and is closer to the deck, and the 2\textsuperscript{nd} one is off the drywell system. Moving the deck further east would require making it shorter because this tank is closer to the house. Chesprocott did a perk test on the property.

Mr. Wilson said the old septic system is labeled “E/F, and the new septic system is labeled C/D.

This is not a big house and Mr. Gauthier said moving the deck away to gain 1 foot will bring it in front of a bedroom window, which he does not want to do.

Regarding the mud room and breezeway, Mr. Bartoli asked how high they are off the ground.

Mr. Gauthier said they are 12 to 14 inches to the slate patio.

Chairman Bartoli asked the applicants if they had considered having a patio installed without a variance and action by the Board. They could build up the patio and do the deck without a variance.

In response, Mr. Gauthier said in building up the patio the garage would go down to 2 inches of the grade level. The deck allows more air space, and being 12 inches up, it would almost be unnoticeable. Personally, it is important to bring the deck to 20 feet to the corner of the house. This is a big expense and Mr. Gauthier said having a deck short one foot will look like a mistake was made. The mud room and garage have lower roof lines coming down. The complete visual would look chopped up, and for one foot it would not be a big difference. The upper deck is from the corner of the house, with the lower one unable to be seen.

There was a variance on this property in 1993, and Mr. Lentini noted it was for an above ground pool, and he asked about the location of the pool.
The Board was informed by Mr. Gauthier that the pool is no longer there. The pool was 5 to 6 feet from the west property line back towards the rear corner of the property. It was far away from the septic system. The garage was built onto the house in 1957.

There were no public comments or questions. Chairman Bartoli closed the public hearing.

VII. DECISION MAKING SESSION

1. Application 10-09-01 PH 9/7/10
Marcel and Betti Gauthier MAD 11/11/10
67 LeClerc Avenue
Requesting a variance of Section 32, Sch. B.
Dimensional Requirements, Requesting a
14’ foot side line variance of the required
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Discussion
Mr. Wilson commented on the fact that this is a significant non-conforming lot on both sides and the Board has dealt with many of these types of properties before. The property owner wants to make some improvements and any improvements would not be permitted under the zoning laws. The ZBA must make a decision whether a deck is a right and a required use of the land. The applicant could accomplish the same living space with a patio on the ground, but chose to build a deck which needs a variance. The difficulty for him is seeing a hardship, even though an outdoor deck is nice to have.

Mr. Devine stated that the hardship is caused by whoever built the original structure. This is a very straight up and down use of the land. These applicants did not have a say in how the house would be, and they are trying to upgrade the property, making it more livable. This deck is an accommodation they would like to enjoy on the property. They are living within the confines of a very narrow
piece of property. Mr. Devine stated he would be favor of granting the variance because the applicants never had control over how the house would be built. In prior variances granted by former Boards there were probably the same feelings about trying to upgrade the house. The applicants are in a difficult situation over which they have no control.

Mrs. Nero concurred with the statement made by Mr. Devine. She visited the property which is on a dead end street, and there is the subject property and house, and nothing on the left side. Consolidated Industries is in the rear. The house does not conform in any way. The deck would be a benefit to the property. The applicants had no say in how the garage and breezeway were put on the house. Mrs. Nero stated she would be in favor of granting the application.

Mr. Lentini agreed with Mr. Devine and Mrs. Nero, and somewhat with Mr. Wilson. The hardship is with the location of the septic system. This deck will not be a negative factor. There were no comments from neighbors. Mr. Lentini said he would support the variance request.

Chairman Bartoli commented on the fact that this property is non-conforming on all sides. It is 91 feet across. If you take a 30 foot setback on each side, this leaves 31 feet to build a house, and someone would be hard pressed to build any kind of structure within these confines. Mr. Bartoli said what the applicants are doing is nice; no one from the neighborhood opposed the variance request; and he would be in favor of granting the variance.

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

MOVED that the Zoning Board of Appeals grants the variance request of Marcel and Betti Gauthier, 67 LeClerc Avenue, Cheshire CT for a 14 foot side line variance of Section 32, Schedule B, Dimensional Requirements, of the required 30 foot side setback to build a deck. The hardship exists which is not applicable to other properties in the district. Granting of the variance will not confer upon the applicant any special privilege. The variance will allow for reasonable use of the property. The variance will not result in injury to the neighborhood or the public welfare. Granting of the variance will be in harmony with the general intent and purpose of the Regulations.

VOTE The motion passed 4-1; Wilson opposed.

Chairman Bartoli informed the applicants that the variance is granted. The variance does not go into effect until it is filed on the land records of the Town of Cheshire in the Town Clerk's Office. This is the responsibility of the applicant.
IX. OTHER ZONING BOARD OF APPEALS BUSINESS
The Board members commented on the fact that they cannot go behind a house to look at the property. It was recommended that applicants be told to include photographs of the subject property, and copies of the notification letters sent to neighbors. These should be part of the file.

Mr. Librandi informed the Board that the Planning office does request as much information as possible with an application. He will recommend that photographs and notification letters be included as part of the documentation submitted for the file.

Chairman Bartoli noted there is a check list of all items required for a variance application, and everything should be included for a presentation before the Board.

It was noted by Chairman Bartoli that an A-2 Survey is very costly, sometimes up to $6,000, especially for applicants who just want to build a deck.

Mr. Wilson stated that this is why good scale drawings, with photographs, are important for applications.

X. CHAIRMAN'S REPORT

XI. ADJOURNMENT

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

MOVED to adjourn the meeting at 8:17 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk