

**MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION  
PUBLIC HEARING HELD ON MONDAY, JULY 9, 2012 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; Tali Maidelis, Martin Cobern,  
S. Woody Dawson, John Kardaras, Gil Linder, Louis Todisco

Alternates: Leslie Marinaro

Absent: Lelah Campo, Ed Gaudio and Jim Bulger (alternates)

Staff: William Voelker, Town Planner

**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. Maidelis 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**

**Town Planner Voelker read the call of public hearing.**

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|---|--------------------|
| <b>1. Subdivision Application</b>           | <b>PH 6/11/12</b>  |
| <b><u>Ricci Construction Group Inc.</u></b> | <b>PH 6/25/12</b>  |
| <b>261 Cook Hill Road</b>                   | <b>PH 7/9/12</b>   |
| <b>2 lots (1 existing)</b>                  | <b>MAD 9/12/12</b> |

Darin Overton, P.E. Milone and MacBroom, represented the applicant.

Mr. Overton stated the proposal is for a 2 lot subdivision of the existing Verde property at 261 Cook Hill Road. Property is 4.8 acres, in two different zones, with the western side in the R-40 zone and eastern side in the R-80 zone. The zone boundary is the Mill River (highlighted in blue), and the existing conditions map was displayed for commission review. North of the property is Cook Hill Road and existing residential properties on the opposite side to the north; to the east and west are existing residential properties; and to the south is open space associated with the former DeDominiscus property.

There is an existing house on the property (highlighted in brown on the plan) with a driveway extending up Cook Hill Road. The site is mostly flat; the eastern side line has a slope up; the site is mostly wooded except for the clearing around the existing house and lawn area. There is public water available in Cook Hill Road, and the existing house has an on site septic system.

The applicant is proposing to subdivide this nearly 5 acre lot into two lots, each over 2 acres in size. The existing house will remain on its own lot. There will be a division line following the eastern bank of the river coming down to the lot's mid point, dividing off the back portion of the lot to go with the new home. The new lot towards the southern portion of the existing lot will be accessed by a driveway coming off Cook Hill Road, following the grades of the slope along the east side. The house is located in this area because the grades widen out there and there is a flat area for the house and septic system. There is a triangle of property in the east to be purchased from the adjacent land owner. As it stand now the property corner is in the Mill River and the only way to access the buildable portion is to cross the river. The portion of land will be purchased bringing the driveway in without crossing the river. This location provides for good sight lines.

Town Planner Voelker stated that reliable survey information will be needed on the adjacent property, and it has not been seen yet, with the status unknown. This property must conform with all the regulations, with a reliable survey.

Mr. Overton advised that Town staff comments have been received along with other Town agencies, and the revisions are being made now to address their issues. Revisions will be in this week.

It was stated by Mr. Overton that the new parcel will have a new water line extending off the Cook Hill water main; will be served by an on site septic system; testing has been done and observed by Chesprocott. A design plan has been submitted to Chesprocott for review.

Comments have been received from Chesprocott regarding putting the adjacent septic systems on other lots onto the plan, and they will be added as part of the revision for submission for approval.

Storm Water Management – Mr. Overton stated there is inclusion a linear rain garden along the driveway to collect runoff and allow for some storage and infiltration. The roof leaders are collected in an under ground storage infiltration system. Calculations have been given to the Engineering Department and they have been confirmed for zero increase in runoff.

Mr. Voelker informed the commission there was a meeting on this application before submission, and one point asked for was a conservation easement along the Mill River, which the applicant agreed to provide.

In that regard, Mr. Overton recalls the discussion on this matter, and there is an application pending with IWW discussing how this would be handled.

Mr. Voelker said the concern is to minimize the tree clearing along the river and some of this is within the purview of IWW. We want the future property owner to be aware that this was a concern, and this must be shown on the subdivision plan.

Mr. Maidelis is interested in what IWW says because the Mill River runs into the reservoir and it is critical to hear IWW statements.

The public hearing was held open pending IWW conclusions.

- 2. Zone Text Change Petition PH 7/9/12**  
**Matthew J. Bowman MAD 9/12/12**  
**Section 30, Schedule A to add a new**  
**Paragraph 1B-Accessor Second Dwelling**

Attorney Anthony Fazzone represented the applicant.

Mr. Voelker read the Central Connecticut Regional Planning Agency comments into the record, dated July 9, 2012.

Attorney Fazzone distributed an exhibit which is a comparison between paragraph #1 of Section 30 Schedule A, and the proposed amendment to the regulations. This is an application to add a new residential use to Section 30, Schedule A, Permitted Uses. Paragraph #1 allows one dwelling unit per lot under customary zoning, and this section allows two dwellings per lot..."where all requirements of the regulation shall be met for each dwelling unit as though each were on an individual lot".

Stating he looked at the file, Mr. Fazzone said there was a staff report which correctly pointed out that, historically, there has been some inconsistency in the interpretation when two dwellings have been proposed. This inconsistency occurs and sometimes requires that the lot be twice the required acreage and both dwellings meet all the setback requirements. Beyond that there were no restrictions on the use of the two dwellings. Under that paragraph there is allowance, as a matter of right without site plan or special approval from the commission, and there is no limitation on who can occupy either of the buildings. They can be rented, and utilizing a condominium concept can be separate zoned. The inconsistency has shown up when paragraph #1 is interpreted to require additional frontage. So, if the regulation requires in R-40 zone 50 feet of frontage, there would be an additional 50 foot requirement that what is allocated to the primary building on the property.

Mr. Fazzone said he submitted an exhibit which shows what is required under Section 1 of the existing regulation, and Proposal 1B shows what is required under the proposed regulation for each instance. The main difference is only in the frontage not requiring double the amount of frontage.

The proposed regulation would allow a second dwelling on a lot only in R-40 and R 80 zones, and would require the lot be double acreage for the zone. R-40 would require 80,000 s.f. and in R-80 zone it would require 160,000 s.f. Each building located on the lot would have to meet all the setback requirements, and in that regard the proposed regulation is similar to some of the historical interpretations of the existing paragraph #1.

Paragraph 1B is more restrictive than paragraph #1. It limits the use of the second dwelling to family members of the lot owner; does allow guests to use the second dwelling; does allow for a caretaker; and does allow for domestic help employed by the owner. Some of this was discussed before coming to the commission with the Planning Dept. staff, and they have suggested some changes which the applicant has no problem with. One of those changes is that the second dwelling cannot be rented.

In the proposed regulation the height of the structure is more restrictive than the existing paragraph #1, which allows two houses of equal size, height. The proposed regulation limits it to 1.5 story building with 50% of the coverage of the existing dwelling/main dwelling.

One of the key factors here is that the proposed Section1B would make the approval subject to a special permit from the commission rather than being allowed as a matter of right.

Mr. Fazzone said there is acknowledgment of trying to address the applicant's property, and has tried to address other situations which have a broader application to the Town as a whole. Over the past few years he has been consulted by clients where families have been looking for alternatives to the in-law apartment use, primarily due to the size and limitation in the in-law apartment as too restrictive. People are looking for a way to combine, parent and child, and the 750 s.f. is too restrictive in the in-law apartment.

The proposal is consistent with the Plan of Conservation and Development. Mr. Fazzone commented on the residential chapter, page 59. The 1979 plan stated *"It is not the purpose of this plan to dictate anyone's life style. To the contrary we believe that one of the goals of the plan is to provide a wide choice of life styles within the parameter of sound planning and the concept of a balanced growth."*

Mr. Fazzone said this is carried forward to the residential goal section of Community Goals. This reads *"To encourage a balance growth that is compatible with our infrastructure, to preserve the semi-rural nature of the*

*community, and to provide a variety of housing types which offer a choice to meet the needs of various income levels and lifestyles.”*

In reviewing the Plan Mr. Fazzino did not find anything that spoke to the contrary of the proposal. The applicant acknowledges that his current situation has issues that arise from the Health Department and Building Department. The Health Department septic issues have been resolved, and the applicant understands he must resolve the building office issues. He further understands that he would have to come back to the commission for special permit approval if this zoning regulation is approved.

Mr. Voelker commented on the items to be included – having some evidence that the principal owner of the property will reside in the primary dwelling.

Mr. Fazzino said that in Section 4 of the proposed regulation, the new wording is **“of the owners who shall reside in the primary dwelling”**,

It was stated by Mr. Voelker that the town wanted to be sure that the owner lived on the property in the primary dwelling; that speculators could not buy two houses and rent both out. In the Accessory Apartment Regulations, it states that the accessory home cannot be rented or used for income purposes.

Mr. Fazzino said the applicant has no problem with either of these modifications.

Mr. Cobern noted the one difference between this and the existing regulation is that there is no longer a requirement that the two lot houses be treated as if they were on separable lots. In that regard he asked if the applicant would consider a minimum separation between the two houses for privacy and aesthetic purposes.

In response, Mr. Fazzino said there is no problem with this.

This can be reviewed further, and Mr. Voelker said the hearing will be left open.

In thinking about the differences, Mr. Cobern said if they are treated as two separate lots, there would be two setbacks on the side lines between the two lots. One could build a house three feet from an existing house, and Mr. Cobern said there should be some restrictions placed.

Ms. Marinaro said it is a case by case basis as a special permit, and it depends on the property, and there are variables.

Mr. Voelker said if there is a minimum separation between the homes, and extraordinary circumstances were found or neighbor concerns, there is the ability to move around for special permit purposes. The way the regulation reads now for two houses on a single lot the interpretation is to show legal setback separation between the two.

Specific to the zoning change, Mr. Strollo said there must be a two acre lot to do it in R-40 zone. When we are saying 1.5 story house, he asked about a cathedral ceiling.

It was explained by Mr. Voelker that the accessory dwelling would be 1.5 stories high, and the primary dwelling would not be limited. He said there could be a height requirement included.

Mr. Fazzone said it is based on coverage as defined in the zoning regulations.

Mr. Strollo asked about this dwelling being a garage, and more than 1.5 stories high, and the second dwelling being above the garage.

In response, Mr. Voelker said a garage could be a flat roof building,  $\frac{3}{4}$  of a story. The applicant meets the regulation or they do not...and if they can't meet the regulation they cannot get a special permit.

Mr. Fazzone thinks a story would be up to 12 feet high, and looking at it the roof begins at the top of the 2<sup>nd</sup> story. In this case there would be the roof beginning at the top of the 1<sup>st</sup> story, and there could be a dormer for the living area. This would be the 1.5 story. Many of the plans used for the age restricted housing in Cheshire are of that type, 1.5 stories.

Mr. Voelker said there would be a determination of what is meant by 1.5 stories in terms of feet. It is meant to deliberately scale a house down. The applicant must show that they conform to the regulations in place.

It was explained by Mr. Fazzone that the applicant would have to submit plans to the commission pursuant to the special permit regulations. The commission could see what the height would be.

Mr. Linder asked about a scenario where the primary owner decides to rent out the primary dwelling.

In reply, Mr. Voelker said the recommendation is a provision that the primary owner has to live on the premises, and cannot rent the 2<sup>nd</sup> dwelling.

If there is a second dwelling that is vacant, and the primary owner rents out the primary dwelling, Mr. Linder asked if this can be done with the primary owner use the 2<sup>nd</sup> dwelling.

Mr. Voelker said there would be a restriction placed on the primary owner not leaving the premises, and if they move they are in violation of the regulations.

Ms. Marinaro commented on the primary owner having to leave town due to job transfer, and what do they do...leave the house vacant.

Unless the commission wants to provide for this situation, Mr. Voelker said that under the regulations this would not be allowed.

Once the dwelling is up, the space is there, and Mr. Dawson said that when the homeowner does with it is his business. He commented on life changing and things changing, and as a judge in a court of law, this restriction is ridiculous. There are bigger issues, and once the foundation is in and building height is done, what goes on at the property as long as it meets health codes, is not the town or anyone's business. It could be a family member or neighbor in need living in the 2<sup>nd</sup> building.

Mr. Voelker said there is a similarity between that recommendation and what is currently in the regulations dealing with accessory apartments. There is an affidavit that family members will live in an apartment. In the staff report it states that if the property owner acquired more property, and could meet all the requirements for conventional lots, they would be free to subdivide it and have two lots, and no longer be subject to the provisions of the special permit.

In his point, Mr. Linder said the primary owner moves and rents out the primary dwelling; the renter of the primary dwelling decides to have the 2<sup>nd</sup> dwelling occupied by the renter's family; that would still be within the spirit of what is being accomplished here.

Mr. Voelker said his recommendation is that if the commission wants to do that it must be enabled in the regulation. The staff point of view is to be similar to the apartment regulation. The spirit is important, and the staff recommendation is that the property cannot be used for income purposes. If another scenario is to be considered by the commission, then language must be drafted.

Stating this makes sense, Mr. Cobern said the objective is to not have someone put up rental income property. The idea is to give the owner/resident more flexibility. So, if the owner rents out the entire property, and new occupant comes into the main residence they should have the same flexibility as the owner. The word "owner" can be changed to "occupant".

Ms. Marinaro said the important part is "not to be used for income purposes". She also stated the commission cannot dictate who will live in the primary dwelling.

In a situation where someone is transferred and wants to rent out the house, Mr. Cobern said the new occupant has family or friends to use the second building and this is consistent with the spirit of the regulation...to give the person living there more flexibility. Changes can be made with simple language.

Mr. Dawson said this makes no sense, and growing up he paid board to his parents. Income is income, and property has high taxes. There could be a lot of issues coming from this special approval.

Mr. Fazzone stated that the existing regulation allows this in the R-20 and R-20A zones. If property is 40,000 s.f. in R-20 zone with right dimensions, someone can build with a matter of right, taking out a building permit. He said the regulation can be tweaked a little. With a job transfer for 2 years, and the owner has a son living in the house, the son should not be moved out because the owner is not living in the primary residence. Or vice-versa with the parents in the 2<sup>nd</sup> dwelling and the son/daughter gets a job transfer. In this instance the main building would be rented out, and the people in the accessory building are still family or caretaker of the primary owner.

With what is being discussed, Mr. Strollo said that the accessory building could never be rented.

Chairman Kurtz stated that this will allow the renter of the primary house to use the accessory building for family, friends or caretaker. This will be reviewed by staff and discussed by the commission at the next meeting.

On the choice of zones, Mr. Voelker said it was staff's recommendation not to include R-20 and R-20A zones due to lack of land left in those districts. The general concern was there being 40,000 s.f. lots left, but neighborhoods are used to a certain pattern, and a change was not recommended. The R-40 and R-80 zones are better suited to a separate dwelling unit situation.

Mr. Maidelis asked if all the square footage would be usable.

Stating we have no restriction there, Mr. Voelker said it does not have to all be usable. If there are wetlands on a property a permit is needed. The lot would not be smaller, but the building location might be limited.

Mr. Fazzone said if it is based on coverage, the perimeter of the building would be the determining factor.

Mr. Maidelis said he was referring to half an 80,000 s.f. lot that is wetlands, with half usable. This is putting two houses on 40,000 s.f.

The subject application will be further reviewed with staff, and the public hearing was continued to July 23, 2012.

## **VI. ADJOURNMENT**

MOTION by Mr. Cobern; seconded by Mr. Kardaras.

MOVED to adjourn the public hearing at 8:20 p.m.

VOTE The motion passed unanimously by those present.

Attest: Transcribed from tape.

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Marilyn W. Milton, Clerk