

**MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION
PUBLIC HEARING HELD ON MONDAY, JULY 23, 2012 AT 7:30 P.M. IN
COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE
CT 06410**

Present

Earl Kurtz, Chairman; Secretary Tali Maidelis,; Martin Cobern, Lelah Campo,
John Kardaras, Gil Linder, Louis Todisco

Alternates: Leslie Marinaro

Absent: S. Woody Dawson, Sean Strollo, and 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.

- | | |
|---|--------------------|
| 1. Subdivision Application | PH 6/11/12 |
| <u>Ricci Construction Group Inc.</u> | PH 6/25/12 |
| 261 Cook Hill Road | PH 7/9/12 |
| 2 lots (1 existing) | PH 7/23/12 |
| | MAD 9/26/12 |

Mr. Voelker read a letter into the record from the applicant requesting an extension of the time period to the September 10, 2012 public hearing date because the application is pending IWW approval.

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

Commissioner Todisco recused himself from this application.

Attorney Anthony Fazzino represented the applicant. The public hearing was left open pending applicant's response to commission questions. Mr. Fazzino stated that the staff report addressed the questions and points raised, and the applicant has reviewed this report of proposed changes and comments. The applicant has no questions or opposition and is in agreement. If the application is approved, the regulation should include these changes.

According to Mr. Voelker, staff came up with some clarifications from the original proposed changes, and sent revisions to the Town Attorney.

Mr. Voelker read the letter from Attorney Olson dated July 23, 2012 into the record of the meeting. This letter included proposed text for paragraph #4, and the reasons for the proposed recommended text. A copy of this letter is included in the file of this application.

Mr. Voelker referred to the staff memo of July 17, 2012 which included the amendments to paragraphs 3 and 4, and he read the amendments into the record of the meeting. A copy of the staff memo is included in the file of this application.

In the original language there was limitation of 1 ½ stories for the accessory building, and Mr. Voelker reported that after doing some research and talking to architects about this issue, the recommendation is to remove the height limitation. The new language will state that the accessory building height cannot exceed that of the primary dwelling. For example, if the primary dwelling is a ranch style home, then the accessory building cannot exceed a one story. Mr. Voelker said that with hard limitations the flexibility of the design and compatibility of the two buildings is removed.

This is a special permit process, on a case by case basis, and the applicant must show the commission that the accessory structure is compatible with the principle dwelling.

The first suggestion was to set the two dwellings far apart from each other, but Mr. Voelker said this defeats the intimacy between the units for families. There is no functional purpose for pushing them apart and it would defeat the advantage of the accessory structure. There was a look at pushing the accessory building to the property line but this would result in more disturbances on the property. These lots have big acreage and pushing the units apart might disturb other things on the property. Staff recommendation is a 20 foot distance between buildings.

For the record, Attorney Fazzino clarified that revisions to the regulation require the accessory structure to be no greater than the main structure.

With regard to paragraph #4, Mr. Fazzone discussed the theme of the property owner leaving the property for personal or business reasons. He submitted this question to the Town Attorney and received a legal opinion today. He read the legal opinion from Attorney Olson into the record of the meeting. He stated his client is in agreement with the proposed changes.

Mr. Maidelis raised the issue of an accessory building constructed after the initial plan is approved.

In response, Mr. Voelker stated that a property owner, by right, can build a single family home.

Attorney Fazzone noted that someone with a single family home on qualified property could submit a permit for an accessory dwelling.

The sewer and water connections for the accessory buildings was questioned by Mr. Maidelis.

There is a health code, and Mr. Fazzone said there is a code requirement for the sewer and water systems for the accessory building, or there is a procedure to apply for an exemption. The buildings must meet the health code requirements.

In reviewing the minutes of the last public hearing, Mr. Maidelis questioned the benefit of the additions to the regulations for the Town.

The commission was informed by Mr. Fazzone that in his experience many people come to him regarding the in-law apartment regulation of 750 s.f. as being too restrictive. This is an example of a benefit to the Town – allowing this type of house. The Plan of Conservation and Development states that the Town should favor a variety of housing. People in retirement who are selling larger homes want a place to live, but not something as small as a 750 s.f. apartment. People would like the opportunity to build an accessory dwelling. Other advantages over an in-law apartment would be the size and privacy of a larger place to live.

Mr. Voelker read a recommendation letter from the South Central Regional Planning Commission dated July 16, 2012 into the record of the meeting.

Mr. Linder asked whether a single family home in Cheshire could be rented without a time limitation.

Mr. Voelker advised that “yes” single family homes can be rented without time limitations.

A scenario was raised by Mr. Linder about an owner building an accessory building, living in the primary dwelling, and having to move out and rent this

dwelling. He asked if this was possible. And, he asked if the renter of the primary dwelling can rent out the accessory dwelling per the regulations (family, caretaker, guests), and if this fits into the regulation being discussed.

In response, Mr. Fazzone said that based on the regulation wording, this would not be permitted.

Stating he agreed it could not be permitted, Mr. Linder asked if there should be a regulation about the owner renting out the accessory building.

Chairman Kurtz stated that, as of right now, if the property owner moves and rents the house, the renter could use the accessory dwelling.

If this application is approved, Mr. Voelker said there would have to be a relationship established between the property owner and the person living in homes. This would be occupancy by a family member, caretaker, guest, domestic help, and this will require an affidavit to show the relationship.

Mr. Maidelis suggested there be a requirement of certification of relationship every 5 years, as in the in-law apartment regulations.

Mr. Voelker said this could be included as a stipulation in the approval.

The commission was informed by Attorney Fazzone that under the proposed regulation – if the property owner moves out and rents the principle dwelling, the accessory dwelling would still have to be occupied by people related to the property owner, not the renter. The renter cannot sublet to someone else.

Stating he agreed with Mr. Fazzone's statement, Mr. Linder said the situation would have unrelated parties occupying the same property.

Attorney Fazzone cited the comparisons in the regulation between Section 1A and 1B. The property in 1A would have double the acreage, two houses could be built, without a special permit and both could be rented. Under 1B the zone change is more restrictive. The primary difference is frontage between the two regulations, other than the 1B restrictions.

Ms. Campo commented on in-law accommodations and then people needing substantial at home care, pass away, and there is a separate structure on the property which has limited usage but must be maintained to preserve property values. She asked about resale with two buildings with limitations of use. For caretakers she knows people can get reduced rent to care for a property, and if this qualifies under the regulations.

Mr. Fazzone said the regulations states the property cannot be used for rental purposes, so this scenario would not qualify under the regulations. Also, anyone

purchasing this property would know that the house has limitations, and this is part of the property record. There are not many properties meeting this usage. Another aspect is that with a special permit it is recorded on the land records, so anyone buying the property would know about the restrictions.

Ms. Marinaro commented on this being up to the owner of the property, and it is a good idea to have a recertification for the accessory building use every 5 years. She noted there would be a smaller market for this type of property.

It was stated by Mr. Cobern that if the 2nd house ceases to be used by the property owner there is the option to tear down this house, reduce taxes, and go back to one dwelling. He does not believe that the commission needs to foresee every far fetched scenario in considering this regulation. This is an application for a special permit which stays with the land, restrictions remain, and anyone purchasing the property would have to know what they are getting into.

When someone takes a 750 s.f. of your home and turn it into an apartment, Mr. Fazzone said it is nowhere the commitment someone makes to build an accessory building. To require them to come back every 5 years is different than converting a portion of a house for use. Other parts of the regulations require some form of reporting, and the applicant would not object to a provision that said a report is required every 5 years to the Planning Department that the 2nd structure is being for the purposes stated. But, to have a different commission in the future not thinking this is a good idea and the property can't be used this way, that the special permit is no good, is building in a potential for the structure to be torn down.

Mr. Cobern agreed that this is a particularly onerous requirement. But, just requiring the property owner to file an affidavit is a simple procedure.

According to Mr. Voelker this could be done this way. If there is a significant change the applicant would have to come back to the commission for review and get a review by the town attorney. The affidavit would have to show compliance with the final language of the regulations.

PUBLIC COMMENTS AND QUESTIONS

Ken Newman, 808 South Meriden Road, asked about the language in #4, and clarification that the property owner has to reside in the primary building or other building.

In reply, Mr. Voelker stated that the property owner would have to reside in the primary building, and the town attorney has advised that the owner could reside in either house.

Mr. Newman suggested that there be a requirement for filing on an annual basis of an affidavit which reaffirms that people in the accessory building meet the

criteria of the regulations. There are concerns that the rules could be broken, and there is evidence that rules are broken all the time, and staff and commission cannot possibly track them all down. With a change in the people and relationship in the buildings, the Planning Department should be aware of this change and it should be on file.

The five year affidavit could be filed, and Mr. Voelker said any change in the residency of the accessory building should be noticed to the Planning Department.

With regard to this regulation change, Mr. Newman asked whether it is good for the Town. He commented on the change being adopted to a situation which is out of control, and there being a better way to make rules, and the commission owes this to the Town and the applicant. He noted that the way this is coming about is a little backwards, and it should have been proposed by staff or the commission because it was good for the Town.

Ms. Marinaro stated that most of the time these issues come before the commission because of a situation, and the commission looks at these situations, such as rear lot access. The regulations are reviewed to determine whether it is beneficial or not, and there are positives and negatives on all of them.

Ann Newman, 808 South Meriden Road, asked about two properties, and if the property can be further subdivided.

Mr. Voelker stated that the way the regulation reads, this could only be subdivided if all sections of the regulations were met, including frontage, width, setbacks and square footage. The scenario being envisioned has the houses spaced sufficiently apart that they could meet the setback requirements if the property line drawn between them, and this would be insisted on by the commission. The property owner could not get a variance because this would be a self created hardship. In order for an applicant to create two building lots lit would have to be proven that the lots met all the regulation requirements.

Attorney Fazzone reinforced one of the primary principles of not getting a variance from ZBA is that the situation cannot be self created. If an owner builds these properties without meeting all of the setback requirements, and tried to subdivide, the ZBA would have a sound basis for denial due to a self created hardship. This would apply to the current owner and a buyer takes this problem along as well. Connecticut State law would uphold denial of such a variance.

For the subject application, Attorney Fazzone stated that the applicant does not have objections to the two part affidavit. One is that it is done every 5 years, and filing of an affidavit when there is a change to the occupancy of the accessory building. This adds the burden to the applicant, and without filing of the affidavit this would make the Town's cease and desist order stronger.

Following a brief discussion on whether or not the hearing should be closed, the commission concluded it could be closed.

Chairman Kurtz closed the public hearing.

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:

Marilyn W. Milton, Clerk