

The Chester Planning & Zoning Commission held a public hearing for proposed Amendments to the Zoning Regulations on Thursday, January 12, 2017, at the Chester Town Hall, 203 Middlesex Avenue, Chester, Connecticut. In attendance were Jon Lavy, Mel Seifert, Sally Murray, Steven Merola, Henry Krempel, Keith Scherber, Jacqueline Stack, Peter Zanardi and Pat Bisacky (seated for D. Joslow). Michael Sanders and Elaine Fitzgibbons (non-seated alternates) were also present. Chairman Lavy opened the public hearing at 7:30 PM.

Secretary Sally Murray read the following Legal Notice of Public Hearing into the record, said notice having been published in the Hartford Courant on December 29, 2016 and January 5, 2017 -

“Notice is hereby given that the Chester Planning & Zoning Commission will hold a public hearing on Thursday, January 12, 2017, at 7:30 PM at the Chester Town Hall, 203 Middlesex Avenue, Chester, Connecticut to hear the following petition -

Amendments to Zoning Regulations

Delete Section 120L. TERMINATION OF SPECIAL EXCEPTION, and replace with new Section 120L. TERMINATION OF SPECIAL EXCEPTION.

Delete Section 140J. TERMINATION OF VARIANCE, and replace with new Section 140J. TERMINATION OF VARIANCE.

Section 40T. Sale of Alcoholic Beverage is amended by deleting subsection (1) in its entirety and substituting in lieu thereof subsection (2) which shall be renumbered as subsection (1).

Add new Section 117. Medical Marijuana Dispensary and Production Facilities.

At this hearing interested parties may appear and be heard and written correspondence will be received and made a part of the record. Copies of the above petitions are on file in the Office of the Town Clerk for public review.

Sally Murray, Secretary

Dated at Chester, Connecticut this 20th day of December 2016.”

Chairman Lavy briefly reviewed the public hearing procedures.

Section 40T, Sale of Alcoholic Beverage, was taken first.

There were no comments or questions either from the Commission members or from the public.

Carlisle Schaeffer spoke in favor of the amendment. He noted the current 1000 foot regulations was antiquated. He indicated a State law was passed and effective July 1, 2015 which allowed restaurants and cafes to sell at retail draft beer for off premises consumption.

No one spoke in opposition and there were no further questions.

Section 140J, Zoning Board of Appeals was taken next.

Attorney David Royston, Commission Counsel, reviewed procedural aspects of the application. He noted this was a Commission generated petition and not subject to the same time constraints as a petition presented by an individual. There are a couple of other petitions on tonight's agenda submitted by individuals that have time constraints, but those time constraints are not applicable to the Section 140 and Section 120 petitions.

Attorney Royston reviewed the reason why he as Commission Counsel and the Zoning Compliance Officer determined it was appropriate to take a look at these two sections of the Zoning Regulations. One reason was a complaint made to the First Selectwoman by owners of property on Castle View Ext. - William and Angela Ruel. It involved a complaint concerning a variance granted by the ZBA without any expiration date back in 2005. There was subsequent litigation initiated by the Gateway Commission. That was resolved in favor of the ZBA in that the granting of the initial variance was proper. That litigation matter was concluded in 2007. The attorney for the property owner at that time did what was required under the Statute to make a variance effective and filed the Notice of Variance on the Land Records in 2007. The property was sold in 2012. A wetlands modification was made to slightly elevate the house to meet current flood elevation requirements. The new owners of the property had persons interested in purchasing the property who came to the Zoning Compliance Officer to get a permit. At that point, the ZCO said the variance had expired under the Chester Zoning Regulations. The owners of the property believed that was not a correct opinion. It was, however, an opinion the ZCO had checked with Attorney Royston who concurred with that information which was then transmitted to the Ruels.

Attorney Royston noted the issue is when does a variance terminate under the Chester Zoning Regulations. The language still remains confusing and takes a

lawyer to interpret it, such lawyer's opinion being subject to challenge. Attorney Royston noted he proceeded on the basis for the attorney for the ZCO and the Commission to interpret it under the principal of what has been historic interpretation and how to reconcile the interpretation with everything else. Attorney Royston noted the variance terminates two years after the effective date. Royston referenced CT General Statute Section 8-7 referring to the effective date of a variance or special exception. The effective date is the date it is filed with the Town Clerk.

Attorney Royston referenced Chester Zoning Regulation Section 140J.1 CESSATION. He noted the first part of that makes sense if there is a use that has been given up. One year from the date of cessation it would terminate. That language however doesn't make sense with a variance to construct a house within the riparian buffer.

Attorney Royston noted in taking a look at this, both Killingworth and Essex had the same regulation. The attorney who wrote that regulation wrote the same regulation for Chester, Killingworth and Essex. Killingworth and Essex are now both in the process of changing this regulation having found out it doesn't read right. Royston noted he looked at what Essex and Killingworth were doing. He indicated one thing he, the ZCO and the Commission were trying to do was to address the complaint made by the Ruels to the Selectwomen's Office that their variance had terminated. The Ruels were quite disturbed by that and understandably so. That's the reason why there is the strange language about making it 10 years retro-active. Their variance would now be revived under this new regulation with a short window to comply with the other terms.

Attorney Royston further noted once this was written, he was contacted by an attorney for the Ruels. They had a conversation concerning this and it was felt the regulation should be tweaked. That attorney is no longer representing them. Royston noted he took this conversation to heart along with other communications and felt there should be some changes to the regulation. He personally felt the 10 year period should be allowed, even though other towns have not gone that far. Subdivisions get 10 years to do public improvements. Wetlands Permits start out at 5 years and based upon certain factors can now be extended up to 14 years. The good thing is the Commission isn't under the gun to decide tonight or close the public hearing. This does need to go before the Gateway Commission.

Attorney Royston distributed an alternative redline version of the Section 140 Amendment. He reviewed the last clause of the redline version which says any variance whose effective date in accordance with the provisions of CT General Statute 8-7 is within 10 years prior to this. So there is a time period as to how long variances are grandfathered. We know of at least one and there may be others.

Attorney Royston noted the current regulation doesn't require the holder of that variance to file it. This loophole should be closed and the new regulation does that. The loophole is the person who will just hang on to the variance and not file it. The effective date is when it is filed on the Land Records. The property owner has one year to file it on the Land Records. This now establishes the variance has to be filed and if not filed, it becomes null and void. The variance holder will be given notice of that fact. A copy of the filed variance should be provided to the ZCO. The property owner is out of luck if not filed within one year.

Attorney Royston reminded the Commission it can change any of these time periods if it thinks they should be changed. Attorney Royston noted initially in the unedited version, a property owner would have until 2017 to get their permit. In the new edited version, if the effective date were April 2017, they would have until 2027. The original proposal was consistent with Subdivision Regulations and Wetlands Permits, but not consistent with other towns. Once permits are obtained, completion of construction is within 2 years, unless ZBA gives an extension but not more than 1 year under this proposal. There was discussion regarding the 5 years in Section 140L.2 (last sentence). Michael Sanders noted maybe ZBA could give an extension and not state the years. Mel Seifert noted he would leave it open ended and not put a limit on it.

Chairman Lavy asked why go with Section 140J.5 and not include that in 140J.2. Attorney Royston noted he felt the retro-active part should be separated out. Mel Seifert noted there may be other properties that fall into this scenario.

It was noted the Ruel variance had an effective date of July 30, 2007. Mel Seifert noted if this regulation does not take effect before July 7, 2007, they would not get the benefit of this. Attorney Royston noted that was correct.

Chairman Lavy asked Commission members what their opinion was of version 1 and version 2 and on the 10 years. He didn't feel this should be sent to Gateway until there was a consensus on version and years. The wording should be revised, if necessary, before sending to Gateway.

Attorney Royston noted he has explained the original version and the edited version. This provides a reasonable period of time within which a property owner can get their permit, construct and have a reasonable time to complete construction. Royston noted this is on the Agenda for the Gateway Commission. If the Commission can reach a consensus, he will provide Gateway a copy of the revised version and someone from his office will be at the Gateway meeting to explain it. Gateway may have some questions back to the Commission. It was suggested it might be a good idea to get a consensus at this meeting.

Chairman Lavy noted it is okay to make revisions during the public hearing as long as it doesn't drastically change the public notice or intent of the amendment.

Chairman Lavy asked for public comment.

Attorney Valerie Votto introduced herself as the Ruels' attorney. She noted Mr. & Mrs. Ruel were also present. Their plight was especially confusing. There is a memorandum from their attorney illustrating prior counsel was having difficulty applying this and his method of dealing with it was to not deal with it. This case is unique. Attorney Votto noted the granting of this variance was a long lawsuit between ZBA and Gateway. The granting of the variance is what made this a buildable lot. The variance was recorded and was unconditional. The Ruels inherited this thinking the variance was good and ran with the land. The Town Attorney said it ran with the land only to find out they couldn't do it.

Attorney Votto noted the Ruels would advocate for an open ended time frame. They certainly would appreciate clarification of this matter. As it is stated now with the time limit, they only get 2 ½ year to sell and build. Mr. Ruel noted they never purchased the land to build on it. It hasn't sold. The deed clearly says the variance is "assigned forever." They had a title search done. They checked with Attorney Sam Chorches (prior owner's attorney) who felt confident there was a variance on the property. Mr. Ruel noted they told people they had to build within the parameters of the variance. They went on the assumption of what was in their deed "assigned forever." Over the years numerous prospective buyers have walked away or canceled contracts after speaking with the ZCO. They only found out 2 months ago the variance expired 9 years ago.

Mr. Ruel reviewed an email from Attorney Jane Marsh explaining what went on behind the scenes. Attorney Bennet maintains the cessation was not enforceable because variances run with the land and are permanent as long as they are recorded in the Land Records. Attorney Royston indicated he wasn't sure but would look at it on a case by case basis. In mid-2016 they again lost another buyer after meeting with the ZCO. Attorney Royston wrote a letter saying the ZCO would have no choice but to deny a zoning permit because of the cessation regulation. That was the first they learned of the cessation regulation. The ZCO never offered any reasonable way to get Attorney Royston's opinion other than to submit an application with full building plans. Mr. Ruel indicated they then hired a litigator, Attorney Tom Cronan, who stated variances don't expire, they run with the land in perpetuity. The fact that towns routinely have zoning regulations that allow for variances to expire is irrelevant. Attorney Cronan recommended trying to work out something before going to litigation. Mr. Ruel noted they appreciate the attempt at

140J but it forces them to sell and build within 2 ½ years. They have incurred over \$300,000 in cost partially due to the ZCO's arbitrary enforcement and confusing Zoning Regulations. As 140J is written, it just increases their costs. He requested a little more leeway than 2 years. What was written would be fine for someone who bought to build on, but not for someone to purchase a lot for resale and have someone else build on.

John Schroeder noted he was always his understanding variances don't expire and run with the land. It surprises him there is a current regulation that allows variances to expire.

Attorney Royston noted it would suffice to say the Ruels have a complaint, we looked at it and this is what is being proposed to resolve it. There have been various comments, quotes, etc. and he wanted to assure the Commission that at all times the ZCO acted properly and in accordance with the rules and regulations she has to deal with and if there is any issue with regard to the correctness of the interpretation she relied on legal counsel for that interpretation. He further noted in all correspondence, he repeatedly requested if anyone could give a case citation that termination of a variance or special exception is illegal to please let him know and he has not received anything. He still felt the provision for a time limit on a variance was appropriate. He did acknowledge it runs with the land. Variances do not run with any individual.

Attorney Royston addressed the question of why is there a regulation that terminates a variance. Variances are granted based upon certain circumstances in effect during a given period of time and the basis for a variance may no longer be relevant years later. It is not just Chester that has limitations on variances. Surrounding towns are doing it as well. It may not be a good idea for something that was okay 10-15-20 years ago.

Attorney Votto noted this particular property with the prior owners had it been built on the year before would not have required a variance at all. The entire litigation between Gateway and the Town was about granting a variance based on a 50' setback and a 100' setback. Implementation of one is a full taking on the property value. If the variance is recorded on the Land Records referred to it as unconditional, there should be an amended practice so the public is aware there are conditions on it. Time limitations are fine as long as people know they are there. The public should be made aware of these.

Mr. Ruel noted abandonment or material change never occurred in their case. They always maintained the lot was for sale. They upgraded the site plan according to the wetlands permit requirements.

Michael Sanders noted the cessation clause in the current regulation seems to say if you don't build what you were supposed to building that was the same as abandonment. If the barn wasn't built after one year, it was gone. It should have been worded more clearly.

Chairman Lavy asked for any further public comment either in favor or in opposition. There was none.

Discussion followed regarding the new edited redline version distributed by Attorney Royston this evening. There was a consensus to end the first paragraph 140J.2 after the word termination and delete the rest of that sentence. The last sentence in the third paragraph was also deleted. The rest of the redline version of Section 140 will remain as edited. Attorney Royston was authorized to take this to the Gateway Commission as pending revisions subject to further input from Gateway.

First Selectwoman Gister noted with regard to the Ruels case and this modification, they would be grandfathered to July 2017 at which point they would have 2 years to build or go back to ZBA for an extension. Sally Murray noted the extension would be for commencement of construction.

Section 120L, Special Exception Procedure, was taken next.

It was noted the typo in the heading should be corrected.

Attorney Royston noted when he looked at the variances, he also looked at similar language for Special Exceptions. The same loophole regarding the effective date should be closed. Special Exception shall be filed on the Land Records within one year and a copy of such given to the ZCO. He noted the same amendments under variances would also apply to Special Exceptions. This would be subject to the same time limits. Sally Murray noted for Section 120, as well as Section 140, something should be added to the conditions that there are certain time limits. Mel Seifert noted he had difficulty accepting some of this responsibility and liability. Attorney Royston noted he would prepare language which does not jeopardize the town, but notifies the applicant to check the regulations to find such limitations.

Brian Hughes, 46 Deep Hollow, noted this only goes back 10 years, what happens to a variance of 30 years. Attorney Royston noted the same principal applies. Why put any termination time period at all on a Special Exception or Variance? Circumstances may change. Anyone who has exercised the Variance or Special Exception and not recorded it 30 years ago, will not lose it.

Bill Sangster noted the grandfathering of 10 years was driven by a specific case. He didn't understand why this would apply to Special Exceptions. Is it true that any Special Exception granted would be valid up to 10 years. Attorney Royston replied yes. The Commission can change the time period. It doesn't have to be 10 years.

Chairman Lavy recommended Attorney Royston do the revisions and submit to Gateway for their January meeting.

Section 117, Medical Marijuana Dispensary and Production Facilities was taken next.

Chairman Lavy read the proposed new Section 117 into the record. Sally Murray noted Consumer Protection licenses care givers. No further public comment was offered.

Chairman Lavy asked if anyone wished to speak in favor of the petition. John Schroeder, 9 Johnson Road, noted he was strongly in favor of this regulation.

Chairman Lavy asked if anyone wished to speak in opposition. No one offered to speak.

Motion by Murray, second by Zanardi, to continue the public hearing until the February 9th meeting. Unanimously Approved.

Respectfully submitted,

Sally Murray /jrb

Sally Murray, Secretary