

1. Call to Order

The Chester Zoning Board of Appeals held its regular meeting on Monday, June 19, 2017, at the Chester Town Hall, 203 Middlesex Avenue, Chester, Connecticut. Vice Chairman John DeLaura called the meeting to order at 7:30 PM.

Vice Chairman DeLaura briefly reviewed procedural matters. He noted as there were only 4 members present this evening, any vote needed to grant a variance would have to be unanimous.

2. Seating of Members

Members in attendance were John DeLaura, Mike Desnoyers, Alex Stein and Bob Blair.

3. Approval of Minutes – May 15, 2017

**Motion made and seconded to approve May 15, 2017 Minutes as written. Approved with Blair abstaining.**

4. Old Business – Public Hearing and Consideration of Application

(1) Application submitted by Gatehouse Properties LLC (owner and applicant) for variance of Sections 72.A.1 CDD Permitted Uses and Section 50D, Change of Non-Conforming to convert the one office unit (#136) into a one-bedroom residential unit, at property located at 132-138 West Main Street, Chester, CT (Tax Map 13, Lot 13, Zone CDD).

Vice Chairman DeLaura read the Notice of Public Hearing into the record.

Attorney Ed Cassella introduced himself as well as the property owner Robert Meyers. He noted this was the property immediately across from Exit 6 ramp off Route 9. There are currently 4 buildings on the property. Cassella indicated the property is currently nonconforming with respect to its uses. It is currently zoned Controlled Development District (CDD).

Attorney Cassella noted the large barn on the left is #138 and has 4 residential apartments. #136 is the second building from the left and currently is an office. #134 has a studio apartment and the building on the right is #132 which has 4 residential apartments. That makes a total of 9 residential apartments and one 550 square foot office. The applicant is requesting variances to allow for the

conversion of the one office to a one bedroom residence. A copy of the proposed floor plan for that unit was provided.

Attorney Cassella noted Gatehouse Properties has owned this property since 2003. It was previously owned by Bill Kotchen and developed over the years. In 2008 there was a new development on Inspiration Lane which caused quite a bit of drainage so Mr. Meyer had to invest a lot more money into this property to be able to divert water around his buildings. When the building was developed on top of the hill, the engineering didn't work as well as they said it would.

Attorney Cassella noted Gatehouse is seeking to convert just the one 550 square foot building into a residential use. Two variances are being requested – a use variance under Section 72A to allow for residence use in that zone and Section 50D to change that utilization to become more nonconforming in some respects. He also explained one aspect of that property that bears substantial relevance to this application is the parking. The regulations now require 1 ½ spaces per unit. There are 15 total parking spaces available on the property. Parking requirements for an office require one space for each employee and one space for each 600 square feet so that is 5 or 6 additional parking spaces. So with 9 residential units for a total of 14 parking spaces and you add in the required parking for the office, you are over the parking on that site. Comparing that to converting this to a residential unit at 1 ½ spaces per unit times 10 units equals 15 spaces which are provided. The property will be brought more in line with the regulations as it pertains to the parking aspects.

Attorney Cassella noted the Zoning Board of Appeals under the regulations and the statutes has to find two things – that this change from commercial to residential will not effect the comprehensive zoning plan and does not impact the health, safety and welfare of adjacent property owners if the variance is granted. He further noted from their prospective having a property that is 90% residential and 10% office and going to 100% residential is not something that will effect the comprehensive zoning plan. This property in itself is almost on an island and won't effect anybody because it abuts Route 9 on almost 2 sides (front and side), Inspiration Lane on the right and up the hill is more Inspiration Lane. There is a big need for this type of living arrangement in Chester. The uniqueness of the property is the fact it is bounded on 3 sides by roads, Route 9 and Inspiration

Lane. The 3<sup>rd</sup> aspect is when there is a reduction of a nonconformity that can be a stand alone basis for the granting of a variance. Fifteen parking spaces is more than enough for this and that brings it into compliance with the regulations.

A Board member asked why there was one office left on the property. Mr. Meyers noted he really didn't know other than maybe Mr. Kotchen was using it for his own office.

Attorney Cassella noted he did review the property file and determined this was a legal nonconforming use as to the 9 units. There was nothing in the record that would allow this to be approved administratively. He submitted a memo from Lee Vito signing off as to the sanitary aspect of this.

Vice Chairman DeLaura asked if anyone wished to speak in favor or against the application. No one spoke at this time.

The public hearing was closed and the Board went into deliberations.

Vice Chairman DeLaura noted he didn't feel there was any record as to how this happened but he felt it made sense as there were 9 apartments and 1 office. He liked the idea of bringing the parking more into compliance. He agreed this was a pre-existing nonconforming use and although Attorney Cassella stated this would be more nonconforming, it would also be more in conformance with the parking requirements. He felt he could support the application in view of the parking being more in compliance as a legal hardship.

Bob Blair noted there was one office within a bunch of apartments. He also felt the same as Vice Chairman DeLaura and that the increase in the parking spaces offset. Both Alex Stein and Mike Desnoyers agreed as well.

**Motion made and seconded to approve Gatehouse Properties LLC variance to convert office into one bedroom residential unit at 132-138 West Main Street. Unanimously Approved.**

(2) Dealer's and Repairer's Location Application – Public Hearing and Consideration of Application

Application submitted by Ted Tine Motorsports LLC for Automobile Dealer's or Repairer's License to be located at 244 Middlesex Avenue, Chester, CT (Tax Map 4, Lot 43, Zone R2).

Vice Chairman DeLaura noted some of the requested information from the last meeting arrived too late for the notices so this will be on the next meeting Agenda for July 17, 2017.

(3) Whelen Aviation LLC, 61 Winthrop Road – Appeal of Cease & Desist Order – applicant has requested extension to July 17, 2017

Vice Chairman DeLaura noted the applicant submitted a letter dated May 30, 2017 requesting an extension to July 17, 2017 for the public hearing.

#### 5. New Business - Public Hearing and Consideration of Application

(1) Application submitted by Leah Kisselbrack & Patrick Fisher (owners and applicant) for variance of Section 60B, Required Characteristics (front, side & rear setbacks) to construct deck, 24' x 30' garage with breezeway and remove existing shed, at property located at 21 Lakeview Avenue, Chester, CT (Tax Map 12, Lots 211 & 212, Zone R2).

Vice Chairman DeLaura read the Notice of Public Hearing into the record. Both Leah Kisselbrack and Patrick Fisher were present.

Leah Kisselbrack noted this was a new application asking for a variance of front, side and rear setbacks. The front variance effects the deck on the easterly side. She reviewed the color coding on the drawing. Green – existing house. Blue – existing shed. Red – is proposed. Orange – existing driveway. In the back of the house is the old well, septic and leaching field. The new well (as of 4 years ago) is next to the driveway. Brown – existing stone wall, patio, etc. in the front. Yellow – what was proposed previously.

Kisselbrack noted they were asking for a 7' variance in the front for the deck. It didn't seem to be an issue with the previous application. The garage on the side was turned to be 10 ½ feet off the property line. Can't come any closer to the house and the well is on the rear property line. She reiterated previously the whole issue was the side property line which had been 5 feet and now is 10 ½ feet. The hardship is the location of the septic tank and leaching field, garage can't go

behind the house or on the east side due to the slope of the land and location of the well in the front.

Ms. Kisselbrack noted the property is under 2 acre zoning. The majority of these properties in this area are 100 x 100 or even less. If the zoning was R1, they wouldn't be asking for that much because of the size of the property and the neighborhood itself.  $\frac{1}{4}$  acre doesn't exist in Chester but should for certain neighborhoods. Everything would be pretty much conforming if there was  $\frac{1}{4}$  acre zoning.

Ms. Kesselbrack noted their property is 200 x 100 and hypothetically falls into the  $\frac{1}{2}$  acre zoning, but half of the property is not buildable because of the slope. Coverage is not an issue. She also noted the shed will be removed and the garage was reduced to 24' x 30' instead of 24' x 36'.

It was explained there was discussion at the last meeting and the applicant decided to postpone a decision and come back with a revised application making it less nonconforming. Vice Chairman DeLaura noted this was a new application and the prior one was withdrawn. The applicant confirmed that was the case.

There was discussion as to why the garage was at such an angle. It was suggested eliminating the breezeway and attaching the garage directly to the house.

Vice Chairman DeLaura noted that was a prudent and reasonable alternative. Discussion ensued with removing the breezeway and attaching the garage to the house. There was discussion about removing the concrete and stone walls.

Vice Chairman DeLaura reiterated anything financial or personal is not a hardship.

Mike Desnoyers noted by attaching the garage they only need a 4' side variance, would trade off a nonconforming shed and put it significantly farther away from the rear property line bringing it closer into conformity.

There was discussion about reventing the propane fireplace (chimney).

Exhibit A was revised to show proposed changes to the submission. The applicant agreed to the changes.

Vice Chairman DeLaura asked if anyone wished to speak in favor or in opposition to the application. No one spoke at this time.

The public hearing was closed.

Mike Desnoyers noted there are two things here – a deck and a garage. No issues with the deck. He noted the front of the garage should start 8' from the back of the house and will be 24' wide and 30' deep. The shed is to be removed and disposed of. Deck is as presented. All of this is represented in Exhibit A.

Vice Chairman DeLaura noted this was a prudent and reasonable alternative.

It was noted the rear setback is made significantly less nonconforming and trading it off for a slight nonconformance on the side setback. It will be a single story garage, 24' x 30', not any taller than 17' at the peak.

**Motion by Stein, second by Desnoyers, to approve the deck on the eastern side of the house as shown in the diagram, 16' x 30' which is consistent with the front of the house with no further encroachment into the front setback. The second part of the variance is the garage as described in Exhibit A where the front of the garage starts 8' in from the rear of the house, garage dimensions 24' wide x 30' long and no higher than 17' at the peak. This is being traded off by removal of existing shed in rear setback. All of this is reflected in Exhibit A submitted with the application. Unanimously Approved.**

(2) Application submitted by James Clarke (applicant and owner) for variance of Section 60B, Required Characteristics (side setback) to construct a 20' x 29' deck attached to back of house and remove existing mudroom, at property located at 49 Railroad Avenue, Chester, CT (Tax Map 10, Lot 219, Zone R1).

Vice Chairman DeLaura read the Notice of Public Hearing into the record.

Mr. Clarke submitted and reviewed some photos he took of the area. He explained his proposal was for a 20' x 29' deck. He applied for one in 2015 but it was all in the nonbuildable area. He has now shifted it over to be 16' off the property line. He is also removing the mud room and rear room. Mr. Clarke reviewed the location of the rear door and chimney.

Mr. Clarke confirmed he purchased this house in the location it is in. Part of the hardship is the house is located almost on the property line which was not self imposed.

Mr. Clark reviewed Exhibit A showing the chimney in the back. He pointed out the 2 rooms being removed. Exhibit B showed the side of the chimney where it banks down next to the driveway.

Vice Chairman DeLaura asked how high the deck was off the ground. Mr. Clarke replied 3 feet.

Vice Chairman DeLaura asked if anyone wished to speak either in favor or opposition to the application. No one spoke at this time.

The public hearing was closed and the Board went into deliberations.

It was noted this brings it more into conformity, the shape of the lot is irregular and this is not a self imposed hardship as Mr. Clarke purchased the house where it is which is on the property line.

**Motion made and seconded to approve James Clarke variance for deck at 49 Railroad Avenue as submitted. Unanimously Approved.**

(3) William and Angela Ruel, Castleview Drive – request for extension of time on previously approved variance.

Vice Chairman DeLaura noted the Ruels were requesting an extension of time on a previously approved variance under Section 140J.

Mr. Ruel noted the property has been a building lot since the 1940's prior to them

buying it. In 2004, the Gateway Commission increased the wetland setbacks making it unbuildable. At that point it was very controversial. The ZBA granted a variance to avoid a regulatory taking. Mr. Ruel submitted a Hartford Courant article regarding this matter. The Gateway Commission sued the ZBA and a Court battle lasted for 2 years. The Superior Court ruled in favor of the ZBA, the variance was granted and recorded in 2007. At that point the Ruels purchased the property to resell as a building lot on the Connecticut River. There has been no change to the lot other than in 2014 they were required to update the site plan to meet Inland wetlands requirements.

Mr. Ruel explained they have been actively trying to sell the property but haven't been able to because the ZEO is telling prospective buyers the variance may not be good. Mr. Ruel noted they pressed the issue and the Planning & Zoning Commission adopted a new Section 140J which extended the variance effective date to May 1, 2018. He further noted Attorney Royston suggested they come to ZBA and request an extension to give more time to find a buyer. He indicated their intent was never to build on the property themselves.

Mr. Ruel referenced the variance granted to Joseph Barnick (previous owner) for Section 90D Gateway Buffer Area, conditions none. He also referenced their Deed listing a number of easements, etc. as well as the Notice of Variance and Memorandum of Decision which was the Court case. It also says assigns forever. The Ruels pointed out once it was recorded on the Deed it was assigned forever. He noted they are requesting a reconfirmation that what is written on the Deed is valid so they can tell buyers the variance is good if they build within the parameters of the variance. Copies of the site plan have been given to prospective buyers. Mr. Ruel showed ZBA members a copy of the site plan with the upgrades required in 2014 and the new FEMA requirements.

Vice Chairman DeLaura noted that before Planning & Zoning adopted the new Section 140J, the regulation did say that variances did expire. They then went back and picked out the variances (including the Ruels) that shall not be deemed to have expired according to the newly adopted regulation. This regulation also provides 2 years after the effective date to obtain a building permit and commence construction. Then there is an additional 2 years after that to complete the construction. In this case, that gives the Ruels until May 1, 2022 to finish the



project.

Angela Ruel noted the issue is they purchased this as an investment property. The problem is the prospective buyers would bolt after seeing the ZEO who told them the lot was not buildable and never talked about the variance. It wasn't until they talked to the First Selectwoman they understood the problem.

Vice Chairman DeLaura noted the Ruels already have 5 years. Mr. Ruel noted they didn't want to apply for a new variance because that would open this up to Gateway again. The question came up can they apply for a new variance when there is already one in place.

Mrs. Ruel noted they need as much time as possible because they are not going to build on it. They purchased "assigns forever, variance runs with the land." Every attorney they talked to when they purchased the property said that.

Mr. Ruel noted they don't know what kind of a house someone wants to put on the property. Vice Chairman DeLaura noted they have until 2020 to obtain zoning and building permits.

There was further discussion on the old Section 140J and that Chester and Killingworth had the same regulation and that both towns have changed it. There was also the question as to whether ZBA can extend an approved variance.

Mrs. Ruel asked if they could request 10 years from May 1, 2018, the effective date. Vice Chairman DeLaura said he would have to consult with the Town Attorney before responding to that.

Mrs. Ruel noted they did due diligence and everything before purchasing the property. Vice Chairman DeLaura noted the property has value. He didn't think this would be a taking. Mr. Ruel noted they have been trying to sell the property for 10 years and have dropped the price about 30%.

Vice Chairman DeLaura reiterated the Ruels have until May 1, 2020 to get permits to start. He explained the 10 years being referenced is not 10 years from the effective date but the Commission went back 10 years to look at what had been

granted. Mr. Ruel stated he was under the impression that if he got a new variance today he would get 10 years from the effective date. Vice Chairman DeLaura noted that was not correct. He stated the new regulation gave that variance back to you.

**Motion by Stein, seconded by Blair, to deny request for extension of time from William & Angela Ruel, Castleview Drive as they currently have 5 years. Unanimously Approved.**

6. Receipt of New Applications – none.

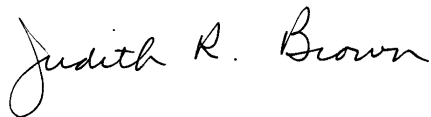
7. Any Other Business – none.

8. Audience of Citizens – none.

9. Adjournment

There being no further business, the meeting adjourned at 9:21 PM.

Respectfully submitted,

A handwritten signature in cursive script that reads "Judith R. Brown". The signature is written in black ink and is positioned below the typed name.

Judith R. Brown, Recording Secretary