

Chester Zoning Board of Appeals
Regular Meeting, March 20, 2017
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1. Call to Order

The Chester Zoning Board of Appeals held its regular meeting on Monday, March 20, 2017, at the Chester Town Hall, 203 Middlesex Avenue, Chester, Connecticut. Chairman Borton called the meeting to order at 7:30 PM.

2. Seating of Members

Those members present and seated were Mark Borton, Bob Blair, Alex Stein and Errol Horner. Chairman Borton noted in order for a variance to be granted it would require four (4) affirmative votes.

3. Approval of Minutes

Motion by Stein, second by Horner, to approve January 23, 2017 Minutes as written. Approved by Borton, Stein, Horner, Blair abstained.

4. Old Business – Public Hearing and Consideration of Application

Application submitted by Leah Kisselbrack and Patrick Fisher (owner/applicant) for variance of Section 60B, Required Characteristics (Front, Side and Rear Setbacks), to construct garage w/breezeway and deck, at property located at 21 Lakeview Avenue, Chester, CT (Tax Map 12, Lot 211 & 212, Zone R2).

Leah Kisselbrack and Patrick Fisher introduced themselves as the applicant. Ms. Kisselbrack noted they would like to build a 2 car garage on one side of the house and a deck on the other side. She noted there have been other variances granted for these small lots in an R2 zone. Chairman Borton explained everything is unique to this case as presented. Alex Stein noted each application must stand on its own merits.

Leah Kisselbrack noted they are expecting a baby in July and this is a project they have always wanted to do. Chairman Borton noted variances are not based on the owner or the circumstances.

Leah Kisselbrack noted the garage requires a variance on the rear and side. The deck on the other side of the house needs a variance for the front setback. It was noted the side of the garage would only be 5' from the neighbor's property line. Currently the driveway is right up to the edge of the property line. She also noted the shed in the back would be removed and it should not be considered in the coverage. The front setback would be 33' and the rear would be 11'. They originally thought they could

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push the garage farther back, but that didn't really make sense with the breezeway.

Exhibits A and B were reviewed. Exhibit A was the last page of the application and Exhibit B was a page entitled "Additional Hardships." Exhibit B showed the location of the house, proposed garage and minus the shed. It was noted the driveway can't be moved due to the well location. The septic and leaching field were behind the house. The second lot which they purchased two years ago is all sloped land and useless as far as building consideration. Patrick Fisher reviewed the sloped land which slopes away from the house toward the Lake. Alex Stein asked about the slope of the land. Patrick Fisher noted the slope was significant. If they were to build a retaining wall to make the property level, it would have to be at least 15' tall.

The size of all the lots in that area was reviewed. Chairman Borton reviewed the area of the setbacks which are not supposed to be built in. The R2 zone was 40'. The buildable envelope was reviewed. Borton noted if the project could be done within the buildable envelope, a variance would not be required. It was noted the house is already outside the buildable envelope. Mr. Fisher noted the house was originally constructed by Leah's grandfather in 1951.

Leah Kisselbrack noted the garage cannot be in the buildable envelope because it can't be built on top of the house and the other side is the sloped land. She further noted the imposition of Zoning is impractical and unworkable for this area. The location of the pre-existing driveway was again reviewed. Chairman Borton asked why the driveway couldn't be closer to the house. Kisselbrack noted it was because of the location of the well. It would be silly to move the driveway and have to make two 90 degree turns into the garage. The distance between the septic and well was reviewed. It was noted the original well was still there (but unused).

Kisselbrack noted they would be moving the driveway a little. Chairman Borton noted there is an inherent interest in moving things off the property line. He asked why the driveway couldn't be moved over as far as possible to get into the garage. Kisselbrack noted she didn't want to move the driveway any closer to the well pump. Mr. Fisher noted the well pump isn't even 5' off the current driveway.

The dimensions of the garage were reviewed. Kisselbrack noted they would like a 2 car garage with space in the rear for storage as long as the shed will be removed.

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A Board member asked if any other orientations of the garage had been considered, for instance if there was no breezeway. Kisselbrack noted the original plan was to tuck the garage behind the house, but that didn't work out.

A Board member asked if the garage could go on the other side of the house. Kisselbrack replied that due to the slope of the land it would have to be built up, the driveway would have to be relocated, the stone wall would have to be removed and there is no entry into the house on that side. It would also interfere with the view of Cedar Lake. It was noted the neighbor recently requested a variance which was granted and topography was an issue.

A Board member asked if all the neighbors had been notified of this application. Chairman Borton replied yes. It was also noted the neighbor's house was about 14' from the property line.

Chairman Borton asked how far above grade the deck would be. Fisher noted it would be right in line with the house and 90% of the deck would be within the building envelope.

Coverage was reviewed. It was noted they are well below the maximum coverage.

A Board member asked if a smaller garage had been considered. Kisselbrack noted they would like 24' for 2 cars and being able to open the doors. Also storage at the back of the garage for things from the shed which is to be removed. A smaller garage really isn't an option. Even if they took 5' off the garage, it would still need a variance. Kisselbrack noted the garage really can't go any closer to the house or the street.

The question was asked if consideration had been given to angling the garage. Kisselbrack replied no, that would be ridiculous. A Board member noted it may not be aesthetically pleasing, but would that bring it closer to the required setback.

Patrick Fisher noted they have double the lot area than other properties that have been granted a variance. Leah Kisselbrack noted this would increase the value of the property and be good for the area.

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The Board went into its deliberations session. Errol Horner noted this is more of a Zoning issue than Zoning Board of Appeals. The side setback of 5' is the problem. The ZBA's hands are tied. Zoning is not keeping pace with the development of the community. This Board is not in the design business. The needs are obvious but the restrictions are the regulations. This clearly does not fit into the existing setback. It is way over in too many areas. Horner noted the biggest issue is the garage and the 5'. That was why he suggested moving the garage to the other side of the house. He reiterated this is a Zoning issue.

Alex Stein noted he has no issue with the deck. He was troubled by the garage and finding a way to try and make it work. There are no Zoning laws that guarantee someone a garage, swimming pool or anything. The lots themselves and how the homes are positioned are cause for concern. He was struggling with putting a structure that large so close to the property line. He understood the issue of the well and the topography and felt there was merit in what Mr. Horner had suggested.

Bob Blair noted he didn't see any issue with the deck. He felt the 5' setback was somewhat of an issue. These lots are not zoned ¼ acre. This is really a Zoning matter. He didn't have an issue with the 11' rear setback because of the location of the well.

Chairman Borton noted a variance could be conditioned on a certain setback figure. Borton noted the deck was okay and probably could be granted. A variance for the garage might be justified, but maybe not for what was specifically proposed. In this case there is an argument for placement driven by slope which maybe could be solved, but there is a view issue, a one car vs. two car issue, etc.

Errol Horner noted if the garage was rotated, it would make a big difference on the side setback. It would be closer to the house. He felt that was the only way for this plan to work out.

Alex Stein noted he had a couple issues with the garage, one being the 5' off the west property line. That was too close. The other was the 36' in depth. If the garage were shortened in depth and rotated, it might pose a different situation. If it could be positioned in such a way to be more aware of the setbacks, it would be more palatable.

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There was much discussion about the possibility of rotating and reducing the size of the garage. It would be much less aggressive on the setbacks. Chairman Borton suggested maybe coming in on the other side of the well.

Chairman Borton noted in the past the Board has provided feedback and welcomed applicants to return with a revised plan.

Alex Stein asked if the Board could come to an agreement on hardship – the slope to the east, the location of the well and imposition of 2 acre Zoning on much smaller lots creates a big issue. Members agreed. They also agreed there was no issue with the deck, but didn't think the garage would be approved as proposed. Stein asked if the deck alone could be approved. Borton replied the application was a package deal. Horner asked if the imposition of Zoning could be called a hardship.

There was a brief discussion if this was a ¼ acre lot and Chester had ¼ acre Zoning and setbacks.

Chairman Borton noted there was a consensus to encourage the applicant to address the Zoning issue through the Zoning Compliance Officer to the Zoning Commission. They would also welcome the applicant to return with a revised plan at the next meeting.

There was a brief discussion between Board members and the applicant as to the Board's discussion during deliberations. Chairman Borton noted there has to be a strong enough argument for approval that can withstand a legal challenge. The Board wants to give the applicant an opportunity to come back with something that will pass. Kisselbrack noted her concern was that they revised the plan and it still may not be approved. Chairman Borton noted that is a risk. Kisselbrack noted the neighbor got a variance to build 3' off the property line. Chairman Borton noted by State Statute they are limited by what they can do. They recognize there is a Zoning problem and that as property owners they (the applicant) can address that with the Zoning Commission.

There was further discussion regarding ¼ acre zoning. Alex Stein urged the applicant to take all reasonable steps to mitigate any encroachment and maximize the setback

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to the western edge as well as to the rear setback.

Leah Kisselbrack asked if letters from the neighbors would be helpful. Chairman Borton again noted this application as it stands would not survive a legal challenge. It does not have to only be a neighbor who appeals, but anyone in town.

Motion by Stein, second by Blair, to grant continuance of public hearing for Kisselbrack and Fisher application for variance. Unanimously Approved.

5. New Business -

(a) Receipt of New Applications

(1) Appeal of Cease & Desist Order – Whelen Aviation LLC, 61
Winthrop Road

Chairman Borton noted an application for Appeal of a Cease & Desist Order issued by the Zoning Compliance Officer has been received, however, there is no supporting documentation. **Motion by Borton, second by Stein, to not receive application of Whelen Aviation LLC to Appeal Cease & Desist Order as there was no supportive documents, ZBA should seek Counsel and Blair will recuse himself. Approved by Borton, Stein, Horner.**

6. Any Other Business

Motion by Borton, second by Stein, for the Minutes to reflect the ZCO again bring the issue of rezoning the Cedar Lake Terrace and Castle View areas before the Zoning Commission. Unanimously Approved.

7. Audience of Citizens – none.

8. Adjournment

Motion by Stein, second by Horner, to adjourn at 9:07 PM. Unanimously Approved.

Respectfully submitted,



Judith R. Brown, Recording Secretary