

MEMORANDUM IN SUPPORT OF THE APPLICATION OF CARYL HORNER, 25  
MAPLE STREET, CHESTER, CT.

FROM: ATTY. MICHAEL E. CRONIN, JR., ATTORNEY FOR THE APPLICANT

TO: ZONING BOARD OF APPEALS, TOWN OF CHESTER, CT.

DATED: SEPTEMBER 17, 2020

Accompanying this Memorandum is a plot plan showing 25 Maple Street and 27 Maple Street, and the two houses situated on said properties. Douglas George McAvay and Pamela Jeanne McAvay are the owners of 27 Maple Street, Chester, Connecticut, and my client's property, 25 Maple Street, is adjacent thereto. The plot plan shows the outline of the single-family dwelling house on the McAvay property, and shows at its closest point, which is 14 feet from the southerly property line on my client's property. The generator, which is the subject of this appeal, is shown next to the northerly line of the building on the McAvay property, and is approximately 16 feet from the property line. Under the zoning regulations, there is a 20-foot sideline setback requirement in this zone, and the generator unit is well within that location. I also enclose with this Memorandum a photograph of the area which shows the building and the generator in its present location.

In "Schedule A" attached to the application of Caryl Horner, there is a review of the sections of the zoning regulations which are applicable to this case. The reasons that the Zoning Official has given for the installation of the generator unit are as set forth in her letter to Errol Horner dated April 24, 2020, which is set forth as follows:

"April 24, 2020

Errol Horner  
25 Maple Street  
Chester, CRT 06412

RE: Generator, 27 Maple Street

Dear Errol:

This letter is to constitute a formal decision from our office to supplement my email of April 11, 2020. It is my decision that under section 121.A.1 of the Zoning Regulations, no zoning permit is required as an accessory improvement which is neither a building or sign. Since no zoning permit is required, this circumstance constitutes an exception to the setback requirement for accessory improvements that are not buildings or signs.

Very truly yours,  
s/ Judith R. Brown, Zoning Compliance Officer"

In reviewing the letter, the sole reason that Ms. Brown cited was that under the provisions of section 121.A.1 of the Zoning Regulations, that no zoning permit is required since this is an accessory improvement, and that this constitutes an exception to the setback requirement. Section 121.A.1 is as follows:

"Section 121A.1 NEW IMPROVEMENTS. Commencement of construction, placement, relocation or installation of any improvements, other than accessory improvement which is neither a building nor a sign."

The installation of the generator is probably an accessory improvement to the structure, which is excluded from receiving a building permit. There is absolutely nowhere in the zoning regulations that says that an "accessory improvement" can be installed within a setback area under the regulations. In fact, the specific language of Section 401.1 specifically requires that setbacks shall be "....open and unobstructed to the sky". This section does allow exceptions for architectural features of the building, such as chimneys, etc. The only exception is for "trees and shrubs". Although the generator may be an accessory to the main building, and exempt from the requirement of a building permit, it is, under Section 20, clearly a "structure", which is as follows:

"DEFINITION OF STRUCTURE". Anything constructed or which is located, on above or beneath the ground, except driveways, sidewalks, parking areas, curbing and fences which are less than eight (8) feet high, including anything located on, above or beneath the water which is not primarily utilized or intended for navigation."

Section 40D of the regulations entitled "IMPROVEMENTS" states as follows: "No improvement shall be made except in conformity with these regulations." It is submitted that that clearly would include the installation of a generator unit. It should be noted that under Section 121 entitled "ZONING PERMITS", Section 121A.5 states in part:

"The term "improvement" as used herein includes a swimming pool and any tennis or other surface outdoor recreational court facility exceeding 10 square feet in area."

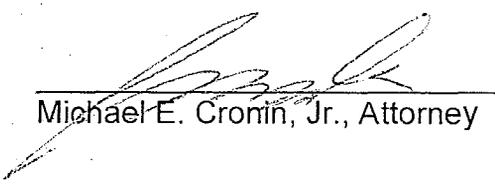
Since that type of facility is clearly an accessory improvement, it is clearly questionable as to whether or not it needs a building permit. However, in interpreting that regulation, it certainly is subject to the setback regulations.

In addition to the above reasons for reversal of the Zoning Compliance Officer's decision, it should be noted that the McAvay dwelling house at 27 Maple Street is a non-conforming building because a portion of it extends into the 20-foot setback area. The installation of the generator in the setback area is clearly an expansion of this non-conformity into the required setback area. This action is clearly prohibited under the provisions of Sections 40D and 40E, which are as follows:

"40D Improvements. No improvements shall be made except in conformity with these regulations."

"40E Changes. No changes shall be made in the use of any land or improvement, in the location of any improvement, or in the size or shape of any lot or improvement, except in conformity with these regulations."

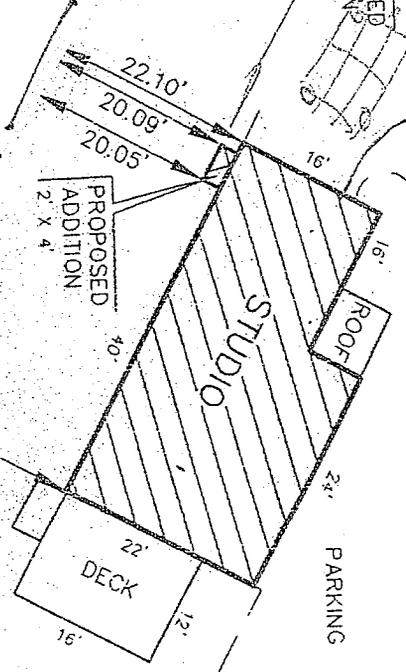
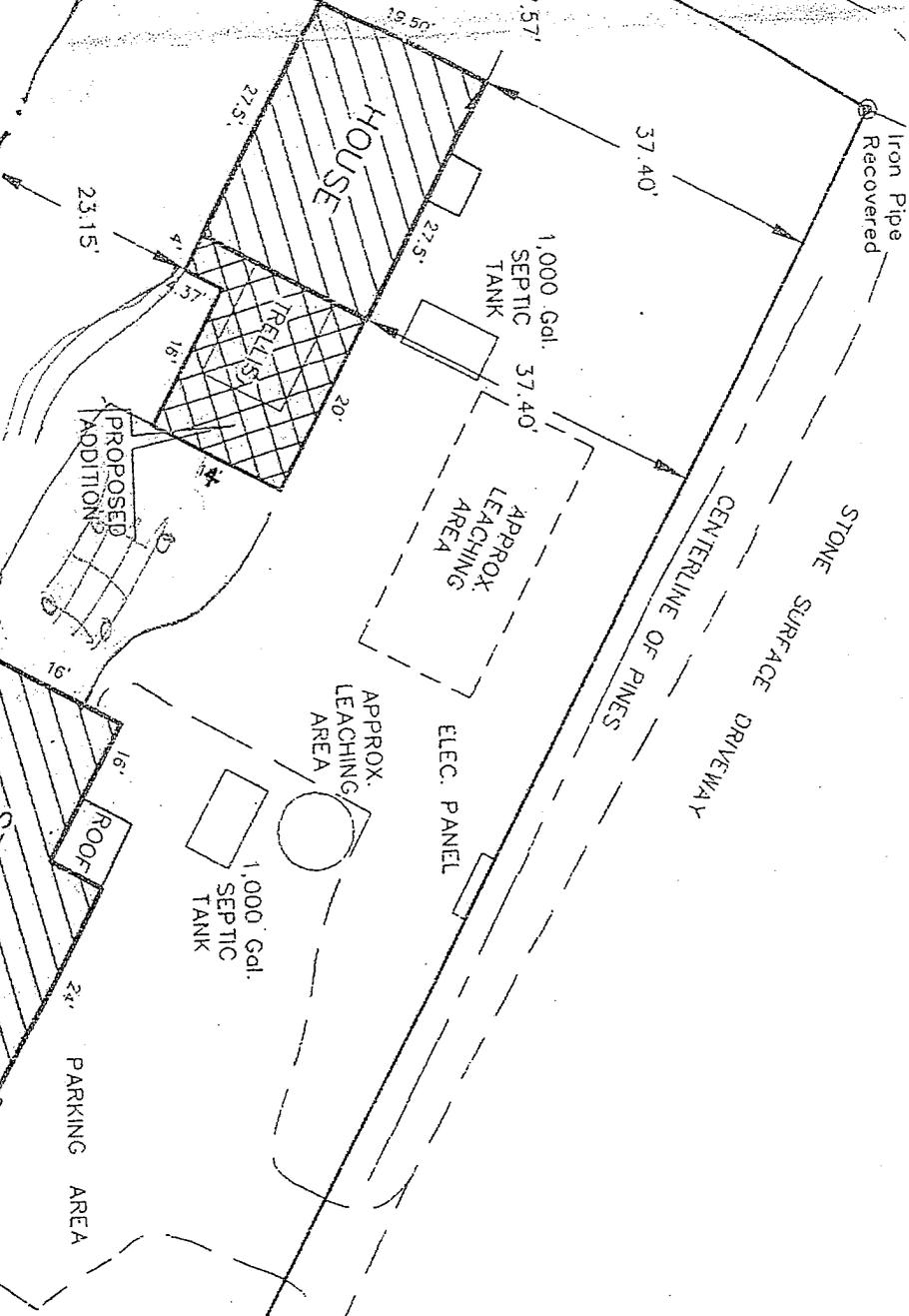
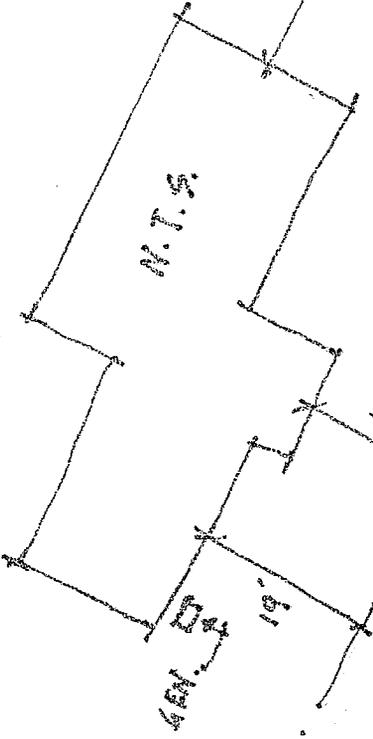
In summary, it is again claimed that nowhere in the regulations is there an exception for the setback requirement for a generator which has been installed on the McAvay property within the sideline requirements. The decision of the Zoning Compliance Officer, Ms. Brown, is not in accordance with the regulations, and should be reversed by this Board.



Michael E. Cronin, Jr., Attorney

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27 MAPLE STREET  
MAPLE STREET  
25 MAPLE STREET  
N32°14'43"E  
80.21'



N42°10'56"W