

THESE MINUTES ARE SUBJECT TO APPROVAL AT THE NEXT ZBA MEETING

CHESTER ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES
NOVEMBER 16, 2020
Via ZOOM

CALL TO ORDER

Bob Blair called the meeting to order at 7:35 p.m. In attendance included: Mary Jane Fisher, First Selectwoman Gister, Attorney Cronin, Dick Leighton, Attorney Sylvia Rutkowska, Pamela and Douglas McAvay, Joe Cohen, Alex Stein, Bettie Perreault, Attorney Bennet, Frank Morico, John DeLaura, Bob Blair, Anna Sweeney, Elizabeth Lewis, Erik Anderson, Mike Peck, Caryl Horner, Vic Fetter and Bettie Perreault.

Seating of Members – Bob Blair, full member, John DeLaura, full member, Alex Stein, alternate member, Erik Anderson, full member, Mike Peck, alternate member. Also in attendance but not seated Vic Fetter

APPROVAL OF MINUTES

John DeLaura made a motion to approve the minutes (record of vote) of the July 20, 2020 meeting as presented. Erik Anderson seconded the motion. The motion passed; with Alex Stein abstaining from the vote.

OLD BUSINESS

Continuation of Public Hearing

Application filed by Caryl Horner, 25 Maple Street, Chester, CT for Appeal from a decision of Judith R. Brown, Zoning Compliance Officer dated 4/24/20 that the generator at 27 Maple Street did not require a Zoning Permit and is excepted from the setback requirement because it is not a building or sign.

The Public Hearing on the above referenced matter was opened at 7:40 p.m.

Attorney Cronin, representing Mr. & Mrs. Horner, requested clarification that ZBA members were in receipt of and have reviewed all information relative to his client's appeal. This information was included in the Board's meeting packet and also provided on the Town's website. A sketch developed by the Horners was "screen shared" via the ZOOM meeting software. Attorney Cronin outlined the basis of the Horner's appeal of the decision made by Judy Brown, ZEO, relative to 27 Maple Street which allowed the installation of a generator without a Zoning Permit.

Documentation provided and included on the Town's website, outlines Ms. Brown's determination that no zoning permit is required since the generator is considered an accessory improvement and constitutes an exception to the setback requirements.

In April 2020, the Horners filed a letter of complaint about the generator installation. Ms. Brown's response to the complaint, dated 4/24/20, was read by Attorney Cronin as follows: "This letter is to constitute a formal decision from our office to supplement my email of 4/11/20. It is my decision that under section 121A.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”.

Attorney Cronin requested that the ZBA review the Horner’s challenge to the ZEO’s decision; He reported that said appeal was filed within the prescribed 30 day appeal period.

Attorney Cronin presented the Horner’s case and provided information on several statutes and exceptions relative to setback requirements and related matters. Attorney Cronin asserts that Ms. Brown’s interpretation of the regulations was incorrect and that a zoning permit was necessary prior to the installation of the generator at 27 Maple Street.

Attorney Rutkowska, representing Ms. Brown, reported that Ms. Brown’s entire file, including Ms. Brown’s hand written notes on the matter, was included in the Board’s packet. Attorney Rutkowska reported that Ms. Brown’s initial decision regarding the necessity of a permit for setbacks was entered on 4/11/20. Her 4/24/20 letter to Mr. Horner reiterated the initial 4/11/20 decision. Ms. Rutkowska continued that the complaint of the Horner’s exceeds the 30 day timeline.

Ms. Rutkowska reported that Ms. Brown determined that a zoning permit is not required for the installation of a stand-by generator; historically, generator installations have not gone before the zoning process and have only required a Building Permit. Historically, generators have not required a Zoning Permit and set back regulations have not been applied to generators. This historical interpretation and lack of enforcement relative to generators was substantial to Ms. Brown’s decision. Ms. Rutkowska encouraged the ZBA to interpret the regulations similarly.

Ms. McAvay, 27 Maple Street, provided a sketch, photograph and written statement relative to the generator. This information was included in the Board packet. The sketch provided by Ms. McAvay was similar to the sketch provided by the Horner’s but included additional items located on the Horner’s property including an entry porch; utility shed, wood shed, permanent clothes line and chicken coop. No permits for these items are on file in the Land Use office. Documentation provided by Ms. McAvay was extensive and included information on the definition of a “structure” and “accessory improvement”. Ms. McAvay reports that the generator is an “appliance” and not a “structure”. She contends that only a Building Permit was necessary for the installation. Ms. McAvay continued that because a generator is considered an “accessory improvement” it is excluded from Zoning Regulations.

The McAvays reported that there are many stand-by generators on properties located throughout the Town of Chester. None of these installations had zoning oversight. Ms. McAvay reported that when they began their generator project, they contacted the appropriate departments of the town hall; i.e. Building Dept. and Zoning Dept. They were told by staff that they did not need a Zoning permit. The placement of the generator was determined by a number of factors and in consultation with the gas installer and electrician.

Ms. McAvay provided information regarding Reardon vs. Darien relative to the timeline for decisions and appeals. Ms. McAvay contends that the Horner’s appeal was filed after the permissible appeal period. No deadline extensions were part of the Governor’s Executive Orders relative to Covid-19. The appeal period remained unchanged.

Mr. Fetter, unseated ZBA member commented that the owners placed the unit for their convenience and not in consideration of their neighbors. He asked Ms. McAvay why a loud generator would be located closest to a structure rather than in an area where no structures are present. Ms. McAvay responded that the location of the generator was chosen on advice of the Gas Company and electrician. She continued that Mr. Horner insisted that the generator be located behind the barn at 250 ft away from the current location. Placing the generator as Mr. Horner suggested would have impacted 2 neighbors, was a much more expensive project and would not have been accessible to the owners; i.e. shoveling snow, accessing the unit to turn it on and off, etc. Ms. McAvay added that Mr. Horner also runs a generator when the power is out.

Frank Vareco – 31 Maple Street – commented that he has no issue with the generator set up. The device is only used for an emergency. If the unit was located on “his side” of the McAvay’s property, he would have no concerns. In the event of a power outage, you hear many generators throughout the neighborhood. He continued that the McAvays are great neighbors.

Attorney Cronin disagreed with Attorney Rutkowska’s comments regarding the timing of the appeal. His understanding was that Ms. Brown sent the letter to Mr. Horner to begin the appeal process. He continued that Attorney Rutkowska’s claim of prior history is irrelevant. While you can find generators throughout the town that were installed without zoning permits, one difference in this instance is that a complaint was filed.

Alex Stein asked where the Horner’s generator is located. Ms. McAvay replied that the Horner’s generator is near their barn. Also, the Horner’s chicken coop does house chickens.

For clarification purposes at the request of John DeLaura, note the following dates:

Building Permit issued:	March 10
Gas Permit issued:	January 31
Electrical Permit issued:	March 10

The Building Code does not allow for the issuance of a permit unless a project complies with Zoning Regulations. Note that this information is included in the packet information made available to ZBA members and the public via the town’s website. The entire land use file is part of the record and includes email exchanges, letters and hand written notes. The Horner’s appeal was filed on 5/24.

Attorney Rutkowska reported that Ms. Brown’s email to Mr. Horner dated 4/11 was a decision based on her interpretation of the regulations. Per the regulations, generators do not come before zoning for a permit.

Mike Peck commented that the form used for filing ZBA applications and appeals is confusing/misleading and perhaps was filled out/dated incorrectly. Attorney Bennet replied that the format and contents of the appeals was not “disturbing” to him. The document may have been dated before the date it was submitted.

Mike Peck made a motion to close the Public Hearing portion of the meeting at 9:07 p.m. Alex Stein seconded the motion. The motion passed unanimously.

Attorney Bennet reported that the Board may continue to review the documents and record, table the discussion or take action on it.

The Board deliberated on the appeal.

John DeLaura reported that he would like more time (30 days) to review documents, emails, permits, applications, etc. He recommended that the Board make a decision at the next ZBA meeting.

Alex Stein commented should the generator be considered an accessory improvement and does it belong in the side setback? Also, the timing of the appeal is curious. His initial impression is to support Ms. Brown's ruling but he is willing to entertain other opinions.

Erik Anderson commented that Ms. Brown's interpretation that the generator is an accessory improvement is accurate and has been applied so in the past throughout town

Mike Peck also supported Ms. Brown's decision.

Bob Blair expressed a concern relative to the dates of when the appeal was submitted and the actual interpretation of the Zoning Regs. Regarding the interpretation, he "leans" toward Ms. Brown's assessment. He reported that if it is the wish of the Board, he would support postponing a decision to a later date.

John DeLaura reported that if it is determined that the appeal was not filed in a timely matter, it would fail. He continued that as the other Board members are in support of Ms. Brown's decision, he will retract his request to postpone a decision.

Erik Anderson made a motion to support the decision of the ZEO relative to the generator installation at 27 Maple Street. Alex Stein seconded the motion. The motion passed unanimously.

NEW BUSINESS

Public Hearing

Application filed by Caryl Horner, 25 Maple Street, Chester, CT for Appeal from a decision of Jon Lavy, acting Zoning Compliance Officer, dated 10/5/20 that the generator at 27 Maple Street when in operation does not constitute a violation of Section 40K by reason of its use being obnoxious or offensive by reason of noise or constituting an explosive hazard

This item was not discussed. Note that the applicant DID NOT appeal the 10/5/20 decision of Jon Lavy.

Application of Mary Jane Fisher for renewal of Variance for property at 6 Lakeview Ave., Chester, CT for construction of a one-story year-round house replacing seasonal cottage on same footprint (renewal of variance granted February 22, 2016) seeking variances of Section 60B of the Chester Zoning Regulations.

Attorney Bennet reported that there are no changes to the original application and case law suggests that the variance from 2016 is permanent.

John DeLaura made a motion to renew the previous variance granted on 2/22/16 for the property located at 6 Lakeview Ave., Chester, CT. Said variance will go with the land in perpetuity. Alex Stein seconded the motion. The motion passed unanimously.

RECEIPT OF NEW APPLICATIONS – None.

ANY OTHER BUSINESS

The Board discussed the start time of ZBA meetings. It was suggested that 7:00 p.m. may be a more convenient time for the ZBA meetings to begin. Note that both the ZBA Chairman and the ZEO have resigned.

It was suggested that perhaps streamlining the ZBA application process by both receiving and hearing an application at the same meeting would be beneficial to applicants. Protocols may need to be adjusted to facilitate same; i.e. responsible party for sending out appropriate notices, etc. Continuing with ZOOM meetings in conjunction with in-person meetings, when appropriate, was also suggested.

AUDIENCE OF CITIZENS – None.

ADJOURNMENT

Alex Stein made a motion to adjourn the meeting at 9:40 p.m. John DeLaura seconded the motion. The motion passed unanimously.

Respectfully Submitted,

Suzanne Helchowski
Clerk