



**TOWN OF NEWTOWN**  
**ZONING BOARD OF APPEALS**

MINUTES  
REGULAR MEETING

September 4, 2019 at 7:30 p.m.

Meeting Room 3, 3 Primrose Street, Newtown, CT 06470

**Present:** Alan Clavette, Barbara O'Connor, Prerna Rao, Jane Sharpe, Ross Carley, Christina Paradis (alternate), and Joseph Bojnowski (alternate)

**Absent:** Robin Buchanan (alternate)

**Also Present:** Rob Sibley, Deputy Director of Land Use, Christine O'Neill, Clerk

Mr. Clavette called the meeting to order at 7:31 p.m.

Presentation of Applications

**Application 19.05 by Neil and Marilynn Forbes, for a property located at 44 Housatonic Drive, Newtown, CT for a Variance of Chart VII-I of the Zoning Regulations of the Town of Newtown, so as to permit the removal of a small garage and dwelling, replacing them with a new garage and one-story dwelling, as shown on a set of plans entitled "Zoning Location Survey, prepared for Neil R. Forbes & Marilyn M. Forbes, 44 Housatonic Drive, Newtown Connecticut" dated 2/17/16 last revised 7/30/19, and documents submitted to the Land Use Agency 8/15/19.**

Mr. Clavette invited Mr. and Mrs. Forbes, the applicants, to speak on behalf of the application. Mr. Forbes stated that 44 Housatonic Drive is his summer home, with his full-time home in Shelton. When he retires, he would like to move to Newtown as his full-time residence. He explained that the footprint of the house needs to be expanded because his wife has COPD and requires single-floor living.

Mr. Forbes said he cannot go north with the house expansion because that is a flood zone. He is looking to move the house six feet to the east, in order to place the new septic system at least 75 feet from the well. He would also like to put his equipment inside a garage rather than leaving it out in the open in his yard, which he feels would be unsightly to the Shady Rest community.

The Board looked at the site plan and Mr. Carley confirmed that the hatchway would be going away. The house would be expanded toward the front.

Mr. Clavette explained that the Board cannot accept COPD as a hardship, but the well/septic system placement is a legitimate hardship.

Mr. Carley asked if the post office form and notarized affidavit had been received. The clerk confirmed that the documents were in the file.

Mr. Bojnowski asked Mr. Forbes to clarify his hardship. Mr. Forbes explained that if he wanted to turn the current cottage into a full-time residence, he would need to expand which would encroach upon the setbacks. Mr. Clavette pointed out that the long, narrow nature of the lot created issues with meeting

setback requirements. Mr. Carley also commented that the lot shape was common for this area. Mr. Forbes agreed and reminded the Board that the flood zone was also a restricting feature.

Mr. Clavette stated that granting this Variance would increase the nonconformity, as this is already a nonconforming lot, but that given the nature of the lot and the hardships, it did not seem unreasonable.

Ms. Sharpe asked what the change in square footage would be. Mr. Forbes explained that it would be an increase of roughly 1000 square feet.

Mr. Clavette invited public participation. No one came forward. Mr. Clavette declared the hearing closed and explained the procedure for the Board rendering a decision. The vote was taken later in the meeting.

**Application 19.06 by James F. Walsh, for a property located at 32 Berkshire Road, Newtown, CT for a Variance to §8.03.320(a) of the Zoning Regulations of the Town of Newtown, so as to permit parking within the 50 foot front yard setback, as shown on a set of plans entitled “Zoning Location Survey of 32 Berkshire Road & State of CT, Parcel: 96-94-70A, Newtown, Connecticut” dated 7/25/19, and supporting documents submitted to the Land Use Agency 8/20/19.**

Larry LePere of Solli Engineering introduced himself to speak on behalf of James Walsh’s application. He handed in the post office form and notarized affidavit. Mr. Carley asked if the address 4 Toddy Hill Road had received notification. The clerk said that she did not see that address of the post office form, and asked if there was a separate mailing address. Mr. Carley responded that the landowners lived in Roxbury, but the clerk did not see anything sent to Roxbury. Mr. Sibley asked if Mr. Carley had informed the landowners of 4 Toddy Hill that the hearing was taking place tonight. When Mr. Carley replied that he had, Mr. Sibley responded that the spirit of the notification requirement had been satisfied.

Mr. LePere explained the Connecticut Department of Transportation (DOT) would be taking a portion at the front of the property for road expansion. There are also wetlands and steep slopes towards the back of the property, which create constraints regarding parking. He pointed out that there is no problem with fitting the building within the setbacks, just the parking.

Mr. Clavette asked if the triangular lot to the left of the parcel was going to be acquired by the client. Mr. LePere confirmed that his client is interested in obtaining the property, but that nothing was definite yet.

Ms. Rao suggested that granting the Variance for the left side of the property once the triangular lot is obtained, rather than the front of the property, would result in a smaller nonconformity. Mr. LePere said he was concerned with that solution because the client had not yet obtained that lot. He also pointed out that parking spaces on the side of the building would not be used as frequently as those in front of the building, adding that front parking spaces are more typical for retail buildings.

Mr. LePere shared that currently there is a proposed coffee shop and proposed retail space; as such, the plan depicts the minimum required parking space according to the Zoning Regulations, which is 56.

Mr. LePere pointed out that the taking of the front portion of the property by the DOT is what has created the hardship here, rather than simply the shape of the lot.

Ms. O'Connor asked where the mulching operation that is currently on the lot would be moved. Mr. LePere replied that it would move to the back lot.

Mr. Sibley asked that the Board distinguish, for the benefit of the public, what the Zoning Board of Appeals will be voting on tonight versus what the Planning and Zoning Commission (which will hear an application for the same property) will be voting on tomorrow. Mr. Clavette explained that tonight, the Board is simply granting a Variance for the parking encroaching upon the setback in the front of the property - it does not have to do with use of the property.

Mr. Sibley inquired if there was a letter from the State to the applicant asking to buy the portion of land at the front of the property. Mr. Walsh and Mr. LePere said that no letter had been received or submitted to the Board.

Mr. Sibley confirmed that the Town's acquisition on the Toddy Hill Road side did not impact the Variance at this point.

Mr. Sibley also reminded the Board that they can condition approvals.

Ms. Rao had further questions about the new setbacks that would occur as a result of the DOT taking. Kevin Walsh of Fairfield, Connecticut directed Mr. LePere to show the State's site plan with the proposed sidewalk, which did demonstrate the State's intention to take that front portion of the property.

After a lengthy discussion between Ms. Rao, Mr. Sibley, and Mr. LePere, it was determined that a Variance of 20 feet for the front portion of the property would allow for the placement of proper number of parking spaces for what is currently being proposed, *and* what would need to be proposed with the taking of the front portion by the DOT.

Mr. Sibley made it clear that the sidewalks and designs that had been displayed and discussed tonight were not part of the Board's decision. Ms. O'Connor and Mr. Bojnowski were concerned about safety, but Mr. Sibley stated that is not part of the Board's decision either.

Ms. Rao asked if there was anything formal from the State regarding their future plans. Mr. LePere returned to the State-issued site plan showing sidewalks.

Mr. Clavette invited public comment. Rip Short of 40 Berkshire Road, Newtown, CT shared that he would enjoy the convenience of being able to walk to the proposed retail space rather than just having a mulch yard on that lot. With no one further coming forward to speak, Mr. Clavette declared the hearing closed. The vote took place later in the meeting.

### Discussion and Action

**Application 19.05 by Neil and Marilynn Forbes, for a property located at 44 Housatonic Drive, Newtown, CT for a Variance of Chart VII-I of the Zoning Regulations of the Town of Newtown, so as to permit the removal of a small garage and dwelling, replacing them with a new garage and one-story dwelling, as shown on a set of plans entitled “Zoning Location Survey, prepared for Neil R. Forbes & Marilyn M. Forbes, 44 Housatonic Drive, Newtown Connecticut” dated 2/17/16 last revised 7/30/19, and documents submitted to the Land Use Agency 8/15/19.**

Mr. Carley felt that the proposed Variance fit in with the character of the neighborhood. Mr. Clavette added the lot was well-maintained. Ms. Sharpe felt that the application was reasonable. Ms. O'Connor felt that this would be an improvement to the property. Ms. Paradis asked the Board if all the homes in this area were so close to each other, to which the Board replied in the affirmative. Ms. Rao pointed out that the current house is already encroaching on the setback, and this would just expand it a little bit.

*Mr. Clavette made the following motion to approve Application 19.05: I make a motion we approve the Variance as requested, granting a slight increase to the nonconformity. The lot is already very narrow and encroaches upon the setback. Furthermore, the placement of the well, septic, and the location of the flood zone constitute further restraints upon the applicants.*

*Mr. Carley seconded. The Board voted as follows.*

*Alan Clavette - AYE*

*Barbara O'Connor - AYE*

*Jane Sharpe - AYE*

*Prerna Rao - AYE*

*Ross Carley - AYE*

*The motion to approve Application 19.05 passed unanimously.*

**Application 19.06 by James F. Walsh, for a property located at 32 Berkshire Road, Newtown, CT for a Variance to §8.03.320(a) of the Zoning Regulations of the Town of Newtown, so as to permit parking within the 50 foot front yard setback, as shown on a set of plans entitled “Zoning Location Survey of 32 Berkshire Road & State of CT, Parcel: 96-94-70A, Newtown, Connecticut” dated 7/25/19, and supporting documents submitted to the Land Use Agency 8/20/19.**

Mr. Clavette expressed the difficulty in approving the application based on a taking that has not happened yet, although they would need a small Variance for one section of the front of the lot anyway. He suggested that the Board make it a condition of approval that the State actually proceed with the taking that was discussed tonight.

The Board wondered the best way to word the approval and condition given that there were two scenarios that could impact the property in the future. Mr. Sibley said the wetlands and steep slopes that were mentioned do not come into play here. He stressed that the taking of the property is what creates

the hardship, and that if the State does not take the land the applicant would need to rearrange his parking spaces as he would not have a case for a hardship.

Returning to the matter of the mailings for this application, Mr. Sibley explained to Mr. Carley how the property list for the neighbor notification is generated from the Land Use Agency's GIS system. Mr. Sibley pointed out that the GIS does not list 4 Toddy Hill as a property that should have received a letter. He felt that the applicant made a good faith effort to contact the neighbors, further pointing out that the address 4 Toddy Hill was just created about sixty days ago. The bottom line is that the landowner did know about the meeting.

*Mr. Clavette made the following motion to approve Application 19.06: I move to grant the application as requested on the condition that the State acquires the portion of property delineated on the map dated 7/25/19 as submitted to the Land Use Agency. Should the State not take the property, the applicant would need to reapply for a Variance.*

*Ms. Sharpe seconded. The Board voted as follows:*

*Alan Clavette - AYE*

*Barbara O'Connor - AYE*

*Jane Sharpe - AYE*

*Prerna Rao - AYE*

*Ross Carley - AYE*

*The motion to approve Application 19.06 passed unanimously.*

#### Acceptance of Minutes

Ms. O'Connor moved to approve the minutes from the meeting of August 14, 2019. Mr. Bojnowski seconded. All were in favor and the minutes from last meeting were approved.

#### Adjournment

Mr. Clavette moved to adjourn the meeting. Ms. Rao seconded. All were in favor and the meeting was adjourned at 8:31 p.m.

*Respectfully submitted,  
Christine O'Neill, clerk*