



**TOWN OF NEWTOWN  
ZONING BOARD OF APPEALS**

**MINUTES**

Wednesday, April 7, 2021 – 7:30 PM

**Zoom Virtual Meeting Participation Information**

Wednesday, April 7, 2021 – 7:30 PM

Call-In Number: +1 929-205-6099

Meeting ID: 969 4385 7910 #

Website: <https://zoom.us/j/96943857910>

**Present:** Alan Clavette, Ross Carley, Prerna Rao, Rachel Rowan, Barbara O'Connor, Christina Paradis, Joseph Bojnowski

**Absent:** Jane Sharpe

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

Mr. Clavette called the meeting to order at 7:33 p.m.

**Public Hearings**

**Application 21-02 by GRC Construction, for a property located at 2 Bungalow Terrace, for a Variance of \$7.04.300 and Chart VII-1 of the Zoning Regulations of the Town of Newtown, so as to allow the construction of a single-family home on a nonconforming lot, as shown on a set of plans titled, "Compilation Plan Prepared for GRC Construction, LLC, 2 & 5 Bungalow Terrace, Newtown, CT" dated 6/18/19, revised 1/26/21, and supporting documents submitted to the Land Use Agency 2/22/21.**

Applicant Greg Carnrick of GRC Construction displayed the letter of Zoning Determination from Zoning Enforcement Officer (ZEO) Steve Maguire for 2 Bungalow Terrace. He explained that the parcel was created in 1925, and today's Zoning Regulations impose a hardship in reconstructing this previously developed parcel. The house directly across the street, 5 Bungalow Terrace, was involved in a fire. Mr. Carnrick rebuilt that house in mid-2019.

As for 2 Bungalow Terrace, it has a shed and a well, but does not currently have a building. Historical research indicates that in the 1940s, there was a gas station on the property. Aerial photography from 1934 corroborates the presence of a building. By 1985, it appears that the building was not present. 2007 is when the shed first appeared in the aerial photos. A Tax Assessors field card from 1965 shows no plumbing, no electricity, and no record of physical inspections. On that field card, the building has an X through it with the number "74," perhaps indicating that that was the year of demolition. The field card described the structure as a "dwelling," but Mr. Maguire made the determination that the building was not a liveable space by today's standards. Mr. Carnrick found records of another contemporary gas station that was called a gas station rather than a dwelling on the field card, which implied that the use of the word "dwelling" was not typical for a gas station.

Mr. Carnrick explained that the continued existence of the well on the property seemed to indicate that the owner did not intend to abandon the use. He pointed to a 2017 revision of the Connecticut General Statutes that requires a property owner to demonstrate intent to abandon use in order to

vacate a pre-existing nonconformity - though Mr. Carnrick specified that he is looking to build a single-family home on this parcel, not a gas station.

Upzoning of this property from R-½ to R-1 also resulted in issues with setbacks, Mr. Carnrick went on, which is part of why he is seeking a Variance. He cited several excerpts from The Newtown Bee to give context to the upzoning from the 1990s: it was largely due to water and sewer issues associated with lot size. Mr. Carnrick explained that there is now public water and sewer available for the property.

The hardship that would permit this Variance, said Mr. Carnrick, is that the Zoning Regulations as they are written would prevent anything from being built on the property aside from a shed. He listed the benefits of approving this application:

- By approving the conforming use of a single-family home, the ZBA would in effect discontinue the grandfathered use of the gas station.
- The setbacks Mr. Carnrick is proposing would be more conservative than any other home in the area, and would mirror the R-½ zone requirements. They would also be closer to conformity than the grandfathered shed and gas station.
- No property values in the neighborhood would be negatively impacted.
- Part of 2 Bungalow Terrace's land would be transferred to 6 Bungalow Terrace to help make that parcel more conforming.

Mr. Clavette wished to clarify that Mr. Carnrick was not making a request for a nonconforming use. He is asking for a setback and lot buildability Variance. Mr. Carnrick explained that in an R-1 Zone, there must be a 50 foot setback from the road and 25 feet from all other property lines; in this case, there are 3 roads, placing an unusual hardship on the lot.

Mr. Clavette did not agree that the gas station use wasn't abandoned; there has not been a gas station there for decades and the property has changed hands a number of times. He asked when the shed was torn down. Mr. Carnrick said he himself tore it down in 2019 and documented its existence before doing so.

Mr. Carley asked Mr. Carnrick to state his hardship. Mr. Carnrick replied that the hardship is, despite the property having been developed in 1925, it cannot be built upon due to the Zoning Regulations - specifically the upzoning and associated setbacks.

Mr. Bojnowski wondered about the statute Mr. Carnrick cited earlier that stated demolition by itself does not constitute abandonment. Mr. Clavette chimed in that the key phrase is *by itself*. The other context the ZBA must consider is the passage of time and the transferring of property from one party to another.

Mr. Carnrick said that he had an option to either appeal the decision Steve Maguire made in his determination, or to apply for a Variance. He chose to apply for the Variance. He said that his plans for a single-family home will not be as nonconforming as the gas station. Mr. Clavette countered that the property has actually been vacant for years, so anything that is to be built will increase the nonconformity. Mr. Carnrick pointed out the grandfathered location of the shed, 5 feet from the property line - which could be eliminated if Mr. Carnrick builds a home 35 feet from the property line.

Ms. Rao asked if there were any other Zoning Regulations, besides setbacks, that would need to be varied in order to allow the construction of the house. Mr. Carnrick mentioned the minimum square requirement.

With no further comment from the ZBA, Mr. Clavette invited public comment.

Daniel Monroe of 6 Bungalow Terrace, Newtown, CT spoke in support of the Variance. He said Mr. Carnrick built a nice house across the street and he feels the development of this parcel will be similarly beneficial to the area.

Jon Masella of 10 Underhill Road, Sandy Hook, CT said that he and his family have been in the area for decades. He is totally in favor of the Variance because Mr. Carnrick did beautiful work on the other house and this proposal will add value to the neighborhood.

Christine Wheway of 34 Underhill Road, Sandy Hook, CT explained that she drives by the property all the time and has seen numerous uses. She believes a house on that corner could be quite charming. She disclosed that she would be the designer for the house, should the Variance be granted. Ms. Wheway said that this neighborhood has had a bit of rehabbing lately due to fires, and she is in full support of continuing to better the neighborhood.

Anthony Klabonski of 14 Underhill Road, Sandy Hook, CT said it is inspiring to witness a rebirth of the area. It has been exciting for him and his family to see the neighborhood grow and improve, while helping the tax base and raising property values. Mr. Klabonski felt the Zoning Regulations were written "with a broad brushstroke" and should not apply to this undersized parcel. He is in favor of the proposal.

Douglas Luessenhop of 18 Bungalow Terrace, Sandy Hook, CT felt that the proposal was thorough and that the house would be wonderful for the area.

Mr. Carnrick added that he sent a letter to a previous owner who said that they had used the property as a second home. He had not, however, included this in his presentation because there was no evidence in the Town records to support the claim.

Mr. Clavette declared the hearing closed at 8:27 p.m.

**Application 21-03 by Thomas E. Pundy, for a property located at 122 Riverside Road, for a Variance of Chart VII-1 of the Zoning Regulations of the Town of Newtown, so as to allow the reconstruction of a home closer to the property lines than the previous nonconformity, as shown on a set of plans titled, "Foundation As-Built, 122 Riverside Road, Prepared for Thomas E. Pundy, Newtown, CT" dated 2/13/21.**

Frank Scinto, attorney with Chipman, Mazzucco, Emerson, spoke on behalf of applicant Thomas Pundy. Atty Scinto explained that the previous house was destroyed by a fire. Mr. Clavette asked when the fire was. Mr. Scinto asked Mr. Pundy, who said it occurred on April 22, 2020. Mr. Scinto explained that the house would be rebuilt in more or less the former footprint, but squared out. The lot size is extremely small, in a neighborhood with many small lots. It is served by a private well with no wetlands. The house was constructed in the 1950s. The Variance being requested would slightly increase the footprint of the previous foundation.

Mr. Clavette explained that the foundation is fairly close to what was previously present. When Mr. Clavette visited the property he saw that the foundation had already been poured. This is a bit of a 'closing the barn doors after the horse is already out' situation, he commented. He asked why this had happened.

Mr. Scinto said that Mr. Pundy was confused based on statements from the Health District regarding where he could place the foundation. Mr. Scinto displayed an image of a Health District determination. Mr. Pundy added that squaring off the back of the foundation had been approved by the Zoning Department.

Mr. Sibley clarified that the document Mr. Scinto and Mr. Pundy displayed is a Health District document - it is not a zoning approval or a zoning document.

Mr. Carley wondered about increasing a nonconformity. Mr. Clavette said that it is a slight modification of the nonconformity.

Ms. Rowan asked if Mr. Pundy had poured the foundation without receiving any permits. Mr. Pundy explained that he had received permits, and they were on file with the Land Use Agency.

Steve McMahon of 118 Riverside Road, Newtown, CT - an abutting property owner - said that he was present during the fire, so he is concerned that Mr. Pundy's house would now be rebuilt even closer to the property line, possibly exposing him to more damage if another fire occurs. Mr. Clavette asked if the extra foot would make a big difference to him. Mr. McMahon said yes, because the houses are already so close to each other, with less than 20 feet from foundation to foundation. Mr. McMahon feels for the applicant's loss but wanted the house to be in compliance with zoning.

Doug Luessenhop of 18 Bungalow Terrace and 26 Bungalow Terrace, Newtown, CT noted that the narrative the applicant submitted does not contain a valid hardship. The hardship appears to be strictly financial, not land-based. Mr. Luessenhop expects the letter of the law to be applied here, just as it is with all developers in town. The property owner should not be given an exception because he made a mistake in pouring the foundation.

Christine Wheway of 34 Underhill Road, Sandy Hook, CT said that she is looking at an applicant who has already poured a foundation and is now asking for permission. She was confused about what permit, exactly, has been issued. Atty Scinto said that the whole house plan was signed off by the Zoning Department. She felt that the proposal is within reason, so she is neither for it nor against it, though she wanted to contribute her two cents regarding permitting.

Ms. O'Connor shared that she visited the property today and wondered if the 40+ feet of backyard represented on the survey was accurate - it appeared smaller. Mr. Clavette also visited the property and he said it seemed right.

Daniel Monroe of 6 Bungalow Terrace, Newtown, CT said that he agrees with Mr. McMahon's concern that the houses are already tight and close, and this Variance would put the houses even closer.

Mr. Luessenhop added that this application would increase a nonconformity, which is against the Zoning Regulations.

Mr. Clavette invited Mr. Sibley to speak about the Zoning Department approving the foundation. Mr. Sibley explained that the Building Department is where most permits begin and end, with sign-offs from other departments along the way. In this case, a ZEO signed off on an A-2 survey that showed no extension beyond the setbacks from the existing foundation. The foundation may have been squared off - that part was not an issue. "It was made extremely clear to the property owner" that he could not increase the foundation from what it originally was, Mr. Sibley reported. He said that the testimony given by the applicant and attorney about miscommunication as to

where the foundation could be poured is not the same as the experience from the zoning perspective. The ZEO was extremely clear about what could and could not be done. Mr. Pundy agreed that the foundation was poured larger by mistake.

Mr. Luessenhop commented that this is a self-inflicted, financial hardship.

Mr. Clavette declared the hearing closed at 8:56 p.m.

### **Minutes**

Ms. O'Connor moved to approve the minutes from the meeting of March 3, 2021. Ms. Rowan seconded. All were in favor and the minutes from the meeting of March 3, 2021 were approved.

### **Discussion and Action**

**Application 21-02 by GRC Construction, for a property located at 2 Bungalow Terrace, for a Variance of §7.04.300 and Chart VII-1 of the Zoning Regulations of the Town of Newtown, so as to allow the construction of a single-family home on a nonconforming lot, as shown on a set of plans titled, "Compilation Plan Prepared for GRC Construction, LLC, 2 & 5 Bungalow Terrace, Newtown, CT" dated 6/18/19, revised 1/26/21, and supporting documents submitted to the Land Use Agency 2/22/21.**

It was decided that Mr. Bojnowski would vote in place of Ms. Sharpe for this application.

Ms. O'Connor was impressed so many people spoke in favor of the application, but she felt that adding a house to a lot that never had a house did not seem to be moving towards conformity, as the applicant claimed. Mr. Clavette pointed out that having a house in an R-1 zone would be a conforming residential use, as opposed to a nonconforming commercial gas station use.

Mr. Bojnowski said that he sees the hardship as upzoning. He felt that Mr. Carnrick has a right to put a house on the property.

Mr. Carley wondered if the fact that Mr. Carnrick was able to rebuild across the street at 5 Bungalow Terrace, on a lot half the size, would be reason enough to allow a building on 2 Bungalow Terrace. Mr. Clavette said that there is an important difference: 5 Bungalow was destroyed in a fire and was promptly rebuilt, whereas 2 Bungalow has lay vacant for decades, raising questions as to whether the use was abandoned.

Ms. Rao said that the setback and minimum square Variances being requested appear to be within the purview of the ZBA.

Ms. O'Connor felt that the lot was too small to have a two-story house. Ms. Rao agreed.

Mr. Clavette was also concerned with the intensity of the Variance - although it fits in with the neighborhood, most of that neighborhood is nonconforming. Ms. Rao wondered if conditions could be placed on the approval.

Mr. Bojnowski felt that the proposal would be in keeping with the area.

Mr. Carley said the availability of public water and public sewer go a long way towards comforting him for the appropriateness of this Variance. Mr. Clavette agreed.

Ms. Rowan said that the irregular lot size could be considered a hardship.

Mr. Sibley wanted to clarify that this is not an appeal of the Zoning Enforcement Officer's decision, which determined that this is not a building lot. What the applicant is requesting is a Variance of every regulation that renders the lot unbuildable. Mr. Sibley pointed out that even though the lot was upzoned, even before that the lot was still undersized. Mr. Sibley also mentioned that the record demonstrates the parcel is actually multiple lots. He clarified a few other points in the record, including the Tax Assessor's card that indicated "dwelling" may have been referring to the other lot that comprises this parcel.

Ms. Rao appreciated the clarification because she was wondering which actual Variances were being requested. She felt this was a substantial deviation from what the ZBA usually grants. The ZBA should try to deviate from the regs as minimally as possible, she posited.

Mr. Sibley reminded the ZBA that they do not create a precedent with their decisions - however, there are thousands of parcels in Newtown that are of similar size. He has never heard of upzoning as a hardship.

Ms. Rowan asked if the owner had been paying taxes on a vacant lot as opposed to a building lot. Mr. Sibley said he hadn't been paying taxes on a vacant lot - there is an ability to separate the two parcels and suspend the Zoning Regulations.

Mr. Carnrick began to speak, but Mr. Clavette reminded him that it is illegal for the ZBA to take testimony after the hearing had closed.

Mr. Carley wondered how this differed from March's application on Obtuse Road. Mr. Clavette said it was very similar: an unbuildable lot looking for a Variance to become buildable. Ms. Paradis pointed out the difference is that the neighborhood was strongly against the Obtuse Road house, and the neighbors seem quite enthusiastic about this application.

Mr. Carley had observed that some developers in the past have purchased unbuildable lots very inexpensively, and then came to the ZBA to have that determination reversed. That would be unfair, he said. Mr. Clavette agreed.

Ms. Rao ultimately felt that the ZBA has an obligation not to grant such extreme Variances, as this would constitute spot zoning.

*Mr. Clavette moved to deny Application 21-02 due to a lack of hardship and the extreme nature of the requested Variance. Mr. Carley seconded. All were in favor of the denial and the motion carried unanimously.*

**Application 21-03 by Thomas E. Pundy, for a property located at 122 Riverside Road, for a Variance of Chart VII-1 of the Zoning Regulations of the Town of Newtown, so as to allow the reconstruction of a home closer to the property lines than the previous nonconformity, as shown on a set of plans titled, "Foundation As-Built, 122 Riverside Road, Prepared for Thomas E. Pundy, Newtown, CT" dated 2/13/21.**

It was decided that Ms. Rowan would vote in place of Ms. Sharpe for this application.

While Mr. Clavette said he had sympathy for rebuilding a house lost to fire and that he has no issues with the squaring off, what he heard tonight is that the applicant did not heed multiple warnings from the Zoning Department.

Mr. Carley asked if the only Variance being requested is for a foot or so on the south side. Mr. Clavette confirmed, since the back of the house is still within the setback.

Mr. Clavette reiterated that the applicant had plenty of warning, and he is not sure the ZBA can overlook this. Ms. O'Connor added that the fact that the houses are so close to each other makes the 'only a foot' perspective less relevant.

Ms. Rowan agreed, especially given what Mr. Sibley explained. Ms. Rowan said the ZBA is not allowed to grant a Variance for this type of hardship, which Mr. Clavette identified as "self-created." Mr. Carley agreed.

Ms. Rao was sympathetic because the deviation from the original foundation is so minimal. The notion of tearing down a foundation to move it back a little over a foot seemed like a huge expense for the applicant.

Ms. Rowan posed that if they granted the Variance based on those grounds, what would the stopping point be - one foot, two feet, etc.? Mr. Clavette added that if it's a self-created hardship, there is no consideration of what is or isn't reasonable. Ms. Rao agreed.

*Mr. Clavette moved to deny Application 21-03, as the hardship was self-imposed. Mr. Carley seconded. All were in favor of the denial and the motion carried unanimously.*

### **Adjournment**

Ms. O'Connor moved to adjourn the meeting. Ms. Rowan seconded. All were in favor and the meeting was adjourned at 9:30 p.m.

*Respectfully submitted,  
Christine O'Neill, clerk*

For a recording of this meeting, please copy and paste the following URL into your browser:

<https://drive.google.com/drive/folders/1bD1uj9R6Pheim4ul-pdg6hsTrwglHbM>