

**Town of Montville Zoning Board of Appeals
Meeting Minutes of Wednesday, July 7, 2010
Council Chambers – Town Hall – 7:00 p.m.**

1. **Call to Order**

Chairman MacNeil called the regular meeting of the Zoning Board of Appeals to order at 7:07 p.m. after establishing a quorum.

2. **Roll Call**

Present were Commissioners Adams, Freeman, Lakowski and MacNeil. Absent were Commissioners Bassetti and Longton. Also present was Zoning Enforcement Officer/Assistant Planner, Tom Sanders.

Motion made by Chairman MacNeil, seconded by Commissioner Adams to seat Commissioner Freeman as a regular voting member of the meeting in the absence of Commissioner Bassetti.

3. **New Business** – none.

4. **Public Hearings**

- a. Kyle C. Champagne and Dana M. McIlwain, an application for a variance of Sections 6.6.1 (front yard setback) and 6.6.3 (rear yard setback) on the property located at 23 Massapeag Point Road, Uncasville, Connecticut as shown on Assessor's Map 34, Lot 66.

Chairman MacNeil inquired if all of the mailing receipts are in order for the mailings and Mr. Sanders stated they are and are entered into the record. Mr. Sanders discussed the staff report, stating the property is unique and stated Attorney Harry Heller is present to discuss the proposal with the Commission.

Attorney Harry Heller, 736 Route 32, Uncasville stated he is representing the property owner and applicants of the proposal. He indicated the lot is a unique situation with a validly existing, non-conforming lot that was created prior to zoning. It is located in the R-120 Zoning District and is non-conforming in area containing 1.145 acres vs. the required 2.7 acres but a variance is not required for this because the lot is protected pursuant to provisions of Section 4.13 of the Montville Zoning Regulations. The lot is located at the dead end of Massapeag Point Road, the configuration of the lot is a typical rectangular lot and if the front yard were on the north side of the property where a road would typically be located this lot could be redeveloped and conform to the zoning regulations because the Montville Zoning Regulations define the front yard as the yard closest to the street. By definition on this lot, the easterly yard becomes the front yard because that is the yard closest to the roadway. The rear yard is defined as the yard

furthest away from the lots frontage, so the westerly yard becomes the rear yard. The lot as it exists today is located on an older road in town that pre-dates zoning regulations. He indicated the Zoning Board must make two findings, the first being an unusual hardship or exceptional difficulty that applies to the lot and it is a hardship that arises out of the application of the zoning ordinance to the property itself, the hardship is not created by any act or omission of the property owner and that the hardship is unique to the district and second is that the variances requested are in conformance with the comprehensive plan of the Town of Montville and do not interfere with public health, safety or welfare. The non conformity of this lot resulted as a result of the adoption of zoning regulations and the way the front and rear yards are defined in the regulations. The variances requested would allow the bungalow located on the property to be removed and replaced with a new structure. The applicants are proposing a twenty five foot front yard setback and a twenty five foot rear yard setback and are requesting variances in order to vary the building envelope down to those requirements. The proposed use for the re-development of this lot is a single family residential use permitted as of right in this zoning district. The reduction that is requested to the front and rear yard will not have an adverse impact to the neighborhood. The effect on the neighborhood would be consistent with a typical residential lot would be developed in the R120 zoning district. The use is consistent and the setbacks are consistent with lots in the R120 zoning district.

Chairman MacNeil discussed the on site septic and well proposal and inquired if the Commission should be granting approval prior to approval from the Uncas Health District should there be conflict with structure location. Mr. Sanders stated there is an existing structure on the lot and any issues will be addressed when plans are submitted for construction. Attorney Heller discussed the building envelope, stating the applicant intends to reconstruct a single family home and the septic tank must be located twenty five feet from the foundation of the existing structure, located outside of the limits of the building envelope. The Uncas Health District requirement is part of a multi stage requirement to redevelop the lot, there are a number of approvals that are required and until all of the approvals are obtained, reconstruction can not occur. Chairman MacNeil stated he would feel more comfortable attaching a condition of the approval that would require approval from the Uncas Health District prior to construction.

Mr. Sanders submitted a letter submitted for the record dated July 7, 2010 from Julius K. Jurkiewicz, 17-A Massapeag Point Road, Uncasville, CT to the Zoning Board of Appeals stating he does not have issue with the proposed application for variances but indicates he has objection to the accuracy of the survey information on the map. The right of way in question does not effect this application for variance and does not exist on the property requesting the variances.

Mr. David Burdick, 17 Massapeag Point Road, the adjoining property owner, stated he does not have any objection to the variances requested but objects to the right of way discussed in the letter submitted by Mr. Jurkiewicz. He stated he owns the property and there is no public right of way and has never been one. The property has been surveyed on both sides of the front lot and he claims the property is his. Chairman MacNeil stated

it is not the job of the ZBA to determine if the property is his or not and will not impact any decisions made regarding the application before the Board.

Chairman MacNeil inquired if there was anyone who would like to speak in favor, opposition or in general regarding this application.

Mr. Julius Jurkiewicz, 17-A Massapeag Point Road stated he does not have any objection to the proposal before the Board at this time. He discussed issues he has with the right of way that leads to the Thames River. He is concerned there is documentation that shows a right of way all the way to the river that is not being adhered to. Chairman MacNeil stated this Board grants variances and does not determine ownership of property or settle property boundary disputes.

Motion made by Chairman MacNeil, seconded by Commissioner Adams to close 210-ZBA-4. Discussion: none. Voice vote: 4-0, all in favor, motion carried, hearing was closed.

Motion made by Chairman MacNeil, seconded by Commissioner Freeman to grant application #210-ZBA-4, a request for front and rear yard setbacks, reduction from sixty to twenty five feet as shown on the plan titled Kyle Champagne Property, showing ZBA request lines, 23 Massapeag Point Road, Uncasville, Connecticut, dated May 12, 2010 for property located at 23 Massapeag Point Road, shown on Assessors Map 34, Lot 66 with conditions as follows;

1. The applicant proves successful in obtaining approvals from the Health Department for the onsite septic system and well and;
2. The plan is to be filed along with the Notice of Decision.

The specific conditions for granting the variance as requested are as follows;

1. The specific conditions on the site are unique to the applicants land and does not generally affect the district in which the property is located;
2. The literal enforcement of the provisions of the regulations would result in an unusual hardship or exceptional difficulty and would deprive the applicant of the reasonable use of the land;
3. The unique conditions and circumstances associated with the request are not the result of actions of the applicant taken subsequent to the adoption of the Zoning Regulations;
4. The variance would be in harmony with the general intent and purpose of the Zoning Regulations and would conserve the public health, safety, convenience, welfare and property values.

Discussion: none. Roll call vote, 4-0, all in favor, variances granted for application #210-ZBA-4 with conditions.

5. **Old Business** – none.

6. **Approval of the Minutes of June 9, 2010.**

Motion made by Chairman MacNeil, seconded by Commissioner Adams to approve the meeting minutes of the June 9, 2010 regular meeting. Discussion: none. Voice vote, 4-0, all in favor, motion carried.

7. **Communications**

Mr. Sanders submitted a copy of recent activity in the Zoning Office, including a geothermal repair.

8. **Other Business and Applications to Come Before the Zoning Board of Appeals** – none.

9. **Adjournment**

Motion made by Chairman MacNeil, seconded by Commissioner Adams to adjourn the meeting at 7:45 p.m. Discussion: none. Voice vote, 4-0, all in favor, motion carried, meeting adjourned.

Respectfully Submitted by:

Audrey Ulmer, Recording Secretary for the Town of Montville