

Liz Burdick

From: Jon <jchase100@hotmail.com>
Sent: Monday, October 23, 2023 10:11 PM
To: Liz Burdick
Subject: Re: 23SUB1- 958 Route 163 - 1-Lot Resubdivision



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Liz,

In an effort to at least make a start on reviewing the proposed easement documents that were provided to me by the Mostowys after retaining my services today for the limited purposes referenced in my previous email, I have taken a further look at the current Revised Re-Subdivisions Plan Rec'd 9-26-2023, as these are referred to in the Form Repository section of the Town of Montville website.

I note that the current Re-Subdivision Plan, Sheet 1 of 2, which depicts the proposed driveway and drainage easements, the existing 664.69' boundary line between the property n/f of Raymond B. Mostowy and Shirley A. Mostowy (just south of the Mostowys' existing driveway) is depicted as a "stone farm wall" per the plan legend. This is further depicted as extending 121.88 feet in a southeasterly direction from the easterly end of the first-mentioned line, then 50.92 feet in a northeasterly direction to Route 163, then south along Route 163 (continuing onto Sheet 2 of 2) to the area of the existing house on the proposed Lot 1. Several of the foregoing are also boundaries of the proposed driveway easement; however, in reality and upon my own personal knowledge, there are no stone walls at any of these locations. This may be readily confirmed by a visual inspection of the Mostowy driveway. These incorrect depictions of non-existing stone walls are also shown in the "Easement Enlargement" detail on the said Sheet 1 of 2.

Besides thus making an evaluation of the proposed easement areas shown on the plans very confusing (for example, these "walls" are shown running across the Mostowy driveway at several locations), these mapping errors appear to violate Section 4.3.6 of the Montville Subdivision Regulations, which requires that the Subdivision Plan include a boundary survey depicting "all existing buildings and stone walls". Stone walls which are shown on a boundary survey plan, but do not exist in reality, clearly cannot be "existing stone walls." Were the plans to be approved in their present state, and then filed with the Town Clerk accordingly, significant confusion may result in the future, especially given the relative hierarchy of features such as stone walls in the interpretation of deeds. I note that these survey plans showing stone walls which in fact do not exist bear the seal and signature of "Robert P. Pryor, L.S. CT 19078".

Furthermore, the opposite problem exists on Sheet 2 of 2 of the Subdivision Plan, which fails to depict the stone wall which actually does prominently exist along Route 163 in front of the existing house on proposed Lot 1, and also exists as one proceeds southerly along Route 163 for a distance of several hundred feet. (While not directly relevant to my review of the above-referenced proposed driveway and drainage easements, these omissions of existing stone walls - which are readily visible on the side of the road as one drives past the site - appear to violate Section 4.3.6 also.)

Because the two proposed easement deeds which I have been asked to review - in their current form - merely reference easements as shown on the said Sheet 1 of 2, without further legal description in the deeds themselves, it could be concluded the depiction, on the signed and sealed plans, of stone walls running along and across the Mostowy driveway, which do not exist in reality, hinders or impairs a more conclusive review as to the sufficiency of the proposed easement documents. I therefore recommend that the plans be revised accordingly by the Applicant, as a preliminary to my further review of the proposed easements.

Very truly yours,
Jon B. Chase

PS:

In addition, it seems curious that in the area of the proposed driveway easement and elsewhere, the signed, sealed plans show a "25' side yard setback" on proposed Lot 2 behind (i.e., to the west of) the 60' rear yard setback on proposed Lot 1. Section 6.6 of the Montville Zoning Regulations requires setbacks as follows in the R-120 district: 6.6.1 FRONT YARD 60 FEET, 6.6.2 SIDE YARD 25 FEET, 6.6.3 REAR YARD 60 FEET.

The above-referenced "25' side yard setback", runs parallel to Route 163 but approximately 250 feet west of it. However, per the Definitions contained in the Zoning Regulations, a "YARD, REQUIRED SIDE" is "Required unoccupied space between the building line and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building" but a "LOT LINE, SIDE" is "A side lot line is any lot line not a front lot line, or a rear lot line, bounding a lot and extending from the street toward the rear in a direction approximately perpendicular to the street". Clearly, a line that is parallel to a street cannot also be perpendicular to the same street.

In practical terms, the treatment of this area running parallel to Route 163 as a 25' Side Yard on the Subdivision Plan results in a portion of the Proposed Drainage Easement being within the buildable area of Lot 2, i.e., outside any yard setback. As a result, the building rights of an owner of Lot 2, and the nonexclusive rights over the same area to be granted to Mr. and Mrs. Mostowy under the proposed easement, may be in conflict. However, because the Commission lacks authority to vary the zoning regulations, the "Lot Line, Side" and "Yard,

Required Side" definitions do not appear capable of being made to apply here, even though shown as such on the plan.

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From: Jon
Sent: Monday, October 23, 2023 6:20 PM
To: Liz Burdick <lburdick@montville-ct.org>
Subject: 23SUB1- 958 Route 163 - 1-Lot Resubdivision

Good afternoon, Liz.

I wish to inform you that I was retained today by Shirley and Ray Mostowy for the limited purposes of review and advice in connection with proposed driveway and drainage easements relating to the above-referenced re-subdivision application. As a result, I am seeing these documents for the first time today, together with comments that were made by Town Attorney Willis.

I am sure that you will understand that a full review of the draft documents will take a little while, but that I will try to make time to do so as soon as possible, and following further consultation with Shirley and Ray, I will get back to you as soon as I can.

Very truly yours,
Jon B. Chase

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