

Town of Montville Zoning Board of Appeals
Meeting Minutes of Wednesday, May 5, 2010
Town Council Chambers – 7:00 p.m.

1. Call to Order

Chairman MacNeil called the regular meeting of the Zoning Board of Appeals to order at 7:02 p.m.

2. Roll Call

Present were Board Members Bassetti, Laskowsky, MacNeil, Freeman and Longton. Absent was Board Member and Adams. Also present was Zoning Enforcement Officer, Thomas Sanders.

Motion made by Chairman MacNeil, seconded by Board Member Bassetti to seat Board Member Longton as a regular voting member. Discussion: none. Voice vote: 4-0, all in favor, motion carried.

3. New Business

Chairman MacNeil stated he did not receive anything to discuss regarding New Business.

4. Public Hearings

a. 210-ZBA-2, Christian & Hope Case, an application for a variance of Section 9.5 for a frontage reduction from 100 feet to 65.1 feet on the property located at 41 Cook Drive, Uncasville, Connecticut as shown on Assessor's Map 99, Lot 11.

Mr. Sanders discussed the Staff Report with the Board and submitted the mailing receipts, street card for the property, two site plan maps and the draft minutes from the Water Pollution Control Authority meeting held on Monday, May 3, 2010 that states an approval from the WPCA that would allow Mr. Case permission for an extension of a sewer line to the property located at 41 Cook Drive.

Mr. Sanders reviewed the application, stating the property has adequate land area for two legal size lots but because of the location of the existing lot the property line for the second lot would be right in front of the existing home. He explained the problems this can cause and stated the proposed property line would require a variance and is not perfect but is better defined with less adverse effect. He stated both lots would have access to public water and sewer and there was not opposition from any of the abutting land owners. He explained the proposed lot is in an R-20 zone and would blend in with the existing lots in the area.

Chairman MacNeil suggested wording requiring the home owner to tie in to the public water and sewer lines be added to the stipulations for approval.

Mr. Sanders stated the proposed reduction would allow for the new property line to be perpendicular to the road with better definition between the lots and he recommends the approval of the variance request.

Chairman MacNeil invited anyone in favor of this application to come forward to address the Board.

Christian Case, 32 Cook Drive, explained he is the owner of the property and he stated everything is in place and ready to move forward should his request be granted. He explained the land surveyor came up with the proposal for the property line as the best way to split the lot and he has had no opposition from any of the neighbors regarding the proposed split.

Chairman MacNeil inquired if there was anyone who would like to come forward to speak in opposition of this application. There was none.

There being no more questions or comments, Public Hearing regarding #210-ZBA-2, Christian and Hope Case was closed at 7:10 p.m.

Chairman MacNeil made a motion, seconded by Board Member Bassetti to amend the agenda to move the vote regarding application #210-ZBA-2 to the top of the agenda. Discussion: none. Voice vote: 5-0, all in favor, motion carried.

Motion made by Chairman MacNeil, seconded by Board Member Bassetti to approve application #210-ZBA-2 for 41 Cook Drive, Uncasville, Connecticut as shown on Assessor's Map 99, lot 11 with the following conditions;

1. The plan is to be updated to show the most recent property owners abutting and adjacent to the property;
2. The proposed lot must have the correct number assigned by the Tax Assessor;
3. The plan is to be file along with the Notice of Decision; and
4. The lots must be connected to the public water and sewer system.

The Zoning Board of Appeals stated the following reason statements;

1. The specific conditions on the site are unique to the applicant's land and does not generally affect the district in which the property is located;
2. 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; and

3. 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.

Roll Call Vote: 5-0, Voting in favor of granting the variance were Board Members Bassetti, Lakowsky, MacNeil, Freeman and Longton, motion carried. Variance granted for 41 Cook Lane as requested with conditions.

- b. To Re-hear application #205-ZBA-7, Charles and Willmeta Cockerham, an application for an appeal of an error in an order, requirement, or decision made by the Zoning Enforcement Officer for property located at 4 Glen Road, Uncasville, Connecticut, as shown on Assessor's Map 106, Lot 6A.

Chairman MacNeil resumed the Public Hearing and explained the Board had voted to continue this Public Hearing at the April 7, 2010 meeting in order to give the Board Members time to review the exhibits that were presented. The essence of this appeal is to determine if the Montville Zoning Enforcement Officer (ZEO), Mr. Thomas Sanders erred in providing a zoning permit for said property.

Attorney John Chase, representing Mr. and Mrs. Cockerham, submitted an original postal receipt to the Board as requested at the previous meeting. He indicated he has no new information or evidence to present to the Board and all of the evidence is in.

Attorney Michael Carey inquired if all of the same Board Members are present that were in attendance at the previous meeting and Chairman MacNeil indicated they are. He inquired if the records from the three previous appeals have been incorporated into the appeal and Chairman MacNeil stated they have been.

Motion made by Chairman MacNeil, seconded by Board Member Freeman to close the Public Hearing regarding #205-ZBA-7, Charles and Willmeta Cockerham regarding property located at 4 Glen Road, Uncasville, Connecticut. Discussion: none. Roll Call Vote: 5-0, Voting in favor were Board Members Bassetti, Lakowsky, MacNeil, Freeman and Longton. Voting in opposition, none. Public Hearing was closed at 7:30 p.m.

Motion made by Chairman MacNeil, seconded by Board Member Freeman to discuss #205-ZBA-7. Discussion: Chairman MacNeil stated it is the Boards job to determine if the ZEO erred in providing a zoning permit for said property. Board Member Longton stated he spent many hours reviewing the evidence and testimony and concluded this parcel of land was owned individually and separately from any adjoining tracts of land on the effective date of the zoning regulations which does not meet the dimensional area, width, or design requirements forth zoning district in which it is located. He concluded that neither #4 or #6 Glen Road when considered separately meet the full definition of a conforming lot, both parcels by default and definition are separate none conforming lots. Both lots were legally deeded separately with no provisions contained for merging with any other parcel, indicating the intent of the grantor that they were not one, but two

separate parcels of land and should be defined separate non-conforming lots. From the time the two parcels were first separately deeded, they remained separate non-conforming parcels and were never combined or legally considered as a single parcel and legally available to be treated as completely separate non conforming lots. He stated his conclusion is the Zoning Enforcement Officer did not err as alleged by the plaintiffs, but acted legally and consistently within the framework of the Montville Zoning Regulations in granting a separate zoning permit for property located at 4 Glen Road, Uncasville, CT.

Chairman MacNeil stated he heard the testimony presented and it is apparent the zoning permit was issued in line with how the Town has consistently issued permits in the past. The same formula has been used for interpretation for many years and he is comfortable the Zoning Enforcement Officer followed procedure and was consistent in his decision making process. The permit was executed exactly as the Town interprets the regulations and he did not err.

Board Member Bassetti stated that given the facts he is not convinced the Zoning Enforcement Officer issued a permit in error. He stated there is a consistent unbroken chain on record of these being two separate lots. They were never combined or considered one lot and the Zoning Enforcement Officer acted reasonably and consistently when considering the permit for this lot.

Chairman MacNeil clarified to the Board Members an “aye” vote states they agree the ZEO erred in issuing a permit for said property and a “nay” vote states the ZEO did not err in issuing a permit for said property.

Roll Call Vote: 0-5, voting in favor, none, voting in opposition were Board Members Bassetti, Lakowsky, MacNeil, Freeman and Longton. It was the determination of the Board the Zoning Enforcement Officer did not err in providing a zoning permit for #4 Glen Road for the following reason;

The Zoning Board of Appeals finds that the Zoning Enforcement Officer did not err as alleged by the plaintiffs, but acted legally and consistently within the framework of the Montville Zoning Regulations in granting a separate zoning permit for the property located at 4 Glen Road, Uncasville, Connecticut as shown on Assessor’s Map 106, Lot 6A, a separate non conforming lot.

Attorney Carey commended Board Member Longton for all the thought and effort he put toward making this decision.

6. Approval of the regular meeting minutes of April 7, 2010.

Motion made by Chairman MacNeil, seconded by Board Member Freeman to approve the meeting minutes of April 7, 2010 as submitted. Discussion: none. Voice vote: 5-0, all in favor, motion carried.

7. Communications

Mr. Sanders reviewed a statistics report depicting all of the activity in his office from March through April. He stated there has been a rise in roofing and siding permits since the heavy rains at the end of March.

8. Other Business and Applications to Come Before the Zoning Board of Appeals.

Mr. Sanders stated he has nothing to report.

9. Adjourn.

Motion made by Board Member Longton, seconded by Chairman MacNeil to adjourn the meeting at 8:00 p.m. Discussion: none. Voice vote: 5-0, all in favor, motion carried.

Respectfully Submitted by:

Audrey Ulmer, Recording Secretary for the Town of Montville