

Town of Montville Zoning Board of Appeals
Regular Meeting Minutes of Wednesday, May 7, 2014
Town Hall – Town Council Chambers

1. Call to Order

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

2. Roll Call

Present were Board members Doug Adams, Joseph Aquitante, alternate Carl Freeman, Wills Pike, and John MacNeil. Board Members Ellen Lakowsky and alternate Elmer Wittkofske were absent. Also present was Assistant Town Planner/Zoning Enforcement Officer (“ZEO”) Tom Sanders, Attorney Harry Heller, and applicant John MacPherson.

Chairman MacNeil assigned Board Member Freeman to sit in place of Board Member Lakowsky with full voting rights.

3. New Business

There was no New Business.

4. Public Hearings

- a. Janet Wozny 214-ZBA-1:** An application requesting the granting of a lot size reduction variance from the requirements of Section 9.4 in order to abate a shed encroachment on adjoining property located at 28 Dock Road for the property located at 12 Edward Road, Montville, CT. As shown on Assessor’s Map 70, Lot 71-B.

ZEO Sanders said that the application request was straightforward and confirmed that all the mailings and notices for the request are in order. He also said that the referenced lots, created in the 1940’s and 1950’s, are preexisting and nonconforming to lot side. In addition, at sometime, a shed was built. ZEO Sanders stated there was no need for a variance but a setback was applicable.

Harry Heller, Esq., attorney for the applicant, stated that his client owns both lots referenced in the application and that the shed was built by the applicant’s father at a time unknown. DEP aerial composites were introduced as exhibits. Attorney Heller stated that 28 Dock Road with the shed was being sold by his client and the request has been made for a 292 square foot lot variance for the 12 Edward Road property so that the boundary line of the property can be legally adjusted. Board member Pike asked whether the shed could be moved. ZEO Sanders responded that the shed in on a pad.

Chairman MacNeil asked three times if there was anyone present who would like to speak in favor of the application, in opposition of the application, or make any additions or ask questions. The pronouncement of each was asked three times.

After deeming that there were no further comments, a motion was made by Chairman MacNeil; seconded by Board Member Aquitante; to close the public hearing 214-ZBA-1. Discussion, none; Voice vote, 5-0; all in favor. Motion carried and public hearing closed.

Motion made by Chairman MacNeil; seconded by Board Member Adams; to amend the agenda to Old Business to accommodate Attorney Heller and due to the absence of the applicant in public hearing 214-ZBA-2. Discussion, none; Voice vote, 5-0; all in favor; Motion carried.

b. John MacPherson 214-ZBA-2: An application requesting the granting of a setback reduction variance to 3 feet from the requirements of Section 7.6.2 and 7.6.3 Side and Rear yard to allow for the construction of a one car garage and addition on the property located at 48 Laurel Point Drive, Montville, CT. As shown on Assessor's Map 105 Lot 9.

ZEO Sanders stated the mailings for the application were in order. He said that the property is located near Oxoboxo Lake and requires a setback and a reduction of 3 feet to the rear and side property line but mentioned a concern regarding residents' access to typical amenities. Mr. Sanders confirmed that the Uncas Health District had approved the location of the garage and sewer/septic. He stated that the critical concern is that the building has significant roof overhang on both sides, not the building proper, and has the potential for encroachment and water runoff on adjacent properties. Thus, the motion for the request if approved should designate that the setback from the roof and not the foot of the structure and that the health department will be notified.

The Board asked questions to which ZEO Sanders responded. Board Member Pike asked about the close proximity of the property and its relation to the septic system. Alternate Board Member Freeman questioned whether ZEO Sanders would have the same concerns if the property was guttered as did Board Member Adams who was concerned about runoff. Mr. Sanders stated stone placement between the building and the fence could be used in lieu of gutters to deter water incursion on abutting properties. Chairman MacNeil considered continuance of the public hearing to get additional information on the dimensions of the proposed garage.

The applicant, J. MacPherson, suggested shortening the gable from 20 feet to 17 feet thus the shed would be 3 feet off the ground and would then comply with ZBA regulations. Chairman MacNeil commented that the proposal outlined by the applicant was not accurately depicted and a relocation of the shed required the approval of the health department. ZEO Sanders suggested reducing the side of the building and cutting back

the overhang. He also mentioned that when the property was purchased by the applicant it had a stockade fence that has since been replaced with a vinyl one.

Chairman MacNeil asked three times if there was anyone present who would like to speak in favor of the application, in opposition of the application, or make any additions or ask questions. The pronouncement of each was asked three times.

Board Member Pike asked whether the dimensions would be changed and established with the applicant. ZEO Sanders responded that the zoning permit would be changed from 15' x 20' to 12'x 17' to reflect the 3 feet from the property line on both sides and no farther than the septic. Chairman MacNeil asked if the applicant had a copy of the health department application with him. The applicant did not.

Motion made by Chairman MacNeil; seconded by Board Member Adams to close the public hearing 214-ZBA-2. Discussion, none; Voice vote, 5-0, all in favor; Motion carried, public hearing closed.

5. Old Business

Janet Wozny 214-ZBA-1: An application requesting the granting of a lot size reduction variance from the requirements of Section 9.4 in order to abate a shed encroachment on adjoining property located at 28 Dock Road for the property located at 12 Edward Road, Montville, CT. As shown on Assessor's Map 70, Lot 71-B.

Motion made by Chairman MacNeil; seconded by Board Member Adams, to approve application 214-ZBA-1 request for lot size reduction for property located at 12 Edward Road Assessor's Map 70 Lot 71B, of 292 square feet from 15,761 sq. ft. (existing) to 15,469 sq. ft. (proposed). File Mylar on land records along with property transfer deed. The specific conditions on the site are unique to the applicant's land and do not generally affect the district in which the property is located. 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. 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. 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. Also, per the applicant's authorization: I, Janet E. Wozny, owner of property located at 12 Edward Road, Montville, Connecticut, hereby authorize the law firm of Heller, Heller & McCoy to represent my interests in all proceedings before the Town of Montville Zoning Board of Appeals in conjunction with the promulgation of a lot area variance with respect to said premises in order to accommodate the elimination of a shed encroachment on adjoining property located at 28 Dock Road, Montville, Connecticut, all as shown on a plan entitled "Boundary Line Adjustment Plan Prepared for Janet E. Wozny #12 Edward Road & #28 Dock Road Montville, Connecticut Project No. 14-010 Drawn by: R.A. D.

Date: 3/17/14, Scale: 1" = 20' Sheet 1 of 1, Advanced Surveys, LLC, 25 Apple Lane, Colchester, CT, 06415, Phone & Fax (860) 267-5979," dated at Montville, Connecticut, this 31st day of March, 2014. Discussion; none. Votes in Favor: Board Members Adams, Aquitante, alternate Freeman, Pike, and MacNeil; 5-0; all in favor. Votes in Opposition: None. Motion carried.

John MacPherson 214-ZBA-2: An application requesting the granting of a setback reduction variance to 3 feet from the requirements of Section 7.6.2 and 7.6.3 Side and Rear yard to allow for the construction of a one car garage and addition on the property located at 48 Laurel Point Drive, Montville, CT, as shown on Assessor's Map 105 Lot 9.

Motion made by Chairman MacNeil; seconded by Board Member Aquitante; to approve application 214-ZBA-2 to grant a setback reduction variance 3 feet from the requirements of Section 7.6.2 and 7.6.3 Side and Rear yard to allow for the construction of a one car garage and addition on the property located at 48 Laurel Point Drive, Montville, CT, as shown on Assessor's Map 105 Lot 9, with the following conditions: Structure/including roof overhang may not be closer than 3 feet to the side and rear of property line and also may not encroach closer than previously approved by Uncas Health Department; and with the reasons for granting being: 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; 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; 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: Board Member Pike asked was would prevent the building from being a livable space. ZEO Sanders responded that it lacks a water/sewer connection. Votes in Favor: Board Members Adams, Aquitante, alternate Freeman, Pike, and MacNeil; 5-0; all in favor. Votes in Opposition: None. Motion carried.

6. Minutes

7. Acceptance of the minutes from the Special Meeting of January 8 and 22, 2014 and the Regular Meeting minutes of March 5, 2014.

Motion made by Chairman MacNeil; seconded by Board Member Adams to accept the Special Meeting minutes of January 8 and January 22, 2014, as written. Discussion, none. Voice vote, 5-0; all in favor. Motion carried.

Motion made by Chairman MacNeil; seconded by Board Member Aquitante to amend the agenda to approve the Regular Meeting minutes of March 5, 2014. Discussion: Per Chairman MacNeil, the first sentence of Public Hearing A to read "application for Certificate of Location" and not "application for amendment to a Certificate of Location." Voice vote, 5-0, all in favor. Motion carried.

8. Communications

ZEO Sanders commented on court case, *Frances Erica Lane, Inc. v. Stratford ZBA*, 149 Conn. App. 216 sent electronically to ZBA members that rendered a decision on an issue about the buffer zone between wetlands and building structures stating that it must be 50 feet but also recognizing that the ZBA does not have authority in the matter—therefore, relief was sought from the court.

9 Other Business and Applications to come before the Zoning Board of Appeals.

None

10. Adjourn

Motion made by Board Member Adams; seconded by Chairman MacNeil, to adjourn the meeting at 7:57 p.m.; discussion, none; voice vote, 5-0, all in favor, motion carried.

Respectfully Submitted by:

Gloria J. Gathers
Recording Secretary, Town of Montville

AN AUDIO RECORDING OF THE MEETING IS ON FILE IN THE TOWN CLERK'S OFFICE.