

Town of Montville
Zoning Board of Appeals
Regular Meeting Minutes for Wednesday, June 3, 2015
7:00 p.m. – Town Council Chambers – Town Hall

1. Call to Order:
Chairman MacNeil called the Special Meeting of the Zoning Board of Appeals meeting to order at 7:02 p.m.
2. Roll Call:
Present were Board Members Douglas Adams, Joe Aquitante III, Carl Freeman (alternate), Ellen Lakowsky (7:24 p.m.), John MacNeil, and Wills Pike. Board Member Freeman was seated for Board Member Aquitante. Also present was Assistant Town Planner/Zoning Enforcement Officer (ZEO) Tom Sanders.

A short recess was taken at 7:03 p.m. The meeting reconvened at 7:24 p.m.

Unable to participate or vote, Board Member Aquitante departed the meeting during the recess at 7:06 p.m.
3. New Business – *none*
4. Public Hearings – *none*
5. Old Business:
 - a. **Paul E. Chase 215-ZBA-3:** An application for an appeal of the decision of the Zoning Enforcement Officer for the collection of fee for renewal of Zoning Permit #212-006 to Green Falls Associates, LLC for a three bedroom home on the property located at 310 Cherry Lane, (Oakdale) Montville, CT. As shown on Assessor's Map 53 Lot 3.
Because the application concerns the actions of the Zoning Enforcement Officer, ZEO Sanders did not participate in the discussion.

Motion made by Chairman MacNeil, seconded by Board Member Adams, to deny the Application Appeal 215-ZBA-3 based upon the receipt of the fee in the form of a check stating its purpose and the mutual understanding of both the payer and the payee that the check was for the payment of a renewal fee for the Zoning Permit. Discussion: The Board Members concurred. Town Attorney Michael Carey added that he had submitted a Memorandum of Law to the Chairman and recommended considering regarding other matters related to the appeal. Based upon the facts presented into the record, these matters include:
 - the reason for the appeal, which states that there was error in the re-issuing of the permit. Based upon his recollection and impression of the hearing, the focus of the

applicants appeal was based on the claim that the transaction had not taken place and, therefore, the Board lacks jurisdiction on this appeal

- the permit was renewed and there was no or insufficient evidence that the plaintiffs were aggrieved by the renewal of the permit, which is a statutory requirement for the applicants to present the appeal
- there is no or insufficient evidence of any error having taken place in the renewal of the permit or, in other words, there was no or insufficient evidence that the project for which the permit was issued violates the Zoning Regulations
- the applicants have no right to appeal the renewal as they failed to submit a timely appeal from the date of the original permit

Motion made by Chairman MacNeil, seconded by Board Member Adams, to amend the original motion to include the comments as stated by Atty. Carey. Roll Call vote, 5-0, all in favor. Voting in Favor: Board Members Adams, Freeman, Lakowsky, MacNeil, and Pike. Voting in Opposition: None. Motion carried. Appeal denied.

- b. **Village Apartments, LLC 215-ZBA-4:** An application requesting the granting of a 423,901 square foot lot area variance in order to allow existing 54 multi-family residential units to remain on a 2.67 acre tract or parcel of land for property located at 82 Jerome Road. Shown on Assessor's Map 69 Lot 42.5.

Motion made by Chairman MacNeil to deny the Application Appeal 215-ZBA-4 for the following reasons: the hardship is financial; the granting of the appeal would create an existing non-conforming lot further non-conforming; though the applicant felt it unnecessary, the lack of notices being mailed to all of the abutting property owners of the current property, and; though a function of the Planning & Zoning Commission, the lack of access to the resulting property. Board Member Adams concurred. Board Member Pike requested clarification regarding whether there is an issue with increasing the non-conformance of a non-conforming lot, expressed his disagreement with the notification letters as abutting property owners to the property in question, e.g., Mr. John Moriarty, appear to had been notified, and questioned the relevance of the future actions on the resulting newly-created property to the application. Chairman MacNeil stated that the regulations require certain bulk requirements for the use of the property and decreasing the bulk of that property would be counter-productive to the intentions of Zoning Regulation 9.4, which requires 10,000 square feet of lot area per one (1) dwelling unit for multi-family developments. Furthermore, though the abutting property owners of the lot in question may have been notified, the property, in its entirety, abuts the other landowners.

Atty. Carey stated that, while he was unable to locate any case law regarding this particular issue, in viewing the map as provided by the applicant, there exists a number of lots that

about the remaining property. Personal notices were not provided to those property owners, but were provided to those who abutted the apartment complex. Based upon his reading, interpretation, and understanding of the related Statute, Atty. Carey felt that notices should have been provided to all of the landowners behind and around the property as well as those who abut the apartment complex, itself. That being said, he further added that he was unable to locate any Zoning Regulation(s) in the Town of Montville requiring a personal notice, via certified mail, of any kind of application. State Statutes amended their regulations several years ago stating that Towns may, by regulation, require an applicant to, at minimum, provide an additional, personal notice (as opposed to the public notice printed in a publication) to those owners abutting the subject property. In such case, it appears that personal notification may not be required and the inclusion of such a regulation may be a subject for further discussion by the Board.

Atty. Carey also noted that the remaining property will initially have no road frontage and would be landlocked and questioned whether the applicant should have also requested a variance of Section 4.13.5. Chairman MacNeil added that the plan does not reflect what the ultimate site plan would incorporate.

Board Member Freeman agreed that the hardship appears to be financial and the granting of the variance would further limit an already limited property. He also questioned whether the remaining property will also require a variance should the applicant wish to develop that property.

Discussion ensued regarding the relevance of the lot that would be created to the lot in question in relation to the requested variance. It was determined that it would be necessary to address the two issues together since the purpose of the variance is to create the new parcel and, should the variance be granted, the new parcel, would, at least, initially, be non-conforming. And, while the future of the newly created parcel is a different issue, the resulting creation of the parcel is not.

Motion made by Chairman MacNeil, seconded by Board Member Adams, to deny the appeal based on the fact that the variance would make a non-conforming lot much more significantly non-conforming; insufficient evidence to demonstrate a hardship, and; the lack of notice to the abutters. Roll Call vote, 5-0, all in favor. Motion carried. Appeal denied.

6. Minutes:
 - a. Approval of the minutes of May 6 and May 27, 2015.
The approval of the minutes were tabled.

8. Communications: *none*

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9. Other Business and Applications to come before the Zoning Board of Appeals – *none*
Chairman MacNeil thanked ZEO Sanders, who will be retiring, for his years of service. A Retirement Party will be held on Friday, June 12 at 4:30 p.m. at the Brown Derby.
10. Adjourn:
Motion made by Chairman MacNeil, seconded by Board Member Feeman, to adjourn the meeting at 7:54 p.m. Discussion: None. Meeting adjourned.

Respectfully Submitted by:

Agnes Miyuki, Recording Secretary for the Town of Montville

**AN AUDIO RECORD OF THE MEETING IS ON FILE IN THE MONTVILLE TOWN
CLERK'S OFFICE**