

Town of Montville Zoning Board of Appeals
Regular Meeting Minutes – February 1, 2017
Town Hall – Town Council Chambers

1. Call to Order.

Chairman MacNeil opened the regular meeting of the Zoning Board of Appeals at 7:00 p.m.

2. Roll Call.

Present were Board Members Joseph Aquitante III, Joseph Berardy, Denise Gladue, Richard Gladue, Alternate Carl Freeman, and Chairman John MacNeil. Also present was Zoning & Wetlands Officer (“ZWO”) Liz Burdick and Town Attorney Mike Carey.

Chairman MacNeil stated that all permanent Board members were present, thus alternate Carl Freeman would not have voting rights.

3. Minutes: Approve the Minutes of the December 7, 2016 Meeting.

Motion by Chairman MacNeil; seconded by Board member Aquitante; to approve the Minutes of the December 7, 2016 meeting, as presented. Discussion, none. **Voice Vote, 5-0, all in favor. Motion carried.**

4. Executive Session.

To discuss proposal to settle pending litigation (*Paul E. Chase v. Town of Montville Zoning Board of Appeals* Docket Nos.: KNL-CV-14-6020402 and KNL-CV-15-6024593-S).

Motion by Chairman MacNeil; seconded by Board member Aquitante, to discuss proposal to settle pending litigation *Paul E. Chase et al v. Town of Montville Zoning Board of Appeals* Docket Nos.: KNL-CV14-6020402 and KNL-CV15-6024593-S and to invite in ZWO L. Burdick & Town Attorney Mike Carey. Discussion, none: **Voice Vote: 5-0, all in favor. Motion carried.**

Executive Session commenced at 7:02 p.m. The Executive Session concluded and the Board returned to Regular Session at 7:20 p.m., with no votes taken.

5. New Business.

Consider and act on proposal settle pending litigation (*Paul E. Chase v. Town of Montville Zoning Board of Appeals* Docket Nos.: KNL-CV-14-6020402 and KNL-CV-15-6024593-S).

Motion by Chairman MacNeil; seconded by Board member R. Gladue, to settle pending litigation *Paul E. Chase v. Town of Montville Zoning Board of Appeals* Docket Nos.: KNL-CV-14-6020402 and KNL-CV15-6024593-S as follows:

The Town of Montville Zoning Board of Appeals hereby:

(1) Approves the written “Motion for Judgment in Accordance with the Stipulation” and “Stipulation to Judgment” in *Paul E. Chase et al v. Town of Montville Zoning Board of Appeals and Green Falls Associates, LLC*, KNL-CV-14-6020402 and *Paul E. Chase et al, v. Town of Montville Zoning Board of Appeals and Green Falls Associates, LLC*, KNL-C15-6024593-S, in the form in which the Motion and the Stipulation to Judgment were presented to the Zoning Board of Appeals for its consideration at its February 1, 2017 meeting; and

(2) Authorizes Michael P. Carey, as its attorney in those two appeals, to sign and/or allow his juris number to be affixed to the Motion and to the Stipulation to Judgment. Discussion, none. **Roll Call Vote: 5-0, all in favor, Board Members Aquitante, Berardy, D. Gladue, R. Gladue, MacNeil. Votes in Opposition: None. Motion carried.**

6. Public Hearings/Applications.

- A. #216ZBA04 – 63 Lake Drive (Map 108 Lot 92), Oakdale, CT**—Application of Susan Green for Variances of Zoning Regulations Section 7.6.1, & 7.6.37.6.2 (R-80 Min. Front, Rear & Side Yard Setbacks) to construct additions and decks. (*PH must close by 03/07/2017.*)

The public hearing opened with Chairman MacNeil asking ZWO Burdick for the record if all notifications were in order for Application #216ZBA04. ZWO Burdick reported that she received notice to abutters from the property owners on January 16, 2017 & confirmed receipt of the certified mail receipts and she stated that advertisements were placed in The Day on January 20 & 27, 2017 and her staff report for the application dated January 26, 2017 was summarized for the record by applicant’s counsel, Attorney Harry Heller, 736 Route 32, Uncasville, CT, and included in the record as follows:

1. An 8’ variance of the required minimum 50’ R-80 front yard setback and a 9’ variance of the required minimum 20’ R-80 side yard setback to allow the construction of proposed upper and lower decks to the rear and a proposed deck to the side of the existing structure; and
2. A 41’ variance of the required minimum 50’ R-80 front yard to allow the construction of a 4’ x 7’ (28SF) cantilevered porch roof to the front of the existing structure.

The site is located on .42 acres (18,296SF) with 150 feet of frontage on Lake Drive in the R-80 zone located on the shore of Oxoboxo Lake. The Applicant proposes to construct additions and decks to the existing single family residence. New additions that are proposed in the same footprint as the existing structure do not require variances. Proposed decks and front porch roof are located in or partially in the front yard setback, as is the existing dwelling almost in its entirety. No construction is proposed in regulated wetlands areas, therefore, no IWC approvals are required. The Applicant states the nature of the unusual hardship or exceptional difficulty existing with regard to the property is: “The existing structure was constructed on a validly preexisting non-conforming lot in a non-conforming location prior to the enactment of Zoning Regulations with virtually the entire existing structure being located with the front yard setback as required by Section 7.6.1 of

the Zoning Ordinance and a substantial portion of the garage constructed within the westerly side yard setback area as required by Section 7.6.2 of the Zoning Regulations. The variances requested are for relief of the front yard setback requirement with respect to improvements proposed for construction in the rear of the dwelling house and for relief from the side yard setback requirements with proposed construction which will not extend beyond the existing southwesterly elevation of the garage.”

Attorney Heller stated that most of the work for the residence does not require variances for construction as it's in the existing footprint, only the three proposed decks and the roof over the new front door. He referenced a map to show what he described as “something he's never seen before.”, in that the entire existing house is in the front yard, so the decks to be built at the rear of the house require front yard setbacks. ZWO Burdick asked that applicant's map be introduced into the record as Exhibit #A. He confirmed that the home would have no greater encroachment than what currently exists per a question posed by Chairman MacNeil, but for the door canopy. Attorney Heller then introduced the Building Plan, Exhibit B, an 8 1/2" x 11" architectural drawing of the front of the house. Historically, he said 25' wide lots were created in 1926 on Oxoboxo Lake and over time people have aggregated these lots to create a lot for building houses. Further, Attorney Heller stated that no work can be done on the house without relief from the Board indicating that the variances would be in conformance with the character of the neighborhood. As well, he said almost all of the existing properties have setback issues. Attorney Heller concluded by saying that the application conforms to the legal requirements of the Board.

Chairman MacNeil inquired as to where the applicant parks her vehicle given the work requested. Attorney Heller replied along the side of the house. Board Member R. Gladue inquired if the rear setback was 50' as shown on the building plan. Attorney Heller responded that no work was being proposed there and that the only buildable areas on the plan were between the green and orange lines. Chairman MacNeil then asked if there were further questions for Attorney Heller. He then asked if anyone wanted to speak in favor of the application—there was no response. Thereafter, he asked if anyone wanted to speak in opposition of the application—there was no response. ZWO Burdick commented that as Attorney Heller and staff have said the building plan will have to be revised to show off-street parking, two spaces, which she said would not be included in the motion. Chairman MacNeil concluded by asking if there were further questions for the applicant or staff.—there were none.

Motion by Chairman MacNeil; seconded by Board Member Aquitante to close the public hearing for Application #216ZBA04. Discussion, none. Voice Vote, 5-0, all in favor. Motion carried. Chairman MacNeil commented that there are no setbacks as the house is already there. He added that there are existing patios attached to the house that do not require a building variance.

Motion by Chairman MacNeil; seconded by Board Member Aquitante, to approve Application #216ZBA04, as follows: After giving due consideration to all relevant factors, including those in Section 22.2 of the Montville Zoning Regulations and Sections 8-6 and

8-7 of the Connecticut General Statutes, I make a motion to **GRANT** variances as requested by Susan Green in Application #216ZBA04 for property located at 63 Lake Drive (M108, L92) as follows:

1. An 8' variance of the required minimum 50' R-80 front yard setback and a 9' variance of the required minimum 20' R-80 side yard setback to allow the construction of proposed upper and lower decks to the rear and a proposed deck to the side of the existing structure; and
2. A 41' variance of the required minimum 50' R-80 front yard to allow the construction of a 4' x 7' (28SF) cantilevered porch roof to the front of the existing structure.

The hardship being the existing structure was constructed on a validly pre-existing non-conforming lot in a non-conforming location prior to the enactment of Zoning Regulations with virtually the entire existing structure being located within the front yard setback. The findings for the granting of the variances are:

The unique conditions and circumstances associated with the request are not the result of the actions of the Applicant taken subsequent to the adoption of the Montville Zoning Regulations; and

The variances would be in harmony with the general intent and purpose of the Montville Zoning Regulations and would conserve the public health, safety, convenience, welfare, and property values.

Discussion: none. Roll Call Vote: 5-0, all in favor, Board Members Aquitante, Berardy, D. Gladue, R. Gladue, MacNeil. Votes in Opposition: None. Motion carried.

B. #216ZBA03 – 441 Fire Drive (Map 14, Lot 6), Uncasville, CT
Applicant/Property Owners, Mark Desrosiers & Alexandra Cortes for Variances of Zoning Regulations Section 6.6.1 & 6.63 (R-120 Min. Front & Rear Yard Setback) for construction of a new single-family residence. *(PH must close by 03/07/2017.)*

The public hearing opened with Chairman MacNeil asking ZWO Burdick for the record if all the notifications were in order. ZWO Burdick replied that proof of certified mail sent to abutting neighbors was received and that advertisements were placed in *The Day* on January 20 & 27, 2017, as required by State statute. The ZWO then read her staff report dated January 24, 2017, into the record as follows:

Above-referenced application is for a 27.5' variance of the required minimum 60' R-120 front yard setback and a 22' variance of the required minimum 60' R-120 rear yard setback to allow the construction of a new single-family residence to be located a distance of 32.4' to the southerly front boundary line a distance of 38' to the northerly rear boundary line. 441 Fire Street is located on about 7 acres of undeveloped land in the R-120 zoning district with about 1032 feet of frontage on Fire Street. The site contains about 5 acres of wetland is located in a Special Flood Hazard Zone "a". The Applicant proposes to construct a new 2-bedroom single-family residence in the southeast front corner of the property adjacent to the Deep Hollow Brook.

The proposal was approved by the Montville Inland Wetlands Commission (IWC) on December 15, 2016. To lessen the impacts to the wetlands and Deep Hollow Brook, the IWC required the planting of a dense stand native shrubs and trees as close to the house as possible as shown on a plan entitled “Site Plan, Property Survey and Site Plan, Property of Mark Desrosier & Alexandra Cortes, 441 Fire Street, Montville, CT, Prepared by Star Surveying, LLC, Dated September 5, 2016, *Revised to 12-9-16*”. In making its decision, the IWC considered feasible & prudent alternatives, but determined that due to the extensive wetlands and the steep slopes located at the southwesterly front portion of the site, the proposed location is the only viable location. No changes may be made to the approved plan without further review and approval by the IWC and no additional changes are proposed as part of this application. The Applicant states, “The nature of the hardship is no building area exists within the required (front and rear) building setbacks.”

In summary, ZWO Burdick referenced the site plan of the house stating that the GIS was incorrect regarding the shape of the property. She also noted that the green color on the map indicated the lot is almost entirely covered by wetlands. Chairman MacNeil asked whether the location of the residence on the map is the only viable location for its construction. ZWO Burdick responded “yes” stating that all the other locations have steep slopes. She added that the City of New London owns the abutting property and, after plan review by its City attorneys, solicited no comments. Chairman MacNeil commented that the location for the proposed residence is a pre-existing lot and inquired whether DPH had blessed the project. ZWO Burdick responded that Uncas Health District and the Inlands Wetlands Commission granted their approvals in December 2016. Chairman MacNeil then asked for comments in favor of the application—there were none. He then asked for comments in opposition of the application—there were none. Finally, Chairman MacNeil asked the Board Members and the public if they had questions. Hearing none, he proposed that the public be closed.

Motion by Chairman MacNeil; seconded by Board Member Aquitante, to close the public hearing for Application #216ZBA03. Discussion, none. Voice Vote: 5-0, all in favor. Motion carried.

Motion by Chairman MacNeil; seconded by Board Member Aquitante, to approve Application #216ZBA03, as follows: After giving due consideration to all relevant factors, including those in Section 22.2 of the Montville Zoning Regulations (“Regulations”) and Sections 8-6 & 8-7 of the Connecticut General Statutes, I make a motion to **GRANT** variances as requested in Application #216ZB03 as follows:

A 27.5’ variance of the required minimum 60’ R-120 front yard setback and a 22’ variance of the required minimum 60’ R-120 rear yard setback to allow the construction of a new single-family residence to be located a distance of 32.5’ to the southerly front boundary line and a distance of 38’ to the northerly rear boundary line. The hardship being there is no buildable area that exists within the required front and rear yard building setbacks.” The findings for the granting of the variances are:

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 Montville Zoning Regulations; and

The variances would be in harmony with the general intent and purpose of the Montville Zoning Regulations and would conserve the public health, safety, convenience, welfare, and property values.

Discussion: Chairman MacNeil stated that the proposed location is the only place on which the residence can be constructed; it is a modest home; and it has been approved by DPH and IWC. **Roll Call Vote: 5-0, all in favor, Board Members Aquitante, Berardy, D. Gladue, R. Gladue, MacNeil. Votes in Opposition: None. Motion carried.**

7. **Old Business.** -- None

8 **Other Business.**

ZWO Burdick reported on the upcoming seminar given every two years by the CT Bar Association concerning all things zoning. She said that the seminar is attended by a lot of staff and commissioners. The seminar will be held on Saturday, March 25 at the Lecture Hall at Wesleyan University from 8:00 a.m. – 4:40 p.m. A seminar book and lunch are included at a cost of \$50 that will be paid for from the budget. Board Members were asked to contact L. Burdick if they wanted to attend.

9. **Adjournment**

Motion made by Chairman MacNeil; seconded by Board Member Berardy, to adjourn the meeting at 7:56 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 RECORD OF THE MEETING IS ON FILE IN THE TOWN
CLERK'S OFFICE.**