

TOWN OF MONTVILLE
ZONING BOARD OF APPEALS
310 Norwich-New London Turnpike, Uncasville, CT 06382
Telephone: (860) 848-6779 – Fax: (860) 848-2354
Email: planningdept@montville-ct.org

REGULAR MEETING MINUTES

March 3, 2021, 7:00 p.m.
Town Council Chambers – Town Hall – via GoToMeeting

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On March 14, 2020, Governor Ned Lamont issued an Executive Order 7B suspending in-person open meeting requirements, and to hold such meetings or proceedings remotely by conference call, videoconference or other technology.

Link: <https://portal.ct.gov/-/media/Office-of-the-Governor/ExecutiveOrders/Lamont-Executive-Orders/Executive-Order-No-7B.pdf>

For all publicly broadcasted meetings, public comment on agenda items or topics in accordance with the Town Charter may be submitted in writing in advance or by live audio via GoToMeeting.

Written comments must be emailed to the Town Clerk at townclerk@montville-ct.org at least 1 working day in advance (if the meeting is on a Monday the questions must be submitted by close of business the previous Friday).

Written comments may not be read in their entirety, but rather similar messages may be aggregated or paraphrased for submission to the Board.

Live audio comments may be made via GoToMeeting by registering at the web address or calling from your telephone or computer mic & speakers (VoIP) noted above.

Comments will only be accepted at times designated for public comment by the Chair of the meeting. Procedures, decorum, timeliness and suitability shall be followed and enforced in the same manner as if the meeting were held in person.

1. Call to Order.

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

2. Roll Call.

Present were Board Members Joseph Berardy, Alternate Carl Freeman (by remote access), Robert Yuchniuk, and Chairman John MacNeil. Also present was ZEO Tiffany Williams and Town Attorney Richard Cody. Board Members Doug Adams and Richard Gladue were absent. A quorum was present. Chairman MacNeil seated Alternate Freeman.

3. Minutes: Approve the Minutes of the December 2, 2020, Meeting.

Motion by Board Member MacNeil; seconded by Board member Yuchniuk to approve the Minutes of December 2, 2020, as written. Discussion: none. Voice vote: 4-0, all in favor. Motion carried.

4. Executive Session. -- None

5. New Business:

6. Public Hearings/Applications.

- a. **221 ZBA 1 Owner/Applicant Keith Tower & Mary Jane Drewa 421 Oxoboxo Dam Road (044-004-010)** Appeal of the Cease-and-Desist Order from the Zoning Enforcement Officer regarding accessory structures on the property without a principal structure, seeking to reverse it.

ZEO Williams gave a brief overview for the Cease-and-Desist Order as follows: The office received a message on November 14, 2020, about activity in the wetlands at the property located at 421 Oxoboxo Dam Road (044-004-010). This is a vacant piece of property in R-80 Zone. I met with Mr. Tower and conducted an inspection at the property on December 3, 2020. Mr. Tower met with the Inlands Wetlands Commission and the Commission found the activity was a “Permitted Use of Right.” During my inspection, I noticed two sheds. I took pictures and told him I thought the sheds were not allowed. At that time, I issued a Cease & Desist for the two sheds. The Cease & Desist was issued under the Zoning Regulation Section 4.10.4.2, No Accessory structure shall be built on a lot that does not contain a principal structure or use except for farm equipment storage. ZEO Williams then read into the record the Exhibit List that included the Inlands/Wetlands complaint with pictures, the Violation Letter, Inspection Report of December 3, 2020, GIS pictures that show no structures, and the December 10, 2020, Cease-and-Desist Order received by Mr. Tower on December 12, 2020.

For disclosure purposes, Chairman MacNeil explained his employer uses the services of the owner/applicant’s Attorney Jon Chase who was present and stated he could separate his opinions per the hearing accordingly. Attorney Chase raised no concerns.

Attorney Chase requested and received from ZEO Williams a copy of the Zoning Regulation Section 4.10.4.2. He also spoke of an abutment notification. Attorney Cody said he was contacted by ZEO

Williams regarding it and said the abutment notification applies to a variance and thus informed staff there was no need for it.

Attorney Chase began his argument for reversal of the Cease-and-Desist stating two (2) primary purposes—to act on a variance and appeal of the zoning regulation. He stated the filing of the appeal and when notice was received from the ZEO and sent out were irrelevant. He also provided a summary of the client, Town regulations, and data on the R-80 district where the property is located in addition to a handout to the Board that reduced the testimony of his client in the form of an affidavit. Attorney Chase stated Mr. Tower was present and available for testimony. He explained the Board usually meets referring a hardship to decide whether there is an error regarding strict construction according to regulations and the manner in which it is interpreted and case law regarding the same. He also said the issuance of the Cease-and-Desist Order per Zoning Regulation 4.10.4.2 refers to farm equipment while the Order speaks to something different, accessory uses and having no principal structure. Attorney Chase summarized the contents of his client’s affidavit and said it supported and satisfied the regulation as written. He explained his client has a camper on the property that has been there for 20 years and is permitted usage.

Attorney Chase then spoke of the ZEO acting as an Inlands Wetlands official when removing the Cease-and-Desist Order but thereafter issuing one as the ZEO. Also, he spoke of a process where the ZEO sends a letter and if no response to it a letter then goes to the attorney. He also mentioned the frustration of his Mr. Tower receiving two (2) Cease-and-Desist orders particularly when he had tried to get a building permit as was suggested to him. Attorney Chase then argued about the word “use” in the regulation and cited three (3) legal cases regarding the same and stated “use” is defined as actual use while “principal use” is defined as intention. He questioned Mr. Tower as to his intention to build a house on the property to which Mr. Tower replied, “yes.” Further, he defined the word “camper” and water intended use that refers to a statute that does not exist, as well as, “marine water”, a term with multiple meanings. Attorney Chase distributed a handout a Town chart of zoning districts concerning water that abuts the Thames River or fresh water. He said R-40 is evidence of no identified water use but intended water use per Planning & Zoning use is every time.

Attorney Chase concluded that the ZEO’s Order threatened further enforcement prior to the deadline. He stated Mr. Tower did everything to comply with the terms of the Order that was vague and he said the denial of building permit application prompted the appeal of the Order. Further, he said the violation was not lawful and requested it be lifted. Attorney Chase then asked whether he could cross-examine ZEO Williams to which Chairman MacNeil responded he could not allow it without discussion with Attorney Cody.

Chairman MacNeil stated Attorney Chase’s argument rested on the word “use” and described others with the word “use.” He said the word was not for him to discern stating this was the first time the Town used this regulation. He also stated the exception farm use contradicted the word “use” and said the issue could have been avoided if a permit was received for the shed. Chairman MacNeil also said the ZEO’s discovery of something on the property spoke to clarification of it. Board member Yuchniuk said the argument is not just for the word “use” but “principal structure” and whether a manufactured home is interpreted as being on the property for 20 years, a trailer, is such. Chairman MacNeil then asked if the trailer is a primary structure to which Attorney Chase replied, “yes” and the sheds are an accessory. Further, Attorney Chase added family gathering and outings had been held for 20 years and argued why would a

person buy a property on Oxoboxo Lake. He then referenced whether a camper is a structure citing building code adopted from 2018 by the International Building Code.

Chairman MacNeil then asked the Board if it had questions for Attorney Chase. Alternate Freeman asked the purpose for a Cease-and-Desist Order and whether something that is taxable in another town is a structure. Attorney Chase stated he was not arguing for stronger authority and said whether the structure is valid needs to be answered under the regulation. As for the purpose of the Cease-and-Desist, he referred to the ZEO or Attorney Cody. Attorney Cody said he could not comment on intent but legally as to whether the order was appropriate, referred to consequences and violations in court. He commented on procedural matter and spoke of ZEO Williams as the plaintiff and the violator as the other party and if the ZEO could be questioned that would be denied. He also said ZEO Williams had declined her own counsel. Attorney Chase commented on the procedural aspect and spoke of everyone receiving materials today, not in advance and stating having no knowledge of the history of the aerial pictures or whether the photos show the camper but said having seen the photos he had no objection to them. Chairman MacNeil said the photos in the packet show the camper, but he could not verify their authenticity and said he would not want ZEO Williams put on counsel. Attorney Cody spoke of the appropriateness of continuing the issue to read the submissions and for others to review as well that the Board is aware of the timeliness of the appeal and default stationary and asked that the finding of the of Board be in favor of his client. He referred to timeliness as making a decision regarding his response that he clarified for Chairman MacNeil.

Chairman MacNeil asked three (3) times of those who wanted to speak in favor of the appeal. Thereafter, he asked three (3) times for those who wanted to speak in opposition of the appeal. He then requested of Attorney Cody what the Board should do. Attorney Cody said the Board needs to see the documents as one member is virtual and then suggested continuing the meeting. He then said ZEO Williams wanted to speak and said she had that right and that he wanted to listen to her rebuttal. Chairman MacNeil said he did not want to put her on the spot. Attorney Cody asked ZEO Williams to introduce documents to Attorney Chase.

Staff Exhibits:

1. Original Inland Wetlands Complaint with pictures
2. Inland Wetlands Possible Violation letter dated November 11, 2020 received by Mr. Tower on November 23, 2020
3. An inspection was made on the property with Mr. Tower on December 3, 2020 at which time the two (2) accessory structures were observed.
4. GIS pictures from the years 2004, 2012, 2016 do not show accessory structures on the property. An aerial after 2016 shows one (1) structure, however the exact date is hard to determine because the 2018 aerial has heavy tree coverage. There are no aerial photos for 2017. The 2019 aerial from cteco.uconn.edu show two (2) structures. (See pictures A-F)
5. A Cease & Desist order dated December 10, 2020 was received by Mr. Tower on December 12, 2020

6. On December 25, 2020 Mr. Tower applied for a building permit through Municipality for two (2) Prefab sheds to be installed onsite.
7. On December 28, 2020 an email was sent to Mr. Tower regarding what his options were for existing sheds. This included the link to Zoning Board of Appeals permit.
8. December 28, 2020 Mr. Tower acknowledge he received the email and thought he had to apply for a building permit.
9. An application was received in the office on January 11, 2021. (Application was received 30 days after Cease & Desist was ordered)

Applicant Exhibits:

1. Summary of Appeal
2. Town of Montville Zoning Regulations (excerpts)
3. Affidavit from Keith Tower
4. Zoning Districts in Which Water Dependent Uses are Allowed Per Montville Zoning Regulations

Public Exhibits:

1. Letter of Intent dated January 29, 2021 (John E. Connell & Nancy Farrell)

Motion by Chairman MacNeil; seconded by Board Member Yuchniuk to continue the Public Hearing, 221 ZBA until the next Board meeting on April 7, 2021. Voice vote: 4-0, all in favor. Motion carried.

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

8 **Other Business.** -- *None*

9. **Adjournment**

Motion made by Chairman MacNeil; seconded by Board member Yuchniuk, to adjourn the meeting at 8:21 p.m. Discussion, none. Voice vote, 4-0; all in favor. Meeting adjourned.

Respectfully submitted by:

Gloria J. Gathers
Recording Secretary, Town of Montville

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TOWN WEBSITE.**