

**Town of Montville**  
**Zoning Board of Appeals**  
**Special Meeting Minutes for Wednesday, May 27, 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, Carl Freeman (alternate), Ellen Lakowsky, John MacNeil, and Wills Pike. Absent was Joe Aquitante III. Board Member Freeman was seated for Board Member Aquitante. Also present was Assistant Town Planner/Zoning Enforcement Officer (ZEO) Tom Sanders.

**3. New Business – *none***

**4. Public Hearings:**

Motion made by Chairman MacNeil, seconded by Board Member Adams, to change the order of the Public Hearings and open 215-ZBA-4. Discussion: In an effort to accommodate the members of the public, it was proposed to change the order of the Public Hearings. Voice vote, 5-0, all in favor. Motion carried.

- 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.

ZEO Sanders reported that all mailings are in order, distributed the supporting materials to the Board, and provided a brief history of the property. The Applicant is seeking a lot reduction of their property from approximately 423,000 square feet (3.9530 acres) to 116,000 square feet (2.68 acres). The buildings currently house 54 units and are currently non-conforming in that a building of such size is required to be located on a minimum of 540,000 square feet of property. In addition, while the lot meets or exceeds the front and rear side yards, it does not meet the necessary 100 feet of frontage.

Attorney Harry Heller, 736 Route 32, representing the Applicant, Village Apartments, LLC, presented the Board with a plan showing the 2.67 acre parcel of which they are seeking to create and the variance required to create that parcel to accommodate the two existing buildings, which have a total of 54 dwelling units. While the parcel prepared by the original developers in 1984 is identical to the current parcel, the division line of the property is different. The Applicant is requesting a reduction in the size of the lot from 3.95 acres to

2.67 acres and to increase the size of the unimproved parcel from 5.73 acres to 7.03 acres. As previously stated, the property is currently non-conforming in its frontage and would remain as such. The Applicants are requesting a lot area variance to segregate the two parcels in order to accommodate for future development and segregate the financing between the two parcels. Atty. Heller provided a brief history of the property, adding their disagreement with the previous stipulation of the Zoning Board of Appeals (ZBA) and Planning & Zoning Commission to combine the two parcels to accommodate for the then-requested height variance. Based upon the Superior Court decision in Cockerham v. Town of Montville ZBA, it is felt that both the Board and Commission exceeded their authority in doing so. In addition, while the property originally housed a well house on the second parcel providing a potable water supply to the units, public water and sewer are now available for these properties. He argued that the variance fulfills and satisfies the two requirements under the Statute for the granting of a variance of (1) hardship, in that the issue is unique to this parcel and does not generally exist in the district and the division would allow for the development of the second, undeveloped parcel to be developed with different investors, and (2) because the property is in conformance with the comprehensive plan, the granting of the variance would not have any adverse impacts on the neighborhood as no future development can occur that would increase the size of the building on the property for which the variance is being requested.

Chairman MacNeil clarified that the Applicant is seeking a further reduction in the size of the previously existing non-conforming lot. Future development cannot occur on the parcel and provides no benefit and the additional acreage would have neither a positive or negative impact on the neighborhood. With respect to the concern regarding the lack of legal access to the remaining parcel other than the right-of-way located in the back of the property should the variance be approved, Atty. Heller stated that the Applicant has acquired a parcel on Jerome Avenue and another parcel is under contract that will provide access to that property from Jerome Avenue. There is also a right-of-way that is currently the subject of litigation in Superior Court and, should they prevail, a third means of egress that would be utilized for emergency purposes will be available. In response to the question regarding the ability of the Board to create another parcel that may be non-conforming without the required access was raised, Atty. Heller responded that, because a lot must be conforming in order to be created by deed, the division, should it be approved by the Board, cannot occur in the land records until the property that is currently under contract is acquired.

In response to Board Member Pike, Atty. Heller estimated that approximately one-quarter or 1.75 acres of the seven (7) acre property is considered wetlands, i.e. 5.25 acres is usable land. It was clarified that the hardship is an ownership issue with the investors and in the procuring of financing to develop the property. The identity of the ownership groups will not be the same.

Chairman MacNeil asked if anyone would like to speak in favor of the application. There

being none, he asked if anyone would like to speak in opposition of the application.

John Moriarty, 78 Jerome Road, whose property is located along the access road to the apartment complex, recited an unsigned written statement by his father, John M. Moriarty, regarding his opposition to the application of minimum lot variance. Mr. Moriarty is concerned with the increase in traffic and questioned whether the Applicant is prematurely requesting the variance, as they do not yet have the necessary access to the property.

Jan Moody, 19 Haley Road, speaking on behalf of her mother, Myrna Moody, 74 Jerome Road, stated that she did not receive a notice and expressed her concern with the wetlands and the wildlife on the property as well as the numerous visits by the fire and police departments, a rise in traffic and noise from motorcycles riding over the speed bumps, safety hazards caused by the lack of residents heeding the existing stop sign, drug-related incidents, etc. following the construction of the apartment building.

Launa Prigmore, 68 Jerome Road, stated that she also did not receive a notice, also spoke in opposition to the variance, adding that they were assured when they purchased their home in 1986 that, due to the existing wetlands, no building(s) would be constructed.

Tom Shaughnessy, 94 Jerome Road, stated that he has no issue with the zoning, but is concerned with the resulting safety issues. He felt that the road is not suitable to accommodate the traffic and cited a recent car accident, which resulted to a fire.

Ms. Moody, 19 Haley Road, added that the vehicle involved in the accident referred to by Mr. Shaughnessy was departing from the Village Apartment complex.

Chairman MacNeil asked if anyone would like to speak in opposition of the application or address any of the issues that have been presented.

Atty. Heller, addressing the notice issue, stated that notifications were sent to those abutting the property in question only. With regards to the safety issue, the property is located on Jerome Road and Jerome Avenue, both of which are public roads, and zoned R-20. Based on CT Law, when a Zoning Commission makes a legislative determination as to the zoning district classification, they have determined that the existing infrastructure is suitable for the uses as permitted within that district. Jerome Road is a collector road and is designated as such in the Town's Zoning Regulations. In addition, traffic control currently exists at the intersection of Jerome Road and Jerome Avenue and it is felt that the area is safe and will be able to accommodate any additional traffic should the property they are *not* requesting a variance for is developed.

Chairman MacNeil asked if anyone had any additional questions or comments.

It was clarified that the issue at hand relates to the reduction of the lot property and not the future of the adjacent property. As such, only the abutting property owners were notified of

the requested variance. The ultimate purpose of the variance was questioned and the assumption that the decision of the variance will dictate the future of that property.

Board Member Adams suggested the possibility of placing conditions should they decide to grant the variance, i.e., extending the speed bumps. It was clarified that the access road and the parcel, as a whole, will not require any variance in the future as long as their application to the Planning & Zoning Commission is approved. When granting a variance, based on the meeting of the hardship and harmony requirements, one is either increasing or creating a non-conformity, as is the nature of a variance.

Motion made by Chairman MacNeil, seconded by Board Member Adams, to close the application #214- ZBA-4. Discussion: None. Voice vote, 5-0, all in favor. Motion carried.

Deliberation was continued to provide the Board time to consult with their attorney and clarify any legal questions.

A short break was taken at 8:01 p.m. The meeting reconvened at 8:08 p.m.

- 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.

Chairman MacNeil stated that the Public Hearing was previously opened and continued and the Applicant had provided the Board with an extension due to a notification problem.

Attorney Jon Chase, 34 Church Street, Mystic, representing the Appellants, Paul E. Chase and Johann V. Chase, reported that all notifications are in order. He addressed any potential conflicts of interest, including those with Board Member Pike with whom he sits on the Board of Assessment Appeals and Chairman MacNeil, who had previously recused himself from a case involving the property. Both Board Member Pike and Chairman MacNeil felt they had no conflict of interest. Atty. Chase also stated a possible conflict of interest in that Atty. Heller has personally represented ZEO Sanders in a previous case involving ZEO Sanders and the Inland Wetlands and Conservation Commission (Appellant Exhibit 14).

Atty. Chase began his argument, stating that in order to be aggrieved by an order, requirement, or decision made by the ZEO, such an action must have been taken. Should they find that was no action taken, the appeal may be denied.

Attorney Harry Heller, 736 Route 32, representing the Applicant, Green Falls Associates, LLC, clarified that what is being appealed is the renewal of the Zoning Permit #212-006.

Atty. Chase, referring to his experience of this process to issue, re-issue and/or renew Zoning Permit #212-006 as a "shell game" based upon the several iterations of

continuations and continuations based on the notice contents. He continued to recite the public notice and the item on the agenda, referring to their inconsistency.

Atty. Heller reiterated that Zoning Permit #212-006, issued by ZEO Sanders in 2012, was appealed, heard, and denied by the ZBA and that decision is currently pending in the Superior Court. The only appealable action he is aware of at this time is the renewal of the Zoning Permit.

Atty. Chase submitted and reviewed the exhibit packet. Included in the exhibit packet is Zoning Permit #204-040 and its subsequent renewal for the property located at 4 Glen Road (Appellant Exhibit 6), which, based on the case of Charles Cockerham v. Town of Montville Zoning Board of Appeals (2009 CT Superior Lexus 2773, Court Docket Numbers CV-05-4003702 and CV-05-4004221 (electronic versions), pages 7-8 and 24-26), constitutes the renewal of a Zoning Permit in the Town of Montville. Judge Purtill, in this case, indicated that, because the practice by which the Zoning Permit was renewed was not unusual, but the normal practice, of the office to renew permits in the same manner, the renewal was valid and properly renewed. In contrast, the renewal of Zoning Permit #212-006 differs from what was recognized by Judge Purtill as constituting the usual and normal practice of a Zoning Permit renewal. In addition, the renewal of the permit was made several months following the expiration date of the permit. The public, he argued, has a right to expect confidence in the regularity and timeliness of the process. Should the Board find that ZEO Sanders did not do anything by issuing the receipt constituting an order, decisions or requirement, the appeal may be dismissed.

Discussion ensued regarding a stay and whether an appeal would create a stay of any action being taken against a permit.

Chairman MacNeil asked if anyone would like to speak in favor of the application. There being none, he asked if anyone would like to speak in opposition of the application.

Attorney Harry Heller, 736 Route 32, representing the property owner, Green Falls Associates, LLC, reiterated that, based upon the timing of the appeal, this case deals with the renewal of the Zoning Permit. Appellant Exhibit 3 is a copy of the check by received by Green Falls Associates, LLC, to the Town of Montville, dated January 14, 2015 and indicating that the check is a payment for "Cherry Lane renewed permit 212-006". Regardless of any paperwork generated or not generated by the ZEO, he accepted the check in "accord and satisfaction", meaning he has accepted the payment in reliance upon the issuance of the zoning permit. The right of the Zoning Official to issue renewals of Zoning Permits, under Section 4.5 of the Zoning Regulations, is directory, rather than mandatory, being a provision designed to secure order, system, and dispatch in zoning matters. This is consistent with Judge Purtill's decision in the Cockerham case, a decision that was affirmed by the Appellate Court and was based upon the court's review of the interpretation of the language by the municipality and procedures as traditionally practiced and utilized by the

office. He also cited the 1956 case of Winslow v. ZBA (143-Connecticut-381, page 387). In addition, this practice of renewing Zoning Permits is not unique to ZEO Sanders, but also of past ZEO's as reflected in Public Exhibit 2, which consists of copies of notices to those whose building permits are soon to expire, and should be viewed as appropriate.

Chairman MacNeil asked if anyone else would like to speak in opposition of the application.

Conrad Gardner, Partner, Green Falls Associates, LLC, stated that the home was constructed in 2013 and is unsure as to the goal or wish of the Appellant, but hopes that the Board will dismiss the appeal.

Atty. Jon Chase, provided his rebuttal, referring to Atty. Heller's submission of letters, stating that the letters do not illuminate the process of renewal or legally sanctioned process as was resolved by Judge Purtill. Based on Atty. Heller's statement regarding the receipt of the check as received in "accord and satisfaction", that is not the law as set forth in the Town's regulations or as interpreted by Judge Purtill. Furthermore, the applicability of the Winslow case and the matter regarding the directory and mandatory requirements is a "red herring". Rather, the issue is whether the ZEO did something that constitutes an order, decision, or requirement and, weighed against the statement of how permits are renewed and in viewing the dates of the checks and receipts of the renewals (in one case, by ten (10) months and, in the other, by over one (1) year), conclude whether an expired permit may be renewed.

Atty. Heller read the applicable portion of Judge Purtill's decision, which states the authority of the ZEO to renew a permit, notwithstanding the language of Section 4.5 of the Zoning Regulations, and *not* about the specific procedure, into the record. The ZEO issues renewals on a regular basis and fees are accepted in consideration of the renewal of the permit. As such, he argued, the appeal should be denied.

Atty. Chase completed Atty. Heller's recitation of Judge Purtill's decision, adding that the ZEO does have the authority to renew a zoning permit *in the manner that is traditionally practiced by the ZEO*. In addition, there exists a lack of any record of a renewal having taken place until several months after the expiration date of the Zoning Permit.

ZEO Sanders responded to a series of questions presented to him by Attorneys Heller and Chase, during which he stated that the receipt for the renewal was different than that of the Cockerham case due to a change in procedure as the result of a theft in the office.

A short break was taken at 9:59 p.m. The meeting reconvened and questioning of ZEO Sanders resumed at 10:02 p.m.

ZEO Sanders continued to respond to questions posed to him by Atty. Chase. It was clarified that in addition to ZEO Sanders, Town Planner Vlaun and Planner II/Wetlands Agent Colleen Bezanson also have the authority to issue, renew, and receive any necessary

fees for Zoning Permits. Atty. Chase reiterated that the question was not whether the receipt constituted a payment, but whether the acceptance of the check constitutes an order, decision, or requirement.

Motion made by Chairman MacNeil, seconded by Board Member Freeman, to close the Public Hearing for Application #215-ZBA-3. Discussion: None. Voice vote, 5-0, all in favor. Motion carried.

**5. Old Business:**

Chairman MacNeil recommended providing both the Counsel and the Board time to review the information submitted this evening for both of the Public Hearings and prepare for further discussion at their Regular Meeting next Wednesday, June 3, 2015.

**6. Minutes:**

**a. Acceptance of the minutes from the Meeting of May 6, 2015.**

*The minutes from the May 6, 2015 meeting were previously accepted.*

**8. Communications:** *none*

**9. Other Business and Applications to come before the Zoning Board of Appeals:** *none*

**10. Adjourn:**

Motion made by Chairman MacNeil, seconded by Board Member Adams, to adjourn the meeting at 10:14 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**