

**Town of Montville -- Zoning Board of Appeals
Virtual Public Hearing and Regular Meeting Minutes
October 7, 2020
Town Hall – Town Council Chambers**

1. Call to Order.

Chairman MacNeil called the regular meeting of the Zoning Board of Appeals to order at 7:05p.m.

2. Roll Call.

Present were Board Members Doug Adams, Joseph Berardy, alternate Carl Freeman (7:12 p.m./by phone), Robert Yuchniuk and Chairman John MacNeil. Also present was Town Planner Marcia Vlaun (by phone), Assistant Planner Colleen Benzanson (by phone), and Administrative Assistant Tiffany Williams. Board Member Richard Gladue was absent. A quorum was present.

3. Minutes: Approve the Minutes of the December 4, 2019, Meeting.

Motion by Board Member Yuchniuk; seconded by Board member Adams to approve the Minutes of December 5, 2019, as written. Discussion, none. Voice vote, 4-0, all in favor. Motion carried.

4. Executive Session. *None*

5. New Business: *None other than Public Hearings*

6. Public Hearings/Applications.

- A. Public Hearing/Application – #220 ZBA 1 Owners/Applicants – Michael D. Green and Susan C. Green, Lake Drive (108-169-000).** A request to allow relief from the Section 4.10.4.2 to allow the construction of a garage on a vacant legally non-conforming lot directly across the street from the Applicants' home and relief of Sections 7.6.1(front) and 7.6.3(rear) R-80 setback requirements to allow for the garage's construction.

Chairman MacNeil confirmed with Administrative Assistant Williams that all receipts of notice to the abutters were in order. The Board then took time to review the staff report. Present was representative for the applicant, Attorney Harry Heller, with an office at 736 Norwich-New London Turnpike, Uncasville, CT.

For the record, the staff report for **Application #220 ZBA 1 – Owners/Applicants – Michael D. Green and Susan C. Green, Lake Drive (108-169-000)** is as follows: The application is for a relief of the front and rear yard setbacks of the R80 Zone to allow the placement of a structure on a lot with 75 feet more or less of lot depth per variance of Sections 4.10.4.2, 7.6.1, and 7.6.3 of the Zoning Regulations.

The application is a variance of the sections below for the construction of a 24' x 32' garage.

1. A 19.6' variance of the 50' front yard setback per Section 7.6.1 (R-80 Front Yard Setback)
2. A 28.8' variance of the 50' rear yard setback per Section 7.6.3 (R-80 Rear Yard Setback)
3. A variance to allow a structure to be built on a lot that does not contain a principal structure as per Section 4.10.4.2 (4.10.4 Accessory Structures)

Map 108 Lot 169 Lake Drive is a pre-existing non-confirming lot with a lot area of 10,905SF/0.25 acres and 144.09 feet of frontage. The site currently has a shed which was replaced in 2017 but no primary structure.

The Applicants propose to construct a 24' x 32' garage on the lot that does not have a principal structure and will be 21.2' from the rear property line and 30.4' from the front property line.

The Applicants state the hardship is that the lot is legally non-confirming as is the lot directly across the street which accommodates the Applicants' principal place of residence. There is no room available for the construction of a conforming garage on the property which accommodates the Applicants' residence. The front yard and rear yard setbacks requirements for the R-80 Zoning District overlap on the application parcel leaving no building envelope whatsoever for development of this lot.

For the record, Attorney Heller identified himself as representative for the Applicants, Michael D. Green and Susan C. Green. He stated the non-confirming lot for variance was directly across the street from the Green residence having a 76' depth from Lake Drive to the back of the lot. He said their residence did not meet the needs for a 24' x 32' garage. He described the lot for variance as a legally existing, non-confirming lot per the site map accompanying the Applicants' application. Attorney Heller stated three (3) variances for the lot--a proposed use variance to allow an accessory structure as a principal structure which the Zoning Regulations do not currently allow and a rear and front yard setback each for construction of the proposed garage as the setback requirements for the R-80 zoning district overlap on the application parcel leaving no room for development of this lot. The proposed garage would be set in the center of the lot consistent with the setbacks on the property and general in compliance with the Oxoboxo neighborhood. He also said the Green residence lot was not suitable for construction of the garage due to the cost of utilities, setback requirements, and the topography that slopes down to Oxoboxo Lake. Further, Attorney Heller stated the Applicants have no vital use of the proposed lot, a hardship without the variance.

Attorney Heller reported he submitted an application in the early 1980's for a similar variance and several setbacks for Joseph and Marjorie Fisher of 79 Lake Drive that was granted by the ZBA. The variance was ultimately challenged by a neighbor in Superior

Court and upheld by the CT Supreme Court, *Stankowitz v. Montville ZBA*. The courts assessed and granted relief, setting precedent. He said that same waiver of variance is identical in this request. Attorney Heller then summarized the legal hardship to the Applicants and described the neighborhood as it evolved from a campsite in the 1920's to its existence present day. Chairman MacNeil inquired if there was a lake on the proposed lot which Attorney Heller denied stating the lake had been drawn down for repair. He then asked about a well which Attorney Heller said was existing. Chairman MacNeil then asked whether a sewer system had been sought of Uncas Health District. Attorney Heller replied there was no existence of it on other lots in the area.

Chairman MacNeil then asked if anyone had questions for the Board concerning the application. He then asked if anyone wanted to speak in favor and thereafter in opposition of the application. Caller Shawn Jinkerson said it was hard to hear the speakers and suggested that they speak directly into microphones per his experience regarding the same as a WPCA commissioner. Chairman MacNeil then asked if anyone had any general questions before close of the hearing.

Motion by Chairman MacNeil; seconded by Board Member Adams to close the public hearing, **Application #220 ZBA 1 – Lake Drive, (108-169-000), Oakdale, CT.** Discussion: none. Roll Call vote: *In favor:* Board Members Adams, Berardy, MacNeil, Yuchniuk. *Opposed:* none. 4-0, all in favor. **Motion carried.**

- B. Public Hearing/Application -- #220 – ZBA – 2 Owner/Applicant – Ryan Dehler, 1384 Route 85 (006-021-000).** A request for relief of Section 11.6.2 for a 25' setback waiver to allow for the construction of a building within 5' off the side property line.

Chairman MacNeil confirmed with Administrative Assistant Williams that all receipts were received for the application. The Board took time to review the application. Representative for the applicant, Attorney Harry Heller, with an office at 736 Norwich-New London Turnpike, Uncasville, CT, made presentation on the application.

For the record, the staff report for **Application -- #220 – ZBA – 2 Owner/Applicant – Ryan Dehler, 1384 Route 85 (006-021-000)** is as follows: The application is a variance of the section below to allow for the construction of a 2,405SF building.

- 1.A 25' variance of the 30' side yard setback per Section 12.6.2* (LI Zone Side Yard Setback).

*Note: The application and the legal ad had a mistype of the section of the Zoning Regulations. It should be 12.6.2, not 11.6.2. Both of the side setbacks for the C2 Zone and LI Zone are the same at 30 ft.

1384 Route 85 is a non-conforming lot with a lot area of 35,719SF/0.82 acres and has 114.73 feet of frontage on Routes 85 and 203 +/- of frontage on Lakewood Drive.

The Applicant proposes to construct a 2,405SF building on the lot that will be 5' from the side property line.

The Applicant states that the hardship is that the property to the west was reserved for access from Lakewood Drive for the property to the north with the anticipation of the development of a shared driveway which was never memorialized by Village Development. The property was originally located on a manufacturing district at the time the lot was created which had smaller side yard setback requirements.

For the record, Attorney Heller identified himself as representative for the applicant, Ryan Dehler. He stated the Applicant has a plan for a second industrial building on his lot noting the error in the application and the property as light industrial. He described the lot as non-legally conforming created in the early 1980's. Attorney Heller reported that in 1986 there were revisions to the comprehensive regulations which, prior to, was not a light manufacturing area. Also, there was no minimum lot area for lots in the manufacturing district but there were frontage, setbacks, and sideline requirements. The light industrial was incorporated in 1986 with a minimum builder's acre (7.7 acre with a side yard setback of 30') and side yard of 15'. Per the site map, Attorney Heller said the lot is currently used industrially for a building supply building but said roofing supplies are also sold and must be stored in a building for purposes of manufacturer's guarantee. The separation of the buildings would be by a 25' strip for approval by Planning & Zoning. He also said goods manufacturing would add to the tax base and benefit other businesses in the Lakewood Drive area. Per a question by Chairman MacNeil, Attorney Heller agreed there was a well in the enclosed building envelope. Attorney Heller also confirmed the well would have to be relocated or the project would not be viable or compliant with the Uncas Health District. said Chairman MacNeil. Chairman MacNeil noted the 25' strip wraps around the parcel and asked about letters to abutters about the application. Attorney Heller noted one abutter was the City of New London. Board Member Yuchniuk asked if the nursery used the 25-foot area and Attorney Heller replied sporadically as it is not well graded. Attorney Heller confirmed the requirement for approval by Planning & Zoning as questioned by Chairman MacNeil and read into the record the letter from the City of New London per a question by Alternate Freeman.

Chairman MacNeil asked if there were other questions and then whether there was anyone who wanted to be speak in favor, speak in opposition, or had questions for the Board or the Applicant.

Motion by Chairman MacNeil; seconded by Board Member Adams to close the public hearing, **Application -- #. 220 – ZBA – 2 Owner/Applicant – Ryan Dehler, 1384 Route 85 (006-021-000)**. Discussion: none. Roll Call vote: *In favor*: Board Members Adams, Berardy, MacNeil, Yuchniuk. *Opposed*: none. 4-0, all in favor. Motion carried.

The Board commented on **Application #220 ZBA 1 – Lake Drive, (108-169-000), Oakdale, CT**. Board Member Yuchniuk said the application was reasonable and was upheld by the courts. Board member Adams was in favor of the application.

Motion by Chairman MacNeil; seconded by Board Member Adams to approve **Application #220 ZBA 1 – Lake Drive, (108-169-000), Oakdale, CT** as follows: After giving due consideration to all relevant factors, including those in Section 20.4 of the Montville Zoning Regulations (“Regulations”) and Sections 8-6 & 8-7 of the Connecticut General Statutes, I make a motion to **GRANT** the variances as requested in Application #220 ZBA 1 as follows:

1. A 19.6’ variance of the 50’ front yard setback per Section 7.6.1 (R-80 Front Yard Setback)
2. A 28.8’ variance of the 50’ rear yard setback per Section 7.6.3 (R-80 Rear Yard Setback)
3. A variance to allow a structure to be built on a lot that does not contain a principal structure as per Section 4.10.4.2 (4.10.4 Accessory Structures)

These variances will allow the Applicant to construct a 24’ x 32’ garage on the lot that does not have a principal structure and will be 21.2’ from the rear property line and 30.4’ from the front property line.

Condition of Approval: The property located at Map 108 Lot 69 can only be conveyed/sold with the property located at 63 Lake Drive (Map 108 Lot 92) and that this condition be filed on the land records for both lots.

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 variance 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; *and*

The exceptional difficulty or unusual hardship on which the decision is based is as follows: the lot is unusable for anything but this use and precedent has precedent set by the Courts.

Discussion: none. Roll Call vote: *In favor:* Board Members Adams, Berardy, MacNeil, Yuchniuk. *Opposed:* none. 4-0, all in favor. **Motion carried.**

As to **Application -- #220 – ZBA – 2 Owner/Applicant – Ryan Dehler, 1384 Route 85 (006-021-000)**, Chairman MacNeil asked Attorney Heller to review and approve the application prior to voting on it.

Motion by Chairman MacNeil; seconded by Board Member Adams to approve **Application -- #220 – ZBA – 2 Owner/Applicant – Ryan Dehler, 1384 Route 85 (006-**

021-000), as follows: After giving due consideration to all relevant factors, including those in Section 20.4 of the Montville Zoning Regulations (“Regulations”) and Sections 8-6 and 8-7 of the Connecticut General Statutes, I make a motion to **GRANT** the variance as requested in Application #220 ZBA 2 as follows: A 25’ variance of the 30’ side yard setback per Section 12.6.2 (LI Zone Side Yard Setback) to allow the Applicant to construct a 2,405 SF building on the lot 5’ from the side property line, 30’ from the rear property line and 50’ from the front property line.

Condition of Approval: The building dimension must be removed from the contour line and assigned to the building line.

The findings for the granting of the variance area:

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 variance 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; *and*

The exceptional difficulty or unusual hardship on which the decision is based is as follows: it is an industrial zone with a parcel to the west, a 25’ strip, with no cause for harm and with reasonable use to maintain business.

Discussion: Board Member Adams said approval will help the business grow and help the tax base. Correction was noted the area is a industrial not commercial zone. Roll Call vote: *In favor:* Board Members Adams, Berardy, MacNeil, Yuchniuk. *Opposed:* none. 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 Adams, to adjourn the meeting at 7:59 p.m. Discussion, none. Voice vote, 4-0; all in favor. Motion carried.

Respectfully submitted by:

Gloria J. Gathers
Recording Secretary, Town of Montville

**AN AUDIO RECORDING OF THE MEETING IS AVAILABLE ON THE
TOWN WEBSITE.**