

**ZONING BOARD OF APPEALS**

Mallory Town Hall  
9 Route 39 North  
Sherman, Connecticut 06784-0039

**ZONING BOARD OF APPEALS MEETING MINUTES  
APRIL 5, 2011**

Chairman Baird called the meeting to order at 7:01 p.m. at Mallory Town Hall. Commissioners present: Chairman Dale Baird, Vice Chairman William Jones, Samantha Addonizio, Joseph Chiamonte, Kathy Fazzone, and Alternates Gary Smolen, Helen Bray and Lucy Pollack. There was no audience member recording or video taping the meeting.

Commissioner Helen Bray recused herself from Case #611 and Case #612. In attendance for Case #611 was Attorney Peter Herbst, who was representing the Commission. Chairman Baird stated that Lucy Pollack had not been sworn in yet as an alternate member and asked the attorneys present if they objected with her sitting on the Board. Attorney Matt Willis, Attorney Neil Marcus and Attorney Catherine Cuggino stated they had no objections.

**Public Hearing**

**Case #611:** Tamsin Penelope Saphir is seeking to appeal a decision that was made to issue a zoning permit (Zoning Permit #6965) for the construction of a single family residence at 10 Orchard Beach Road, Sherman, CT (Assessors Map 64, Lot 2).

Attorney Catherine Cuggino was in attendance representing Tamsin Saphir. Ms. Cuggino submitted into record a letter and attachments pertaining to this appeal. She stated that Lot Q, on Map #368, filed in the Town Clerk's office on March 30, 1954 is not an approved lot due to the fact that it was never part of an approved subdivision by the Commission. She explained that in 1979, the former ZEO, John McRoberts denied an application for a zoning permit, finding that Lot Q had never been submitted for subdivision approval and that no appeal was taken of this action. Ms. Cuggino stated that a commission may not reverse itself "unless the facts and circumstances which actuated the decision are shown to have so changed as to vitiate or materially affect the reason which produced and supported it and no vested rights have intervened" as stated in *Consiglio vs. Board of Zoning Appeals of City of New Haven*. She also stated that Lot Q is not entitled to the protection of CGS §8-26a (relating to the protection of nonconforming lots) because it was never an approved lot and if Lot Q was entitled, it does not qualify for such protection because Lot Q did not conform to the zoning regulations of that time. Commissioner Chiamonte stated that he was puzzled by the fact that in comparing the filed map to Mr. McRoberts letter; it does not seem that they match in any of the three criteria that McRoberts stated. Ms. Cuggino reiterated that no one challenged the 1979 decision, and that it should not be overturned.

Attorney Matt Willis, representing Ron Cooper, ZEO stated that Mr. Cooper had an obligation to review the application that was submitted by Victoria Schneider. Ron Cooper stated that after receiving the application, he reviewed maps, deeds, meeting minutes, and Mr. McRobert's letter. He found that Lot Q is recognized as being a part of a three lot subdivision that was reviewed and "approved" by the Zoning Commission in March 1954. The subdivision that was reviewed at the March 16, 1954 meeting identified three parcels as lots (Lot Q, Lot R & Lot S) and at that same meeting, the Planning and Zoning Commission approved five building permits, two of which were the abutting owners of the lot in question (Saphir & Weinstein (Lot R)). Five months prior to this meeting, the Commission discussed a revision to the subdivision regulation and changed the definition of subdivision from a division of any parcel of land into two or more lots to the division of a tract or parcel of land into three or more lots. Since the Commission issued a building permit for both the Saphir lot and the Weinstein lot (Lot R), they recognized this map as a subdivision. In doing so, Lot Q is recognized as a lot. Mr. Cooper also stated that while reviewing Mr. McRoberts comments on the required lot size, lot width and road frontage, he was in error. McRoberts stated that Lot Q did not meet the required lot size of 20,000 square feet, nor met the lot width of 80 feet, or road frontage of 80 feet. Lot Q does meet all three criteria today, and back in 1979. The "Proposed Construction Zoning Location Survey Map (dated February 16, 2007) states that the area is 20,490 sf; the average width is 226 feet, which is parallel to the frontage; and this lot does not have road frontage due to a 15 foot right-of-way. Attorney Willis stated that based upon the facts there is both procedural and substance that has changed.

Attorney Neil Marcus was in attendance on behalf of Victoria Schneider, owner of 10 Orchard Beach Road. He stated that the facts are clearly different than what Mr. McRoberts was looking at. He pointed out that in the ZEO report of the November 1, 1979 P&Z meeting it stated that "He also felt there is confusion on the status of legal non-conforming lots." He also said that the appeal is as to whether there is a clear error in the ZEO's decision of 1979. What are the facts? Did Mr. McRoberts base his decision on facts? Mr. Cooper based his decision on facts, research and reasoning and did his due diligence.

Also discussed was if the land was ever taxed as a buildable lot, which it was not. It was pointed out that originally the lot was problematic because it would not comply with the Town of Sherman health code. It has since been approved by the State of Connecticut Health Department. Also, Ms. Schneider does have a vested interest in the property due to the construction of a retaining sea wall, and the investment in getting a septic system approved.

Chairman Baird read into record a letter from Peter Sylvester, the owner of the abutting property, who was in support of this appeal. Patricia Sylvester also expressed her concern and support of this appeal.

It was decided that Attorneys Cuggino, Willis and Marcus would review the newly submitted information and any additional comments would be provided to the Board.

Commissioner Addonizio motioned to continue the public hearing on Case #611 until May 3, 2011. Commissioner Jones seconded the motion. Commissioners Baird, Jones, Addonizio, Chiaramonte, Fazzone, and Smolen all voted in favor.

**Case #612: Theresa Moser** – 5 Orchard Beach Road – requesting variances of Section 332.5 “Minimum Setback Requirements” from a front yard setback of 50’ to 29’ and Section 384 “Non-Conformity, Other Than Use” to construct a roof structure over an approved existing deck as shown on the plan submitted and entitled “Property Survey prepared for Theresa Moser, 5 Orchard Beach Road, Sherman, Connecticut dated November 14, 2006, revised June 2, 2009”.

The applicant, Theresa Moser was in attendance, as well as Charles Reppenhagen, her architect. Ms. Moser explained that she would like to put a roof over the existing deck and an approved new deck addition (total deck size is 14’ x 34.5’). She explained that the new deck addition had not been built yet, but will be in the near future. Ms. Moser showed the Commission pictures of the hemlocks at the back of the house prior to the trees dying due to disease. In the winter of 2009 and the spring of 2010, the trees started to fall down, and so Ms. Moser had a lot of them removed due to safety. She stated that since there are no more trees, there is no more shade over the deck, hence the building of a roof over the deck. Chairman Baird questioned where the hardship was. Ms. Moser stated that the land does not allow for new tree plantings due to rock. It was suggested that perhaps the area under the deck could be used. Ms. Moser stated that this area would not be good due to too many stairs, large boulders and that it is a very small area. Other options that were suggested were using patio furniture, putting up an awning, or putting a roof over part of the deck.

Commissioner Chiaramonte motioned to go into the business session. Commissioner Jones seconded the motion. All voted in favor.

### **Deliberations**

**Case #612: Theresa Moser:** The Commission discussed the fact that a hardship has not been shown. The homeowner wants shade, but the hardship is due to the topography, not the land. They agreed that there are alternate options. Ms. Moser withdrew her application.

Commissioner Jones motioned for adjournment. Commissioner Smolen seconded the motion and all voted in favor. Meeting was adjourned at 10:45 p.m.