

ZONING BOARD OF APPEALS

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

**ZONING BOARD OF APPEALS MEETING MINUTES
MAY 3, 2011**

Chairman Baird called the meeting to order at 7:00 p.m. at Mallory Town Hall. Commissioners present: Chairman Dale Baird, Vice Chairman William Jones, Samantha Addonizio, Joseph Chiamonte, Kathy Fazzone, and Alternate Gary Smolen. Absent were Helen Bray and Lucy Pollack. There was no audience member recording or video taping the meeting. In attendance for Case #611 was Attorney Peter Herbst, who was representing the Commission.

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).

Chairman Baird read into record new material that had been received: Exhibit 4: Letter from Attorney Catherine Cuggino dated April 26, 2011; Exhibit 5: Letter from Attorney Matt Willis dated April 29, 2011; Exhibit 6: Letter from Attorney Catherine Cuggino dated May 2, 2011; Exhibit 7: Letter from Attorney Neil Marcus dated May 2, 2011. Ron Cooper, ZEO reviewed the facts in how he determined Lot Q to be a building lot. He stated that building permits were issued for the lots on either side of Lot Q, and that by approving both lots, the commission of that time locked in the boundary lines of Lot Q. The commission was well aware of the subdivision regulations at that time due to just having reviewed them a few months prior. The regulations stated that any parcel or tract of land divided into three or more lots is defined as a subdivision. Mr. Cooper further explained that Lot Q met the regulation for front lot line, lot size and frontage. He explained that this lot was not the only lot that was approved at the end of a cul-de-sac. Mr. Cooper submitted into record Map #611 (Exhibit 9), Map #1088 (Exhibit 10), and Map #928 (Exhibit 11) which show lots with no frontage. Mr. Willis, attorney for Ron Cooper, stated that this lot is a legal lot that is now considered non-conforming but is governed by the regulations of the time.

Attorney Catherine Cuggino was in attendance representing Tamsin Saphir. She highlighted some of the additional information that was submitted into record (Exhibit 4 & Exhibit 6). Attorney Cuggino stated that the zoning permit is null and void due to the application information does not match the information on the zoning location survey; that back in 1979, there was no appeal within the thirty days of Mr. McRobert's decision; that there has been no change in circumstances sufficient to justify the reversal of the denial of a zoning permit for Lot

Q; the fact that the ZBA cannot overturn the ZEO's decision after the appeal period; the Sherman Tax Assessor has taxed Lot Q as unusable; and that there are discrepancies in the record map and the zoning location survey regarding the property boundaries (430 line vs. 440 line). Ms. Cuggino submitted a letter into record for an extension of time for the Public Hearing to remain open (Exhibit 12).

Attorney Matt Willis stated that the application and zoning location survey map were all part of the application and Mr. Cooper had to determine if it was a building lot from this information. He also stated that the term "frontage" was not defined in the regulations back in 1954 and that Mr. Cooper determined that the easterly line was the frontage after looking at similar lots located on a cul-de-sac. Mr. Willis also stated that there are no other court cases like this one and that any case Ms. Cuggino has referenced are different.

Attorney Neil Marcus was in attendance representing Victoria Schneider. He stated that the boundary line of Lot Q is the 430 contour line because of the title on the property and that Mr. Brian Wood of First Light approved construction of a sea wall at the 430 line due to it being the property line. He also commented that other issues Ms. Cuggino brought up were regarding case law and that Mr. Willis stated it correctly – that there were no other case laws dealing with this issue. Also stated was that the findings of Mr. McRoberts are much different than what is found today and that Ron Coopers decision is clearly supportable. Ms. Victoria Schneider stated that her intent for the property all along was to build a home on it.

Commissioner Jones motioned to continue the public hearing on Case #611 until May 31, 2011. Commissioner Chiamonte seconded the motion. Commissioners Baird, Jones, Addonizio, Chiamonte, Fazzone, and Smolen all voted in favor.

Case #614: Caroline & Eric Holub – 137 Route 37 South – requesting variances of Section 331.5 "Minimum Setback Requirements" from a front yard setback of 50' to 20' and Section 384 "Non-Conformity, Other Than Use" to renovate and add on to the existing garage and construct a half story storage space over the garage.

The applicants, Caroline and Eric Holub were in attendance, as well as Charles Reppenhagen, their architect. Mr. Holub explained that the current garage is in need of repair and that he would like to expand the garage from 18' x 18' to 22' x 22'. The property is located on a corner lot, which requires a 50' setback on both roads. The current garage is located 22' from the road. He looked at other spots on the property, but it was determined that the right side of the house is too steep and a new garage would get in the way of road site lines; that the back yard would not be a good spot due to elevation differences that would impact runoff and erosion, that it has rock outcrops, as well as, the reserve septic area. It was questioned as to why the new proposed garage is so much bigger than the original garage and that it looks like it has a second story. Mr. Reppenhagen stated that the second story is not a full story, but a half story as per the zoning regulations. He also said that the height to the ridge is approximately 23' from the driveway elevation. The height as it exists now is approximately 15' or 16'. Mr. Holub commented that

the area above the garage would be used for furniture storage or space for a weight bench, not as an apartment. It was stated that if the size of the garage is increased, than the non-conformity is increased. Mr. Holub and Mr. Reppenhagen then discussed what would happen if they did not add a half story onto the garage, but only expanded it a few feet in width so that a car could actually fit inside. The Commission requested that if Mr. Holub wanted to take off the half story on the garage that he comes back in June with new information (height of the proposed structure, width of the structure and its proximity to the road).

Commissioner Fazzino motioned to continue the public hearing until June 7, 2011.

Commissioner Chiamonte seconded the motion. All voted in favor.

Commissioner Addonizio motioned for adjournment. Commissioner Chiamonte seconded the motion and all voted in favor. Meeting was adjourned at 11:15 p.m.

DRAFT