

ZONING BOARD OF APPEALS

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

**ZONING BOARD OF APPEALS MEETING MINUTES
JULY 13, 2011**

Chairman Baird called the meeting to order at 7:50 p.m. at Mallory Town Hall. Commissioners present: Chairman Dale Baird, Vice Chairman William Jones, Samantha Addonizio, Joseph Chiaramonte, and Alternate Gary Smolen. Absent were Kathy Fazzone, 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.

Deliberations

Case #611: This is a continuation of deliberations that began on May 31, 2011. One issue was whether the current ZEO had the authority to reconsider the decision of a previous ZEO and if so, whether or not any new or additional information has come to light, that no vested rights have intervened and whether or not the lot was part of an approved subdivision. Attorney Herbst explained that vested rights usually go with an individual property owner and that vested rights start once the building process takes place. He stated that just because a person has a building permit does not mean that they have vested rights. Different court cases have stated that the vested right is given when considerable construction has been done on a property. In this case, no vested rights have intervened. Chairman Baird stated that there is new information including land assessment information; maps filed within the clerk's office that do not have signatures on them until the early 1960's; the fact that the information Mr. McRoberts relied on seems to be inaccurate and does not reflect today's map. It was determined that there is new information and that no vested rights have intervened. Commissioner Addonizio motioned to reverse ZEO Cooper's decision solely on the basis that he did not have the right to reconsider the previous ZEO McRobert's decision. Commissioner Jones seconded the motion. Motion was denied unanimously 0-5 with Baird, Jones, Addonizio, Chiaramonte and Smolen all voting.

Another issue that was brought up by Attorney Cuggino in her April 26, 2011 letter was whether or not the zoning permit is null and void due to inaccuracies. Attorney Herbst stated that from a legal perspective under Section 414 of the regulations, a permit will be null and void if the permit is issued on the bases of false or inaccurate information. Commissioner Smolen stated that Mr. Cooper's decision appeared to be based upon Lot Q of the 3-lot subdivision map, not the dimensions or the application details. Chairman Baird stated that if Mr. Cooper had mentioned any of the inaccurate details in his report regarding the issuance of the permit, then it would be null and void, but he did not. Commissioner Addonizio motioned to reverse ZEO Cooper's decision on the basis that the zoning permit was issued on the basis of false or inaccurate

information and that it is null and void based on Section 414 of the zoning regulations. Commissioner Smolen seconded the motion. Motion was denied unanimously 0-5 with Baird, Jones, Addonizio, Chiaramonte and Smolen all voting.

Chairman Baird stated that the Board needs to make a determination on whether they should reverse or uphold Mr. Cooper's decision to issue a zoning permit. It was determined that Lot Q is part of a 3 lot subdivision as evidenced in the filed map of 1953; that other building permits were issued to the surrounding lots; that the regulation in effect stated that a subdivision constitutes 3 or more lots, which the filed map showed; and that although the filed map was not signed, filed maps were not signed by the Commission until 1963. It was also determined that Lot Q did meet the regulations for front lot line, lot size and frontage and that Lot Q is part of an approved subdivision. Commissioner Addonizio motioned to reverse ZEO Cooper's decision to issue a zoning permit based on Lot Q being part of a 3 lot subdivision. Commissioner Smolen seconded the motion. Motion was denied unanimously 0-5 with Baird, Jones, Addonizio, Chiaramonte and Smolen all voting.

Commissioner Smolen motioned for adjournment. Commissioner Chiaramonte seconded the motion and all voted in favor. Meeting was adjourned at 10:15 p.m.