

**TOWN OF POMFRET
ZONING BOARD OF APPEALS
MINUTES-PUBLIC HEARING & REGULAR MEETING
MONDAY, MARCH 19, 2007 AT 7:00 PM
POMFRET COMMUNITY SCHOOL CAFETERIA**

In Attendance: Board Members – James Robbins, Bruce Shay, Bill Hull, Gary Kendall, Richard Galante, Robert Bitondi. First Selectman James Rivers, ZEO Ryan Brais. Attorney Mark Branse, Attorney Kenneth Slater, Robert Lussier, William Wentworth, David Abbamonte, CT DOT Derek Ireland, Michael Marzi, approx. 35 citizens. Board Members not present: Alternates Liz Cartier, Barry Jessrun.

- I. PUBLIC HEARING** – Opened at 7:00 PM by James Robbins
- 1. State of CT, DOT, 7 Cheney Road, Variance Section 10.1, Lot Size** – J. Robbins read the Legal Notice for this Public Hearing into the record. Derek Ireland from CT DOT stated that due to improvements being made to Covell and Cheney Roads the State needed to take 171 square feet of area, reducing this already non-conforming lot by that amount leaving the remaining lot at 52,101 square feet. State Statute says that failure to grant variance can result in total acquisition. He presented map for Board review. There were no citizen comments. Bill Hull asked if the lot was currently occupied. There is one single family residential house. Robert Bitondi asked about the amount of landscaping to be done. Michael Marzi with the DOT stated that one tree will be removed along with one sloped easement which is shown on the map. He also stated that this improved intersection is part of a larger project that includes bridge repairs at this location. This application is totally separate from any work to be done to the bridge. He has contacted the property owner verbally and in writing and he has stated he has no problem with this, but agreement by property owner is not necessary for the State to obtain. Bill Hull moved to close the Public Hearing. Robert Bitondi seconded. All in favor.
 - 2. Appeal of February 9, 2007 decision of ZEO regarding Non-Conforming Use at 34 Wetherbee Road** J. Robbins read the Legal Notice for this Public Hearing into the record. Attorney Mark Branse was present representing B. Wentworth and D. Abbamonte who are appealing this decision. Attorney Branse questioned three procedural points and in light of these questions he asked if Attorney Slater would accept the ZEO withdrawing his decision and begin a new period. Attorney Slater stated this was not agreeable. The ZEO and the P&Z has the authority to act. Attorney Branse then reviewed points for his clients, citing Wing vs Cromwell and Felician Sisters of St. Francis of Connecticut vs Enfield. He reviewed burden of proof, client affidavits, aerial photographs, bills of sale, and other points related to their reason for appeal. He stated his clients had no problem with the two pick-up trucks associated with the business. David Abbamonte spoke concerning a timeline. He stated that the Great Woods trade name was filed in November, 2005, the property in

Putnam was sold in October 2005, it seems obvious that is when Mr. Lussier moved. He also stated that Mr. Lussier filled a half acre lot in the Spring of 2006 for parking. Bill Wentworth stated he had no issues until June or July of this year. He saw the half acre parking put in, workers showing up, and more trucks on the property. He called R. Brais in July to investigate. He feels he is protecting the value of his property. Attorney Ken Slater spoke for Mr. Lussier. He stated again for the record that the Board was there to make a decision as to legal non-conforming use before zoning. There is no judgment to be passed of P&Z or ZEO procedures. The ZEO can review all information available to him. He reviewed for his clients dated photos showing trucks, his clients affidavits, his response to case law cited by Attorney Branse, and other points relating to their case of legal nonconforming use. He stated the Board can not determine against the ZEO unless they determine Mr. Lussier and Ms. Sullivan are lying. Bob Lussier stated he ran a business in Putnam while previously married. He divorced in 1999 and his x-wife continued to live on the property. In November of 2002 he moved to 34 Wetherbee Road with all of his property. The Putnam property was sold once his obligations had been met. Most of his equipment is non-registered forestry equipment which goes to a job and stays there. It is primarily just the two trucks he brings home. These are a 94 Kenworth tractor trailer and a 2000 Log truck. If any of the other equipment does come home it would be on one of these trucks. The equipment listed would rarely all be at home at the same time. He does not fuel trucks. Diesel is stored for the non-registered forestry equipment. His intent was to park the two trucks on the gravel area, out of sight. The gravel was an existing field he tried to make better. Review of maps showing separate driveway, turn-around, and gravel area. Jim Robbins asked if machinery was fueled there before February 2003. A fuel tank is there, the machines aren't fueled on site. Mr. Lussier explained an occasion when logs were on the property due to a job on nearby Fay Road. He stated he is not claiming he has a right to process logs. He just wants to park his trucks. He currently runs a logging company, land management, and land clearing. Bill Hull asked about how the fuel tank is filled. With same type of delivery truck as heat to a home. Cindy Sullivan affirmed statements made in her affidavit. Beverly Champany questioned the affidavits made by those appealing. She felt there was some contradictions. She spoke about use of the cart path and the fact that it had always been kept clear. Jim Robbins asked if there were additional comments or questions from the public. None at this time. Ryan Brais reviewed his ability to accept information at any time. His decision was emailed to the P&Z Commission but he received no response. His decision was based on information he received – most of which was hearsay. He referenced photos stamped January, 2003 showing trucks parked at 34 Wetherbee Road. He also stated that prior to Zoning he had delivered pizzas for Pizza 101, ending his employment there in February, 2003. He does remember seeing trucks parked at 34 Wetherbee

Road when delivering pizzas. The non street legal equipment included in his list are there because they would come home on the 2 trucks on occasion. There are many trucks in town that are company owned that the driver takes home. Mr. Wentworth stated that his affidavit submitted to P&Z and in the appeal are exactly the same. There are no discrepancies. He recalls Ryan stating to him at an earlier time that he never saw any trucks at 34 Wetherbee Road other than the pick-up trucks. Mr. Abbamonte referred to the aerial photographs of 2004, stating they show that Mr. Lussier couldn't have parked trucks where he stated. He also remembers Ryan Brais stating at an earlier P&Z meeting that he could not make a decision without council. Debra Wentworth stated she was in the room when Ryan Brais made statement about not seeing the large trucks at 34 Wetherbee Road. She also stated that she stood by the statements made in her affidavit. Charles Boster, member of P&Z Commission, stated that he did respond to R. Brais email of decision but didn't hear anything back. Bev Champany spoke about conflict between neighbors before this process started. Bob Lussier stated he was willing to give up parking around the lawn area and will limit parking to the gravel area. Jim Robbins moved to continue the Public Hearing in light of the large amount of information submitted. Robert Bitondi seconded. All in favor to continue the Public Hearing. J. Robbins moved that due to scheduling conflicts the April meeting/Public Hearing will be rescheduled to Thursday, April 26, 2007 at 7:00 PM at the Pomfret Community School. Seconded by Bruce Shay. All in favor. Attorney Branse will forward a written request for extension in light of this date.

II. REGULAR MEETING

1. Seat Alternates – None to be seated as all regular members were present.
2. Citizen's Comments – None
3. Items to Add to Agenda – None
4. Approve minutes of February 22, 2007 – Gary Kendall moved to approve minutes as presented. Seconded by Bill Hull. All in favor.

III. CURRENT BUSINESS

1. Application of State of CT, DOT, 7 Cheney Road, Variance Section 10.1, Lot Size – Gary Kendall moved to approve the application for a variance to Section 10.1, lot size at 7 Cheney Road as requested. Bill Hull seconded. B. Hull stated the Town requested work to be done. It appears to have a minimum impact. J. Rivers stated this is part of a larger project. J. Robbins stated that the map submitted to file, dated February, 2006, Rehabilitation Plan, is not stamped by an engineer and would not be adequate to obtain a building permit. He noted that the State will need to come back to the ZBA if anything else is changed. Call for vote: All in favor to approve requested variance.
2. Appeal of February 9, 2007 Decision of ZEO regarding Non-conforming Use at 34 Wetherbee Road – Continued to April meeting.

IV. NEW BUSINESS

1. Correspondence – None

V. OLD BUSINESS

1. ZBA Attorney – Discussion – Brief discussion on attorneys R. Galante is waiting to hear back from.

VI. OTHER BUSINESS

1. Agenda Items for Next Meeting – None

VII. ADJOURNMENT – Jim Robbins moved to adjourn. Seconded by Bruce Shay. All in favor. Meeting adjourned at 9:45 PM.

Respectfully submitted,

Bonnie Ryan, clerk

Date approved_____