

Town of Montville Zoning Board of Appeals
Meeting Minutes of Wednesday, December 1, 2010
Town Council Chambers – Town Hall
7:00 p.m.

1. Call to Order

Chairman MacNeil called the regular meeting of the Zoning Board of Appeals to order at 7:03 p.m.

2. Roll Call

Present were Commissioners Adams, Bassetti, Freeman, Lakowski, Longton and MacNeil. Also present was Zoning Enforcement Officer, Thomas Sanders.

Chairman MacNeil appointed Commissioner Longton as the alternate to sit in for the voting process.

3. New Business

4. Public Hearings

a. Richard C. Cullen: an application for a variance of Section 4.6.2.3 for a Home Occupation Permit on the property located at 467 Chesterfield Road, Oakdale, CT as shown on Assessor's Map 20, Lot 3-4.

Chairman MacNeil read the purpose of the public hearing into the record and requested a staff report from Mr. Sanders.

Mr. Sanders stated for the record the corrected mailings went out and are in order. He gave a history of the property, stating in 2005 Mr. Cullen applied for a home occupation permit was issued a permit for a home office. The applicant operates a tree service named Tomorrow's Trees. There was a complaint filed in July of 2010 regarding the business operating out of this site, and Mr. Cullen was notified and made application to the Planning & Zoning Commission to operate his business out of his house. The zoning application made was to allow for the storage of equipment and to allow for employees to access the site. The request was denied by the Planning & Zoning Commission in August, 2010. Since that time a request for a variance has been applied for to overturn the decision of the zoning commission. The request for the variance in section 4.6.2.3 is requested by the applicant and is part of the report given to the Commission members. Mr. Sanders indicated there are a number of requirements for the home occupation permit that are not being met by the applicant and the Planning and Zoning Commission used the criteria in making their decision for denial in August, 2010 of the original application to operate this business on this residential lot. The applicant applied for a home occupation permit to operate his industrial operation in a residential zone. The Planning

& Zoning used the criteria from the Zoning Regulations and determined the business use in this zone would be too much for the neighborhood and denied it. The applicant is now applying for a variance for this Commission to overturn the decision of the Planning & Zoning Commission which would allow for this business to be operated in a residential zone. Mr. Sanders explained the variance would remain with the land if Mr. Cullen was to sell his property in the future and this property would be open to any industrial use in the future. Staff recommends the application be denied. The applicant has a permit to operate a home office, but he has expanded his business to outside storage of vehicles on the site and he has employees coming to the site to take the vehicles and go to work. This is not allowed in a residential zone. A home occupation permit is designed for family members only to work from their home, not for storage of heavy equipment or the parking of cars outside the home for employees.

Chairman MacNeil invited the representatives for the applicant to come forward to address the Commission.

Attorney Tom Collier, representing Tomorrow's Trees and Mr. Richard Cullen, the owner of the property and the applicant for the variance. He explained his client has applied for a variance for one part of the home occupational rule depicted in 4.6.2 and under 4.6.2.3 there are eleven rules that must be met. He feels the only part of the rule his client needs to get a variance for is part number three, which is "no one other than bonifid residents of the dwelling shall be employed in the conduct of the home occupation, the applicant must show proof of residency and the property owner must sign the request for the home occupation permit". Based on the review of the facts he believes his client has a valid home occupation situation, he has been conducting his business out of his home without complaints for several years. The property consists of sixteen acres and there is significant buffer to adjacent properties. He submitted **Exhibit #1, an aerial photograph with a circular diameter range of one thousand feet that depicts the house site owned by Mr. Richard C. Cullen.** Attorney Collier entered into the record **Exhibit #2, the Assessor's Map depicting the 16.23 acre site in question.** Attorney Collier entered into the record **Exhibit #3, a Google map depicting the level of buffer between Mr. Cullen's property and Chesterfield Road and the closest neighbors.** Mr. Collier reviewed the eleven questions and criteria for a home occupation permit with Mr. Richard C. Cullen. Attorney Collier stated his client meets the spirit of all the rules with the exception of rule #3, the employee rule. There are four employees of Tomorrow's Trees including Mr. Cullen. The employees do not work in the home, they arrive, take a vehicle and go off to work, returning at the end of the day. Attorney Collier argued his client needs help with the employees and the parking area for these employees. He stated his client does not plan to expand his business across the entire sixteen acres, and is willing to state on record they are requesting the variance for a ten thousand square foot area for parking only. Attorney Collier submitted into the record **Exhibit #4, an aerial photograph depicting the location of the house and three identified black squares, the two rectangular areas are the proposed employee parking areas.** The photograph also depicts the area where the company parks the dump truck, cherry picker and pickup trucks. He stated he will submit dimensions of the

parking areas if the ZBA is willing to put a stipulation on the variance approval stating the parking areas can be limited to a certain number of feet and any violation of this variance would be grounds for repeal. He stated Tomorrow's Trees is a local business, and submitted **Exhibit #5, a copy of the LLC showing the home address is the business address.** He stated his client does not have the funding to purchase a commercial lot for parking his vehicles because he is a small business. Up until this year his client has operated his business at his home without incident or complaint. Attorney Collier submitted **Exhibit #6, letters of support from adjacent neighbors.** He read the letters into the record, each letter has the same content and there are a total of six letters signed by neighbors stating they are not opposed to the variance requested by Mr. Cullen. A discussion was held regarding the complaint letter sent to the Planning & Zoning office by a relative of Mr. Cullen in opposition of the operation of a home business from this property. A discussion was held regarding the volume of traffic generated by the home occupation business in a residential zone. Mr. Collier discussed the rule and stated two or three employees will not increase traffic to a degree that is excessive or unreasonable in a residential zone and his client has no intention of expanding his business to include more employees than he already has. He is willing to put a limit to the number of employees as a condition of the home occupation if the variance is approved. A discussion was held regarding the impact of business related traffic in a residential area. Attorney Collier discussed the definition of hardship, stating it is difficult to find a legal hardship for a variance application, the hardship standard is a difficult standard. He stated 4.6.2.3, causes Tomorrow's Trees to lose its legal status of a low impact home occupation which has been seven years in the same location. It is his opinion the intended spirit of the rule appears to be aimed at preventing home occupations that would have employees actually working at the home occupation site. The employees of Tomorrow's Trees do not work at the site, there is no logging or cutting of trees at the site for commercial business, there is no storage of fire wood, wood chips or logs at the site. The company uses the home occupation status to store vehicles, equipment and tools. He stated there is a large buffer between the house location in question and the closest neighbors. It is his opinion that his client complies with ten of the eleven conditions and criteria under regulation 4.6.2.3 that allows for a home occupation and to date there has been only one complaint filed with the town. Attorney Collier stated if this variance is not granted it will cause the company tremendous hardship, it will cause the company to restructure, it will not be able to continue the employment of its employees and will have to use contractors in order to meet the rule and the people it now has employed will have to be laid off and hired as contractors. The action enforcing that portion of the rule is unfair given the good standing of the company as a valid low impact home occupation on a very well buffered site. Mr. Collier submitted the proposed square footage of the parking areas requested on the lot by Mr. Cullen.

Chairman MacNeil asked three times if there was anyone who would like to come forward to speak in favor of this application.

Chairman MacNeil asked three times if there was anyone who would like to come forward to speak in opposition of this application.

Chairman MacNeil inquired if there is anyone who would have general comments regarding this application.

Attorney Martin M. Rudchick, representing Shirley Kobelski, an abutting land owner, explained the problem that has been created is the effort that has been made to expand this home occupation area to include approximately sixteen total acres owned by Mr. Cullen. He discussed the Assessor's map that shows the area in question. The neighbors are relatives and their grandfather has given portions of this area to various members of his family. There is no desire on behalf of his clients to eliminate this man from making a living or giving him a place to do business. They are opposed to any expansion of the home occupation to include any of the conditions that are normally allowed and to include the storage of vehicles and materials on the site. It is his position that as long as the home occupation is limited to the measurements that have been set forth by Attorney Collier there is no objection as long as there is a limited amount of vehicles that are parked there and the Planning Commission will do what is appropriate in this difficult circumstance. His client is looking to restrict the use of the total acreage but does not have any strong opposition to the home occupation restrictions. He urged the Commission to be consistent with the Zoning Regulations in the Town of Montville.

Chairman MacNeil invited Attorney Collier to come forward with rebuttal.

Attorney Collier stated there is a misunderstanding regarding the expansion of Tomorrow's Trees on the entire sixteen acres. It is not the intent of his client to do so. His client will be restricted to the amount of space given and anything above and beyond that will put his client in violation of his home occupation permit. His client is comfortable with limitations and restrictions being put on his home occupation permit if it is granted and he is willing to comply with the limitations.

Commissioner Adams inquired regarding the complaint filed against Tomorrow's Trees. Mr. Sanders read the complaint into the record for the Commission, the complaint simply states that Tomorrow's Trees is not a small business and is operating and located in a residential zone.

The Commission expressed concern regarding granting the request of Mr. Cullen because the variance, if granted, will run with the land and be in effect forever, recorded on the land records and stay with the parcel. This would open up the possibility of a successor owner opening an industrial operation on this parcel of land.

The Commission discussed rule #11 and how a variance would affect this rule. Mr. Sanders stated the home application permit is issued to the applicant and a variance goes with the land. If the variance is granted and the property is ultimately sold and someone else wants to run an industrial business there they will be allowed to do so. Home occupation permits were designed for members of the family of the dwelling only, not to have employees or outside storage of industrial equipment.

There being no more questions or comments, Chairman MacNeil made a motion to close 210-ZBA-06. Motion was seconded by Commissioner Adams. Discussion, none, voice vote, 5-0, all in favor, motion carried. The public hearing for 210-ZBA-06 closed at 8:15 p.m.

b. The Mohegan Tribe of Indians of Connecticut: An application for a Certificate of Location for a fueling station to be located on the property at 16 Sandy Desert Road, Uncasville, CT as shown on Assessor's Map 63, lot 28.

Mr. Sanders reviewed and discussed his Staff Report for this application. He indicated all of the appropriate mailings have been sent and are in order. He explained the Zoning Board of Appeals must approve the location of fueling stations and convenience stores. The function of the Board is to review the location of the proposal and determine if it is an appropriate location for the proposed use. The property is located in the middle of tribal property. This property was never taken into trust when the other parcels surrounding it were taken into trust. It is a large parcel located near the entrance to the Mohegan Sun casino off of Route 32 across from the employee parking garage just to the south of the new road off of Route 32. The application is for a gasoline filling station, or fueling facility. It is proposed for employee purchase of retail gasoline. The Board must determine if the use meets all the criteria and it is his opinion that it does. The lot is surrounded by three parking lots and will not be tax exempt.

Chairman MacNeil asked the representative for the applicants to come forward to address the Board.

Attorney Harry Heller, 736 Route 32 in Uncasville, representing the Mohegan Tribe. He explained the property is not in trust, it was formerly Trading Cove Pizza and at the time of the last trust application, the tribe did not own this property and therefore was not a part of the trust application. It is still owned in fee by the Mohegan Tribe and is subject to municipal regulation and municipal taxation. Sandy Desert and Trading Cove Roads are town owned roads, they have been transferred to the Mohegan Tribe and are owned and maintained by the tribe. The facility proposed for this site is the principal use of this property. The property was originally intended for parking and site plan approval was granted for parking on this property but it is not longer required due to a slower economy. The sales of petroleum products on the property will be at retail, but will not be open to the general public, this is a facility that will be available to employees of the casino and employees of the Mohegan Tribe itself. Casino busses and other vehicles will have access to this facility as well. He stated the Board will have to determine if this facility is appropriately situated with respect to places of public gathering, traffic congestion, access and adverse impact on neighboring properties. This project will not generate any traffic on Town of State roads because it is only available for use by employees of the casino and the tribe. Access to and from the facility is on the internal privately owned roads of the tribe. There are no ecological impacts, it is using state of the art technology and there will be double walled fiberglass storage tanks, a computerized leak detection

monitor and inventory control system that periodically monitors the amount of fuel from the tanks and compares that to the amount that is passed through the pumps and reconciles this data several times per day. It will be installed in accordance with the State requirements and the storm water collection system on the site also has a hydrodynamic separator for the run off in case there is a surface spill, it will be collected in the hydrodynamic separator. That water then passes into a water quality bay and a water quality detention basin, both of which are built in conjunction with prior approval and are already in place. There is a triple line of protection before any storm water on site is discharged to the environment. It is appropriately situated and it is a convenience for tribal and casino employees and it meets the criteria of the statute. The Board is acting as a special agent of the State of Connecticut in this application, not as a Zoning Board of Appeals in a certificate of location approval application and this can be done by a simple majority vote. The facility will be manned and there is a guard shack on the location. There are no facilities for purchase of any other items other than fuel.

Chairman MacNeil inquired three times if there is anyone who would like to come forward to speak in favor of the application.

Chairman MacNeil inquired three times if there is anyone who would like to come forward to speak in opposition of the application.

Motion made by Chairman MacNeil, seconded by Commissioner Longton to close application #210-ZBA-07 at 8:33 p.m. Discussion, none, voice vote, 5-0, all in favor. The Public Hearing for #210-ZBA-07 closed at 8:33 p.m.

5. Old Business

a. Richard C. Cullen, an application for a variance of Section 4.6.2.3 (home occupation permit) on property located at 467 Chesterfield Road, Oakdale, CT as shown on Assessor's Map 20, lot 3 & 4.

Motion made by Chairman MacNeil, seconded by Commissioner Adams to deny application #210-ZBA-6, a request for a variance of Section 4.6.2.3 (3), for property located at 467 Chesterfield Road shown on Assessor's Map 20, lots 3 & 4. The reasons for denial being the application is incomplete and it does not address all of the criteria as required to issue a permit; the intensity of this type of business is not conducive to operating in a residential area and there is no unusual hardship or exceptional difficulty that would deprive the applicant of a reasonable use of the land.

Discussion: Chairman MacNeil stated Planning & Zoning concluded the applicant did not meet the criteria for a home occupation permit, and in reviewing the home occupation permit criteria, it is clear the intent was to give occupants of a dwelling use of their home to conduct their personal business. This is clearly an industrial business with employees coming and going and there are conditions that are clearly not met. This is an abuse of a home occupation permit in its original intent and there are many other businesses that

may want the luxury of operating out of their homes but can not because they have smaller lots. He can not determine a hardship for granting this request. Commissioner Longton pointed out the regulations clearly state there can not be employees at the home and he is asking for a variance to allow employees. The variance will stay with the land and not just with the business and he has a problem with this. The next owner of the property could legally conduct a business with employees and the zoning of the lot in question was not meant for that purpose and it is not fair to others who have a home occupation permit who would like to have employees at their business. Commissioner Adams stated if the owner has conducted business as usual this would not be an issue, but somewhere along the line he brought attention to himself and if it were not for that he would not be in front of this board. This is a residential zone and the proposed use is not permitted. In considering a hardship, the Board can not consider a financial hardship. This business has clearly outgrown its original intent and the business has been operating outside of the regulations for a home occupation permit for some time.

Roll call vote, 5-0, voting in favor of the denial of application #210-ZBA-06 were Commissioners Adams, Bassetti, Lakowski, Longton, and MacNeil. Voting in opposition, none, motion carries. Application #210-ZBA-06 Denied.

b. The Mohegan Tribe of Indians of Connecticut, an application for a Certificate of Location for a fueling facility to be located on the property at 16 Sandy Desert Road, Uncasville, CT as shown on Assessor's Map 63, lot 128.

Motion made by Chairman MacNeil, seconded by Commissioner Bassetti to approve the location application #210-ZBA-07, Mohegan Tribe of Indians employee fueling facility and to have the Chairman sign a completed form.

Discussion: Commissioner Adams stated this is a cut and dry application and he has no opposition to the proposal. Commissioner Longton stated the application meets the intent of the code and there are no hidden considerations, there are no grey areas and he sees no problem with approving the location.

Roll call vote, 5-0, voting in favor were Commissioner Adams, Bassetti, Lakowski, Longton and MacNeil. Voting in opposition, none, motion carries. Application #210-ZBA-07 approved.

6. Motion made by Commissioner Longton, seconded by Commissioner Bassetti to approve the Zoning Board of Appeals meeting minutes of July 7, 2010 as submitted. Discussion, none, voice vote, 5-0, all in favor, motion carried.

7. Communications

Mr. Sanders submitted the Zoning Officer's report for the months of August, and September, 2010. The report depicts the number of zoning permits, home occupation permits, zoning applications pending, complaints, and trade permits.

8. Other Business and Applications to come before the Zoning Board of Appeals

a. Election of Officers

Motion made by Commissioner Longton, seconded by Commissioner Bassetti to appoint Commissioner MacNeil as Chairman of the Zoning Board of Appeals and Commissioner Adams as the Vice-Chairman of the Zoning Board of Appeals. Discussion, none, voice vote, 5-0, all in favor, motion carried.

b. Motion made by Commissioner Longton, seconded by Commissioner Adams to approve the 2011 meeting schedule of the Zoning Board of Appeals as discussed with alternate dates to accommodate holidays. These dates are as follows, January 5, February 2, March 2, April 6, May 4, June 8, July 13, August 3, September 7, October 5, November 2, and December 7, 2011. Discussion, none. Voice vote, 5-0, all in favor, motion carried, 2011 dates approved.

Mr. Sanders updated the Commission regarding Cherry Lane and Cockerham litigation.

9. Adjournment

Motion made by Chairman MacNeil, seconded by Commissioner Longton to adjourn the meeting at 9:10 p.m. Discussion, none, voice vote, 5-0, all in favor, motion carried. Meeting adjourned at 9:10 p.m.

Respectfully Submitted by:

Audrey Ulmer, Recording Secretary for the Town of Montville Zoning Board of Appeals.