

TOWN OF MONTVILLE
ZONING BOARD OF APPEALS
310 NORWICH-NEW LONDON TURNPIKE
UNCASVILLE, CONNECTICUT 06382
TELEPHONE: (860) 848-6779 – FAX: (860) 848-2354

REGULAR MEETING MINUTES

Wednesday, April 4, 2018 – 7:00 P.M.

LOCATION: MONTVILLE TOWN HALL, *Council Chambers*

1. Call to Order

Chairman MacNeil called the meeting to order at 7:01 p.m.

2. Roll Call

Present were Douglas Adams, Joseph Berardy, Richard Gladue, Robert Yuchniuk, John MacNeil, and Carl Freeman (Alternate). Also present was Zoning and Wetlands Enforcement Officer (ZWEO) Liz Burdick.

3. Minutes: Approve the Minutes of the December 6, 2017 Meeting.

Motion made by Board Member MacNeil, seconded by Board Member Adams. Discussion: None. Voice vote, 4-0-1, all in favor. Voting in Favor: Board Members Adams, Gladue, Yuchniuk, and MacNeil. Voting in Opposition: None. Voting in Abstention: Board Member Berardy. Motion carried.

4. Executive Session: *none*

5. New Business: *none*

6. Public Hearings/Applications.

A. Public Hearing – Application #218ZBA1 – 2090 Route 32 (Map 103, Lot 25), Uncasville, CT – Applicant, Douglas Sanford – Property Owner, L & M Montville, LLC for location approval per C.G.S. 14-54 for auto sales and repairs. (*PH must close by 5/8/18*).

Chairman MacNeil opened Public Hearing Application #218ZBA1, 2090 Route 32, Uncasville.

ZWEO Burdick stated that the Legal Notice for the Public Hearing, which was originally scheduled for March and cancelled due to inclement weather, was re-noticed on March 23 and 30 in *The New London Day* newspaper and all certified mail receipts of the notices to the abutting property owners have been received. The Applicant is seeking approval for the operation of an established automotive sales & repair facility, per CT General Statutes Section 14.54. The property, which was formerly used as a garage by the State of CT DOT (Department of Transportation), was vacant for several years before being sold to its current owner. A Zoning Permit and site plan for the use were reviewed and approved prior to the

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sale and contingent upon the Board's approval. The staff and Town Attorney agreed that the Zoning Board of Appeals would be required to hold a Public Hearing and approve the location of the Auto Center in order to transfer its CT DMV (Department of Motor Vehicles) license. Proposed minor site improvements include cleanup of the site, water quality basin, parking lot striping, including handicap parking, and extensive interior renovations, as approved by the Building Official and Fire Marshal. The Board reviewed the site plan and photographs and the following recommendations were made as the Board considers its decision on the application:

- (1) location of the property in the C-2 (Commercial) Zone on a State road in a commercial corridor
- (2) its use is permitted in the zone, per the Zoning Regulations, Section 11.A.2.2
- (3) site was formerly utilized as the a State of CT DOT Garage facility
- (4) submission of the application to the Board for review, as required
- (5) submission of the site plan

In response to Board Member Gladue, the concrete sidewalks indicated on the site plan are existing and no new sidewalks are being proposed.

The Application will not be sent to the Planning & Zoning Commission for review. With the exception of the CT DOT garage not having been a licensed repair garage, the use of the property is basically the same. Ellen Bartlett, a Professional Engineer with Green Site Design, LLC, and CLA Engineers, Inc. was hired by the Applicant to create the site plan.

Applicant Douglas Sanford, 688 West Thames Street, Norwich, stated that he owns a successful family business repairing and selling vehicles. The business is now in need of expansion and the property, being fenced and providing ample space, would provide a great opportunity for the business to continue growing. As previously stated, site improvements will be made and the site will be reviewed and approved by the CT DMV with respect to the necessary floor drains and traps, and the like, to ensure that proper protocols are in place to avoid any possible oil overflow. Proof regarding the proper handling and disposal of hazardous chemicals, waste oil, and used tires will also be provided to the CT DMV at regular intervals, as required.

Chairman MacNeil asked three times if there was anyone present who would like to speak in favor of the application.

Chairman MacNeil asked three times if there was anyone present who would like to speak in opposition to the application.

Chairman MacNeil asked if there were any questions or comments from the Board.

Motion made by Chairman MacNeil, seconded by Board Member Adams, to close the Public Hearing Application #218ZBA1, 2090 Route 32, Uncasville. Discussion: None. Voice vote, 5-0, all in favor. The Public Hearing was closed.

- B. Discussion & Decision – Application #218ZBA1 – 2090 Route 32 (Map 103, Lot 25), Uncasville, CT – Applicant, Douglas Sanford -Property Owner, L & M Montville, LLC for location approval per C.G.S. 14-54 for auto sales and repairs. (DRD 65 days from close of PH).**

Motion made by Chairman MacNeil, seconded by Board Member Adams, to approve Application# 218ZBA1 of Applicant, Douglas Sanford and Property Owner, L & M Montville, LLC for Location Approval pursuant to Section §14-54 of the Connecticut General Statutes to allow the operation of automotive dealer & repair facility at 2090 Route 32 (Map 103, Lot 25), Uncasville, CT, in accordance with a plan entitled “Site Plan, 2090 Norwich New London Turnpike, Montville, CT, Prepared for Sanford Auto, Prepared by Green Site Design, Dated Sept. 2017”, with a finding that the subject property is suitable for the business intended. Discussion: None. Roll Call vote, 5-0, all in favor. Voting in Favor: Board Members Adams, Berardy, Gladue, Yuchniuk, and MacNeil. Voting in Opposition: None. Motion carried.

- C. Public Hearing – Application #218ZBA2 – 1605 Route 163 (Map 64, Lot 4), Oakdale, CT – Applicant/Property Owner, Gretchen M. Brochu for Rear Yard Variance to Construct an In-ground Pool. (PH must close by 5/8/18).**

Chairman MacNeil opened Public Hearing Application #218ZBA2, 1605 Route 163, Oakdale.

ZWEO Burdick stated that the Public Hearing was originally scheduled for March, but was cancelled due to inclement weather. The legal notices were re-noticed on March 23 and 30 in *The New London Day* newspaper and all certified mail receipts of the notices to the abutting property owners have been received. The Applicant is requesting a 27’ variance of the minimum required 60’ rear yard setback, per the Zoning Regulations, Section 6.6.3 (R-120 Rear Yard Setback), to allow the construction of an in-ground pool located at a distance of 33’ to the east rear boundary line.

Attorney William R. Sweeney, Tobin, Carberry, O’Malley, Riley and Selinger, P.C. (TCORS), representing the Applicant, presented the Board with a packet, including a proposed site plan, relevant photographs of the property, and a GIS mapping of the property, reflecting its unusual configuration. The proposed location of the irregularly shaped approximately 20’ x 30’ in-ground pool is north and down gradient of the home. The pool will be surrounded by pavers on all sides and nestled between the two existing curved retaining walls, which will provide some privacy and screening. The Applicant, he stated, is entitled to the variance due to the unique physical constraints of the property, which create an

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unusual and exceptional difficulty or unusual hardship for the construction of a reasonable and customary accessory pool structure without a rear-yard variance. The following physical constraints, which, both independently and as a group, constitute unique physical conditions that are not common among similarly situated lots in the neighborhood, include:

1. Unusually Shaped Lot – The approximately 2.5-acre lot with over 600' in road frontage is unlike other rectangular-shaped lots located along Route 163, where 60' front and rear setbacks would be possible. Being a very wide and shallow lot with very little depth, the lot's triangular shape creates obstacles for future development, particularly in relation with the 60' front and rear yard setbacks. The home, itself, was constructed on the lot's widest point and is the only area of the property where a home can be constructed without the need of a variance.
2. Topography – The lot slopes downward in a 30' grade change from the south to north towards a stream. The residence is built into the slope, resulting in the need for the existing curved retaining walls. As such, the only relatively level area, outside of the applicable setbacks that can be used to install a pool is located just northwest of the residence. Unfortunately, due to the location of the septic system, it is not possible to construct the pool in this area.
3. Ledge Outcrops – Theoretically, the pool could be constructed south of the residence, but, because the area is dominated by a ledge that runs along the entire south side of the property and wraps around the southeastern corridor, excavating in this area would create an exceptional difficulty. Thus, further limiting the location of the pool in a conforming area. The location would also not provide sufficient privacy to the neighboring residence.
4. Inland Wetlands – Further frustrating the ability to locate a pool in an acceptable area is a stream that cuts through the property from east to west at the northern end of the lot and a swath of forested wetlands associated with the stream.

The granting of the variance would allow the Applicant to modestly improve the residential property and provide a benefit to the family without resulting in an adverse change to the residential nature of the property, itself, or an adverse effect on the neighboring properties and neighborhood, as a whole.

Chairman MacNeil asked three times if there was anyone present who would like to speak in favor of the application.

Chairman MacNeil asked three times if there was anyone present who would like to speak in opposition to the application.

Chairman MacNeil asked if there were any questions or comments from the Board.

ZWEO reported that one telephone call from the adjacent southern property owner was received regarding their preference to have the pool located on the (east) rear boundary line

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rather than to the south of the residence due to concerns regarding the noise any activity surrounding the pool might generate.

In response to Board Member Adams, Atty. Sweeney stated that a fence with the minimum required height would be installed around the pool, as required by code. The only neighboring property that will be in full view of the proposed pool is located in the east/northeast of the property and they have expressed no objections to the pool.

Discussion ensued regarding alternate location(s) for the pool. The proposed location would increase the distance of the pool to the neighboring property located to the south and would not displace the current improvements that have been made to the property. The lot was purchased and constructed by its current owners and, as such, Chairman MacNeil expressed his concerns regarding the approval of a variance for a hardship that appears to have been self-created, having been aware of the limitations of the lot from the beginning. Atty. Sweeney stated that the listed hardships were in existence well before the construction of the residence as more than half of the property is unusable. He contended that the hardship was not self-created, rather it is due to the physical constraints of the property, complicating the placement of the pool to a degree that it would be reasonable for the Board to provide some relief. With respect to the privacy the location would provide, it does not impinge upon the neighboring property and is secluded. ZWEO Burdick confirmed that the ledge does wrap around towards the side of the garage. In response to Alternate Board Member Freeman, Atty. Sweeney confirmed that, by approving a variance for this particular property, the Board would not be setting a precedence as variances are judged on a case-by-case basis based upon the individual features of the property in question and there must be a hardship.

ZWEO Burdick proposed the possibility of providing the Applicant with the opportunity to investigate the possibility of constructing the pool behind the home to confirm that an in-ground pool cannot be placed in that location. Based on the photographic evidence and location of the residence, Chairman MacNeil felt that no further investigation would be necessary. Board Member Berardy agreed, adding that the proposed location would provide more sunlight and avoid the cutting down of trees.

Motion made by Chairman MacNeil, seconded by Board Member Adams, to close the Public Hearing Application #218ZBA2, 1605 Route 163, Oakdale. Discussion: None. Voice vote, 5-0, all in favor. The Public Hearing was closed.

- D. Discussion & Decision – Application #218ZBA2 – 1605 Route 163 (Map 64, Lot 4), Oakdale, CT – Applicant/Property Owner, Gretchen M. Brochu for Rear Yard Variance to Construct an Inground Pool. (DRD 65 days from close of PH).**

Motion made by Chairman MacNeil, seconded by Board Member Adams, to, after giving due consideration to all relevant factors, including those in Section 22.2 of the Montville Zoning Regulations (“Regulations”) and Sections 8-6 & 8-7 of the

Connecticut General Statutes, GRANT the variance as requested in Application #218ZBA2 as follows: A 27' variance of the minimum required 60' rear yard setback per ZR Sec. 6.6.3 (R-120 Rear Yard Setback) to allow the construction of an inground pool located a distance of 33' to the (east) rear boundary line.

The findings for the granting of the variances are:

- **The unique conditions and circumstances associated with the request are not the result of actions of the Applicant taken subsequent to the adoption of the Montville Zoning Regulations and the variance would be in harmony with the general intent & purpose of the Montville Zoning Regulations & would conserve the public health, safety, convenience, welfare and property values; *and***
- **The exceptional difficulty or unusual hardship on which the decision is based is as follows:**
 1. **Unusually Shaped Lot**
 2. **Topography**
 3. **Ledge Outcrops**

Discussion: While Chairman MacNeil reiterated his concerns regarding the Applicant's knowledge of the limitations of the property prior to its purchase and construction of the residence and the importance of adhering to the Regulations, he felt that, due to the existing ledge, topography, and the unusual circumstance of the existing landscape, there was no suitable alternative for the location of the pool. Roll Call vote, 5-0, all in favor. Voting in Favor: Board Members Adams, Berardy, Gladue, Yuchniuk, and MacNeil. Voting in Opposition: None. Motion carried.

E. Public Hearing – Application #218ZBA3 – 11 Red Cedar Avenue (Map 67, Lot 59), Uncasville, CT – Applicant/Property Owner: Clinton Hewitt for Variance for Lot Area Reduction for a Boundary Line Adjustment. (*PH must close by 5/8/18*).

G. Public Hearing – Application #218ZBA4 – 15 Red Cedar Avenue (Map 67, Lot 58), Uncasville, CT – Applicant, Charles Rousseau – Property Owners, Charles Rousseau, Alexander Rousseau & Amy R. Armstrong for Variance for Lot Area Reduction for a Boundary Line Adjustment. (*PH must close by 5/8/18*).

Chairman MacNeil opened Public Hearing Applications #218ZBA3, 11 Red Cedar Avenue – and #218ZBA4, 15 Red Cedar Avenue.

ZWEO Burdick stated that the Public Hearings were originally scheduled for March, but was cancelled due to inclement weather. The legal notices were re-noticed on March 23 and 30 in *The New London Day* newspaper and all certified mail receipts of the notices to the abutting property owners have been received. The three parcels, 11, 15, and 19 Red Cedar Avenue, are located in the towns of Montville and Waterford and each contain a structure. Two of the properties, 11 and 15 Red Cedar Avenue are before the Board this evening for a variance for

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a lot area reduction for a boundary line adjustment. During a recent survey that was conducted on the property located at 15 Red Cedar Avenue, it was discovered that the property lines and their respective structures did not correspond with the Deed description. As such, they are proposing lot line adjustments to correct the encroachments. For zoning purposes, in Montville, each of the lots must conform to 40,000 square feet. The Applicants are requesting a lot reduction of 0.10 acres to 0.07 acres for the Montville portion of the property located at 11 Red Cedar Avenue and a 0.15 acres to 0.10 acres lot reduction for the Montville portion of the property located at 15 Red Cedar Avenue.

Attorney Garon Camassar, Dubicki & Camassar, New London, representing the Applicants, stated that the properties in question create a hardship, not created by the Applicant that has been in existence for a long period of time. The properties were divided in circa 1948 and are non-conforming. There are two options to correct the discrepancy: (1) request a variance from the Zoning Board of Appeals to move the boundary lines and do quit claim deeds between the parties or (2) bring an action to the Superior Court based on a claim to quiet title on the basis of conflicting claims for adverse possession. The latter option may prove difficult as none of the claims fit within the rules of adverse possession.

In response to Board Member Adams, he confirmed that all of the property owners are in agreement with the boundary line adjustment.

Chairman MacNeil asked three times if there was anyone present who would like to speak in favor of the application.

Chairman MacNeil asked three times if there was anyone present who would like to speak in opposition to the application.

Chairman MacNeil asked if there were any questions or comments from the Board.

Motion made by Chairman MacNeil, seconded by Board Member Adams, to close Public Hearings #218ZBA3 – 11 Red Cedar Avenue – and #218ZBA4 – 15 Red Cedar Avenue. Discussion: None. Voice vote, 5-0, all in favor. The Public Hearing was closed.

F. Discussion & Decision -Application #218ZBA3 – 11 Red Cedar Avenue (Map 67, Lot 59), Uncasville, CT – Applicant/Property Owner: Clinton Hewitt for Variance for Lot Area Reduction for a Boundary Line Adjustment. (DRD 65 days from close of PH).

Motion made by Chairman MacNeil, seconded by Board Member Adams, to, after giving due consideration to all relevant factors, including those in Section 22.2 of the Montville Zoning Regulations (“Regulations”) and Sections 8-6 & 8-7 of the Connecticut General Statutes, GRANT the variance as requested in Application #218ZBA3 as follows: A variance of 16,550SF of the minimum required 20,000SF lot area per ZR Sec. 9.4 (R-20 Minimum Lot Size with Public Sewer) for lot area reduction from the existing (Montville portion) lot area of 4,513SF (.10 acres) to 3,450SF (.07 acres) to allow a boundary line adjustment between the 11 Red Cedar Avenue and 15

Red Cedar Avenue in accordance with the boundary line adjustment map dated 11/24/17, revised to 01/18 to be filed on the land records.

The findings for the granting of the variances are:

- **The unique conditions and circumstances associated with the request are not the result of actions of the Applicant taken subsequent to the adoption of the Montville Zoning Regulations and the variance would be in harmony with the general intent & purpose of the Montville Zoning Regulations & would conserve the public health, safety, convenience, welfare and property values; and**
- **The exceptional difficulty or unusual hardship on which the decision is based is as follows:**
 - 1) **The historical areas of occupation, which were not created by the current property owners, for properties at 11 and 15 Red Cedar Avenue do not match boundary lines described in the Deeds to the subject properties, which was discovered by a recent survey and the granting of the variance allows for boundary line adjustments to correct conflicting title claims in that the record clearly shows the colossal error and misunderstandings that were assumed for many years; the file will indicate the lot lines and presents a clear hardship**

Discussion: None. Roll Call vote, 5-0, all in favor. Voting in Favor: Board Members Adams, Berardy, Gladue, Yuchniuk, and MacNeil. Voting in Opposition: None. Motion carried.

H. Discussion & Decision -Application #218ZBA4 – 15 Red Cedar Avenue (Map 67, Lot 58), Uncasville, CT – Applicant, Charles Rousseau – Property Owners, Charles Rousseau, Alexander Rousseau & Amy R. Armstrong for Variance for Lot Area Reduction for a Boundary Line Adjustment. (DRD 65 days from close of PH).

Motion made by Chairman MacNeil, seconded by Board Member Adams, to, after giving due consideration to all relevant factors, including those in Section 22.2 of the Montville Zoning Regulations (“Regulations”) and Sections 8-6 & 8-7 of the Connecticut General Statutes, GRANT the variance as requested in Application #218ZBA4 as follows: A variance of 15,559SF of the minimum required 20,000SF lot area per ZR Sec. 9.4 (R-20 Minimum Lot Size with Public Sewer) for lot area reduction from the existing (Montville portion) lot area of 6,377SF (.15 acres) to 4,441SF (.10 acres) to allow a boundary line adjustment between 11, 15, and 19 Red Cedar Avenue.

The findings for the granting of the variances are:

- **The unique conditions and circumstances associated with the request are not the result of actions of the Applicant taken subsequent to the adoption of the Montville Zoning Regulations and the variance would be in harmony with the general intent**

& purpose of the Montville Zoning Regulations & would conserve the public health, safety, convenience, welfare and property values; *and*

- The exceptional difficulty or unusual hardship on which the decision is based is as follows:

- 1) The historical areas of occupation, which were not created by the current property owners, for properties at 11 and 15 Red Cedar Avenue do not match boundary lines described in the Deeds to the subject properties, which was discovered by a recent survey and the granting of the variance allows for boundary line adjustments to correct conflicting title claims in that the record clearly shows the colossal error and misunderstandings that were assumed for many years; the file will indicate the lot lines and presents a clear hardship.**

Discussion: None. Roll Call vote, 5-0, all in favor. Voting in Favor: Board Members Adams, Berardy, Gladue, Yuchniuk, and MacNeil. Voting in Opposition: None. Motion carried.

7. **Old Business:** *none*

8. **Other Business:** *none*

9. **Adjournment**

Motion made by Chairman MacNeil, seconded by Board Member Adams, to adjourn the meeting at 8:39 p.m. Discussion: None. Meeting adjourned.

Respectfully Submitted by:

Agnes Miyuki, Recording Secretary for the Town of Montville

**AN AUDIO RECORD OF THE MEETING CAN BE FOUND ON THE TOWN'S WEBSITE
LOCATED UNDER RESOURCES – FORM REPOSITORY – MEETING RECORDINGS**