

TOWN OF MONTVILLE
ZONING BOARD OF APPEALS
310 Norwich-New London Turnpike, Uncasville, CT 06382
Telephone: (860) 848-6779 – Fax: (860) 848-2354
Email: planningdept@montville-ct.org

REGULAR MEETING – PUBLIC HEARING MINUTES

Regular Meeting/Public Hearing
June 1, 2022, 6:00 p.m.
Town Council Chambers – Town Hall

The Town of Montville has lifted the mask mandate effective Monday, February 28, 2022, throughout the Town facilities in coordination with the schools. Although the mask mandate has been lifted, Uncas Health strongly recommends that all individuals, both vaccinated and unvaccinated, continue to wear masks indoors. Comments will only be accepted at times designated during public hearings by the Chair of the meeting. The Zoning Board of Appeals Rules of Procedure, decorum, timeliness, and suitability shall be followed and enforced.

1. Call to Order.

Chairman MacNeil called the regular meeting of the Zoning Board of Appeals to order at 6:00 p.m.

2. Roll Call.

Present were Board Members Douglas Adams, Vincent Attwater-Young, Richard Gladue, John MacNeil, and Alternates Arthur Montorsi and Russell Wehner. Board Member Joseph Berardy was absent. A quorum was present.

Chairman MacNeil introduced newly appointed Board Alternates Arthur Montorsi and Russell Wehner and Board Member Vincent Attwater-Young. He also seated Alternate Montorsi seated for voting.

3. Minutes: Approve the Minutes of the December 1, 2021, Meeting.

Motion by Board Member MacNeil; seconded by Board member Adams to approve the Minutes of December 1, 2021, as written. Discussion: none. Voice vote: 5-0, all in favor. Motion carried.

4. Executive Session. -- None

5. Public Hearings/Applications.

- a. **Public Hearing. 22 ZBA 1 Owner/Applicant: Hassan/Hussain LLC** – An application for a Certificate of Location Approval for a Motor Vehicle Fueling Facility (Gas Station/Convenience Store) to be located at 2040 Route 32 (M/B/L 103-001-00A), Uncasville, CT. (*App. Submitted 04/25/2022. Date of Receipt 05/04/2022. Public Hearing set for 06/01/2022.*)

Town of Montville

Regular Meeting/Public Hearing – Zoning Board of Appeals

June 1, 2022

Town Planner Burdick, substituting for Zoning Enforcement Officer (ZEO) Williams, introduced herself and reported the following exhibits and called for them to be included into the record:

1. Application and Plans titled “Concept 3 of 2040 New London Turnpike (AKA CT RT 32) Uncasville, Connecticut Prepared For: Amer Choudrey March 7, 2022, Drawing Scale: 1’=30’ Sheet No. 1 of 1 Job No. 21-001048 Drawn by: DC Fedus Engineering LLC, Civil Engineers, Mailing Address: 70 Essex Street, Mystic, Connecticut 06355, Office: (860) 536-7390; Fax: (860) 536-1644.
2. Public Hearing Notice published in *The Day* newspaper on May 20, 2022.
3. Public Hearing Notice posted to the Town of Montville website on May 20, 2022.
4. Public Hearing Notice published *The Day* newspaper on May 27, 2022.
5. Staff Report dated June 1, 2022.

Town Planner Burdick then read the following Staff Report dated June 1, 2022:

<u>APPLICANT:</u>	Hassan/Hussain, LLC
<u>PROPERTY OWNER:</u>	Hassan/Hussain, LLC
<u>ATTORNEY:</u>	Harry B. Heller, Esq., Heller, Heller & McCoy
<u>SITE ADDRESS:</u>	2040 Route 32 (M/L/B 103-001-00A), Uncasville, CT
<u>ZONING DISTRICT:</u>	C-2 Zone (Commercial)
<u>PROPOSAL:</u>	Location Approval for a Motor Vehicle Fueling Facility (Gas Station/Convenience Store) per CGS § 14-321.

The Zoning Board of Appeals is acting in its capacity as an Agent for the State of CT in reviewing this application for a Certificate of Location Approval for a Motor Vehicle Fueling Facility (Gas Station/Convenience Store) per CT General Statutes (CGS) §14-321 (copy attached). A public hearing is being held for this application, but there is no requirement for a hearing in either the CGS or the Montville Zoning Regulations (ZR). (Per Town Planner Burdick, it is the custom of the Board to hold a public hearing for such applications.)

The property is located at the southwesterly intersection of CT Route 32 & Podurgiel Lane in a C-2 (commercial) zoning district on about 2.68-acres with about 453' of frontage on Norwich-New London Turnpike (CT Route 32) and about 256' of frontage on Podurgiel Lane and contains regulated wetlands and upland areas.

Staff recommends the Board consider the following in making its decision on the application:

The subject property is located in the C-2 (Commercial) Zoning District in a commercial corridor and the proposed use of a convenience/gasoline sales establishment is permitted per ZR Section 11.2.11 (C-2 Permitted Uses), in accordance with ZR Section 4.11.10 (Gasoline Filling Stations and Convenience/Gasoline Sales Establishments).

The proposed use will be required to obtain approval for regulated activities from the Montville Inland Wetlands Commission and site plan approval from the Montville Planning & Zoning Commission and any other required local, state or federal permits/approvals.

Town of Montville
Regular Meeting/Public Hearing – Zoning Board of Appeals
June 1, 2022

There were no questions directed to Town Planner Burdick concerning the report.

Attorney Harry Heller of Heller, Heller and McCoy at 736 Route 32, Uncasville, CT introduced himself and his accompanying associate Attorney Andrew Cody as representing the Applicant. He referred to the application for review before the Board as a Certificate of Location Approval of a DMV License under C.G.S. §14-321 as stated on the record in the Staff Report. For this application, it was stated the ZBA would not be acting in its customary role as cited in C.G.S. Chapter 124 ruling on variances and appeals presented by the ZEO. Instead, it would act as an agent for the State of CT DMV on approval of the application per its statutes. Given very little caselaw as mentioned by the Town Planner on interpretation of C.G.S §14-321 and having nothing in the statutes or Town zoning regulations requiring a public hearing, thus a review of the history of C.G.S §14-321, gasoline dispensing and C.G.S. §14-55, Motor Vehicle Repairers and Sales Facilities must be considered. In the late 1990's, the original versions of C.G.S §14-321 and C.G.S. §14-55 were repealed by State legislature. Under the original C.G.S §14-321, there were specific procedural requirements and evaluation criteria that required the ZBA as an agent for the State in consideration of a Certificate of Location Approval that included highway configuration, traffic, schools, places of public gatherings, and places of worship. After the statute repeal, it was unclear under the new statute if the local authority was the Zoning Commission or ZBA and for a time Certificates of Location Approval in Montville were administered by Planning & Zoning. There is now caselaw that makes clear that where a municipality has zoning the authority is the ZBA. Considerations by the ZBA for a Certificate of Location Approval include traffic configurations and determining whether the application proposal conforms. The 2.68 acre parcel at Route 32 and Podurgiel Lane is on the north side of access to Home Depot but use is permitted as of right and due to its location in the C-2 Zone (Commercial) for permitted uses i.e., hotels, conference centers. An overlay zone is included and applies to any property fronting Route 32. DOT bilateral access from Podurgiel Lane and synchronization of other streets in the area were mentioned. The DOT will not allow a left-hand turn and a right-hand turn at the area. Further, history was mentioned concerning a 50-room hotel approved at the location in the late 1990's. Any development on the site will need ingress and egress for northbound and southbound traffic. The signaled lane is now short but can be adjusted for a longer time. Per conclusion, consistent zoning in Town designates the location as of right, the project has been appropriately designed for traffic consideration, and the application for approval applies with the standard.

Chairman MacNeil asked three (3) times if anyone else wanted to speak in favor of the application. There were none. Thereafter, the question was asked if anyone wished to speak in opposition of the application limiting there comments to three (3) minutes.

Resident Therese Dunn, 48 Podurgiel Lane inquired why another gas station was needed when one is at Stop & Shop around the corner and three (3) other stations a quarter a mile away on Route 32. The map shows an exit and entrance ramp to the project gas station. Her suggestion was for another traffic flow given the traffic turning right off of I-395 leaves Podurgiel Lane traffic at a standstill even if the light is green or chance getting hit from the highway exit traffic. Further comments included the difficulty in getting out of the lane given the limited time the traffic light is green, the need for no more problems on the lane, the prior mud slide and

Town of Montville
Regular Meeting/Public Hearing – Zoning Board of Appeals
June 1, 2022

evacuation in October 14, 2005 when Montville Commons was built and the damage from it, and building an exit and entrance for the location on Route 32 and leaving Podurgiel alone.

John Dunn, 29 Packwood Road, Baltic, CT, concurred with the comments made by his mother and suggested egress on Occum Lane instead of Podurgiel Lane stated use of Podurgiel Lane was so a left turn can be taken. He spoke potential for fatalities given there is no right turn on red although it is mostly ignored and cars nearly broadsided by highway traffic, suggested use of the Montville Commons driveway for access, and referenced his 25 years working for the DOT and current work as a consultant regarding traffic concerns. He also referred to the Mohegan Fire Station vicinity to the project gas station entrance/exit site as being problematic.

Resident Mike Gurchik, 59 Podurgiel Lane, commented from an economic standpoint on the three (3) gas stations, three (3) convenience stores, CVS, and Stop & Shop in the area that can be a disadvantage to those businesses. He noted being nearly broadsided by traffic and of the traffic light at Podurgiel Lane that has a five-minute wait for 15-seconds to leave the lane. He spends a hour each day waiting at the school bus stop. Today, there were 34 cars making a right turn on red from Route 2A and two (2) that ran a red light. This traffic activity may cause injuries or someone being killed. He suggested installation of a red light camera.

Resident Michelle Lemieux, 32 Podurgiel Lane, commented on the traffic light at the lane that requires a 3-minute wait and when it changes only allows two (2) cars to exit the lane. She stated there was no reason for a gas station in her backyard adding there was no butters list nor notification for the public hearing. Other concerns were the project exit/entrance location, the number of trees that can fall, Podurgiel Lane is a dead-end, traffic illegally turning right on red, and not wanting to pay Stop & Shop a royalty.

Resident Lawrence Duprey, 64 Podurgiel Lane, commented traffic is hazardous for residents, and traffic from the highway ignores no right turn on red. He also commented on the safety hazard concerning school buses, loss of property values, 50 gas stations within a 15-minute drive, and detailed drainage in his backyard and damage from the Commons. Also, the project is counterproductive for use of right for residents on the lane which they should get.

Resident Kathy Fletcher, 36 Podurgiel Lane, has lived there for three (3) years. She has been nearly broadsided four (4) times because of the ramp traffic from the highway where a turn on red is not allowed. It makes no sense for Podurgiel Lane particularly with the school bus stop there and where someone drove through when the bus was stopped. It is a big safety issue now and with additional traffic there will be more safety issues.

Resident Beth Sciarroni, 16 Podurgiel Lane lives in the newest house on the lane and stated progress will abut what is already there. She suggested reviewing the traffic light, the exit right and the gas station for a different means of egress. Her home is the closest to the effected project area in question; the Town needs to look out for the residents as they are getting steamrolled at times.

Town of Montville

Regular Meeting/Public Hearing – Zoning Board of Appeals

June 1, 2022

Resident Michelle Lemieux, 32 Podurgiel Lane had additional comments referring to Attorney Heller's comment regarding the approval for a hotel in the 1990's stating that decision was made before development of the Home Depot and the Montville Commons.

Resident Joe Cerniglia, 52 Podurgiel Lane stated he has run the lane for thousands of miles and said every opposition comment made today is true. He acknowledged witnessing fist fights and being nearly run off the road this morning while driving 30 mph. This project will now place the problem on Podurgiel Lane and the possibility of his being killed by a truck or car and being here to talk about it.. He opposes the access road as it will change traffic on the street that is a family-oriented with kids who ride bikes and where dogs are walked. He wants the character of the lane to be maintained in a way that balances the needs of both parties in Town that is family-friendly.

Resident Pamela Gonski, 55 Podurgiel Lane questioned how will truck traffic be controlled on the lane. Since Home Depot, tractor trailer trucks have accessed the road with the thought it is an access road to the store and finding no way to turn around.

John Dunn, 29 Parkwood Road, Baltic added there are more trucks going up the lane missing the turn and the trucks then trying to back up, the only way to get out and a cause for safety of the children.. Going out of Podurgiel Lane to take a left turn is not the right answer.

Resident Larry Duprey, 64 Podurgiel Lane inquired about the possibility of obtaining police reports of the number of accidents that have occurred at the other two (2) area gas stations down the road. Working the graveyard shift, he has witnessed a lot of accidents where people are to quick access and exit.

Resident Drew Gates, 40 Podurgiel Lane strongly urged the ZBA to oppose the application until research can be done as to access on to Montville Commons. He commented on negative traffic impact specifically right turns on red in order to avoid the traffic in addition to left turns on red, two (2) within the last week. He spoke not just of the timing of the traffic light and a left turn but instead spoke of the lack of space and it being a less safe road. Having only lived on the lane since 2019, he spoke of wife living on the road for 35 years and his mother-in-law since 1965 where she lived with her siblings. He moved to Town to live on a nice, quiet street and urged that it continues given discussion continues about the mudslide at family gatherings.

Resident Al Mandler, 22 Leisure Road spoke as a visitor to the lane and not in his capacity as a town councilor. His son lives on the lane which he visits 2-3 times a month and he is as aggravated as the residents with the traffic situation where you literally take your life into your hands. He referenced traffic studies done prior to his opening of Chili's, noted the map for the project in question does not show the divider at Podurgiel Lane, and spoke of fire truck activity from Mohegan Firehouse and their control of the traffic signal and ambulance daily calls concerning the traffic situation referencing his formerly having been a fire chief and thus knows about safety. The added traffic effect on school bus stops is also an issue for him.

Chairman MacNeil then offered the applicant the opportunity to respond to comments heard. Attorney Heller again identified himself and his office location for the record and then addressed

Town of Montville

Regular Meeting/Public Hearing – Zoning Board of Appeals

June 1, 2022

some recurring comments. Why another gas station? Investment was made by the property owner according to his rights for use of it in accordance with legislative and Town authority. Enforcement issues and traffic law are in force to address the illegal righthand turns at the Route 2A traffic light and the Town police force should be notified accordingly. A comment from the floor was addressed by Attorney Heller demanding courtesy as it was given to previous speakers as stated by Chairman MacNeil who asked for civility. Why access on Podurgiel Lane instead of Occum Lane that is actually the access road to Home Depot on the map was addressed. A plan was submitted with the application for the Certificate of Location Approval. Introduced into the record was a plan for submission to the Wetlands Commission a plan entitled Cover Sheet of 2040 New London Turnpike AKA CT Route 32 Uncasville, CT dated April 28, 2022. With attention to the Board directed to Sheet 2 of 3, the plan shows a dramatic change in topography between the Home Depot access drive and the area of the improved site to be retained and flattened for development. Additionally, the wetland boundary is close to the access, the westerly area of the proposed development. When the lot was brought before the Wetlands Commission and in the 1990's for a 50-unit hotel the lot before the Wetlands and Planning & Zoning Commission much of it was regulated as wetland by federal and state entities. Since then, wetlands has been evaluated on the property and filled significantly. Access to Home Depot and would create a great incursion to the wetlands and violate Wetlands and the U.S. Army Corp of Engineers for which permits were sought and is not viable. A left turn into or out of the site is also not permissible. The applicant is here for a Certificate of Location Approval for a motor fueling facility. A secondary street for access will be constructed with a traffic light. The cycle of lights at Podurgiel Lane was timed at 53 minutes. Another outburst from the floor warranted Chairman MacNeil to state a potential close of the hearing. Attorney Heller stated the signal light would be adjusted accordingly. As to the runoff from Montville Commons, it will be metered out at a controlled rate out of the access drive in any storm event and there is a 42-inch culvert underground for the same and any incursion on the site will go into catch basins. As for distance, use is permitted as of right and must be parameters for a Certificate of Location Approval. Attorney Heller asked that the project proceed.

Per a question by Chairman MacNeil, Attorney Heller responded to the commented earlier regarding Stop & Shop and noted it is a tenant not an owner. Commissioner Attwater-Young engaged in discussion concerning the submitted plan, Exhibit Item 6 and noticed by Town Planner Burdick, regarding the wetlands improvements since the 1990's, design options, sloping (not permitted by the U.S. Army Corp of Engineers), grading, and traffic lights that will be adjusted according to a DOT program. Commissioner Attwater-Young inquired about a traffic study and an engineering study. Chairman MacNeil discussed the limitations of the Board and questions asked that do not come under its purview which is issuing a location approval and could not be legitimately answered by Attorney Heller. He indicated a traffic study and engineering report could be requested but the timeliness of them is questionable. Town Planner Burdick asked that she be allowed to assist in the request for clarification but could provide no answers as the introduced plan by Attorney Heller was submitted this evening. The plan will be posted to the Town website. She noted statute does not require a public hearing and suggested a visit to the site.

Town of Montville
Regular Meeting/Public Hearing – Zoning Board of Appeals
June 1, 2022

Motion by Chairman MacNeil; seconded by Board Member Adams to continue the Public Hearing, 22 ZBA 1 until the next Board Meeting on July 6, 2022. Voice vote: 5-0, all in favor. Motion carried.

- b. **Discussion & Decision 22 ZBA 1 -- Hassan/Hussain LLC** – An application for a Certificate of Location Approval for a Motor Vehicle Fueling Facility (Gas Station/Convenience Store) to be located at 2040 Route 32 (M/B/L 103-001-00A), Uncasville, CT. (*DRD 65 days from close of public hearing.*) **No Action Taken**

6. **New Business:** -- *None*

7. **Old Business.**

- a. **WITHDRAWN – 221 ZBA 2** – Applicants, Richard and Denise Gladue, Roger and Cheryl Gregoire, Christian and Hope Case for Appeal of the August 30, 2021, decision letter of the Zoning Enforcement Officer regarding the properties located at 1856 and 1874 Route 32 (Assessor's Map 99 Lots 2 & 16.) (*Received 10/06/2021; 11/03/2021 PH postponed to 12/01/2021, Extension of Time Granted by Applicant to postpone opening of PH to 01/05/2022.*) **Appeal withdrawn on December 14, 2021, via email by Applicant Agent, Attorney Jon B. Chase.**

Town Planner Burdick reported 221 ZBA 2 was withdrawn but was still active at the last meeting was added to the Agenda as an FYI. No action is required.

8 **Other Business.** -- *None*

9. **Adjournment**

Motion made by Chairman MacNeil; seconded by Board member Adams, to adjourn the meeting at 7:34 p.m. Discussion, none. Voice vote: 5-0; all in favor. Meeting adjourned.

Respectfully submitted by:

Gloria J. Gathers
Recording Secretary, Town of Montville

**AN AUDIO RECORDING OF THE MEETING IS AVAILABLE ON THE
TOWN WEBSITE.**