

**TOWN OF MONTVILLE
ZONING BOARD OF APPEALS**

310 Norwich-New London Turnpike, Uncasville, CT 06382
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REGULAR MEETING – PUBLIC HEARING MINUTES

Regular Meeting/Public Hearing

July 6, 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 6:02 p.m.

Motion by Chairman MacNeil; no second to the motion to amend the Agenda to include Item 1.a, Pledge of Allegiance. Discussion: None. Voice vote: 5-0, all in favor. Motion carried.

2. Roll Call.

Present were Board Members Joseph Berardy, Douglas Adams, Vincent Attwater-Young, Richard Gladue, John MacNeil, and Alternates Arthur Montorsi and Russell Wehner (6:12 p.m.). A quorum was present.

2.a Motion by Chairman MacNeil; no second to the motion to amend the Agenda and add Item He congratulated Meredith Badalucca on her new position as the Zoning & Wetlands Enforcement Officer (ZWO).

3. Minutes: Approve the Minutes of the June 1, 2022, Meeting.

Motion by Board Member MacNeil; seconded by Board member Adams to approve the Minutes of June 1, 2022, 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.)

Chairman MacNeil noted for the record this Public Hearing is a continuation from the hearing originally held on June 1, 2022. He directed information to the Applicant's attorney that he works for a company with sites currently in litigation that are owned by the Applicant/property owner. He confirmed that he felt he could be impartial to his duties without prejudice and was giving the opportunity to Applicant's attorney to request recusal. Attorney Harry Heller stated having known the Chairman for 40 years he concurred with his ability to act impartially and thus had no issue.

Chairman MacNeil apologized to the public and the Board for failing to explain the rules and regulations concerning public hearings at the last meeting given the new members on the Board and the Board not having met since December 2021. He explained the following:

- The impropriety of speaking out, applauding, or interrupting the applicant at the podium or the Board. (The permit in question concerning this public hearing is optional for the Town but was done so the public could have a voice.)
- Upon closing the hearing and then discussion by the Board, no public comments are allowed.
- The Board will wait to hear all of the information including testimony from the applicant and the public before discussion among themselves toward a decision.

Town Planner Burdick asked that Board Member Montorsi be seated to vote. Chairman MacNeil did seat Board Member Montorsi and explained Board Member Berardy was absent from the last meeting and did not listen to the meeting recording to familiarize himself but could participate and ask questions.

Town Planner Burdick, assisting ZWO Badalucca, reported the following additional exhibits to be included into the record:

- Exhibit No. 7 – Letter from Heller, Heller & McCoy dated July 1, 2022;
- Exhibit No. 8 – Plans – “Inlands Wetlands Submission 2040 Route 32 – Proposed Convenience Store – 2040 Route 32, Uncasville, CT, Applicant: Amer Choudrey;
- Exhibit No. 9 – Staff Report dated July 6, 2022.

She read into the record Exhibit No. 7 from Applicant's counsel concerning a statutory 10-day extension though no actual time constraint is warranted. The modification of the application with a traffic study eliminating ingress and egress to Podurriel Lane per the revised prints in Exhibit No. 8. was also explained.

ZWO Badalucca then read the following Staff Report dated July 6, 2022, into the record:

<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).

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.

The Applicant in light of comments and concerns received by the Montville Zoning Board of Appeals at the public hearing held on June 1, 2022, has modified its development proposal for a gasoline/convenience store facility located at 2040 Route 32. As a result of concerns that were voiced with respect to traffic congestion and traffic safety issues with the proposed ingress and egress to Podurgiel Lane, the site development plan has been modified to eliminate that ingress and egress. Access to and from the site will be limited to Route 32.

Attorney Harry Heller of Heller, Heller and McCoy at 736 Route 32, Uncasville, CT reintroduced himself as representing the Applicant for a Certificate of Location Approval of a DMV License under C.G.S. §14-321 for 2040 Norwich-New London Turnpike (Route 32) as previously stated on the record. He briefly recapped the Board's authority to hold a public hearing although not required statutorily and the interpretation of statute in the late 1990's regarding the same. Between June 1, 2022, until tonight, he spoke of the CT appeal regarding a Certificate of Location as being broader than State statute, traffic and the scope of inquiry, and that it is the decision of the Board for approval of the location that is entirely located within the C2 Zone and any permitted use can be allowed as of right. The gas station is the only enumerated use that comes before the Board that must determine if the location is appropriate. Attorney Heller referred to testimony and adverse effects of traffic by neighbors that he discussed with his client and client's engineer concerning the ingress and egress from Podurgiel Lane. Investing with a traffic engineer regarding a left turn from Route 32 is under consideration and must be approved by the DOT. He also addressed the Montville Commons, wetlands, and a provision by the State Traffic Commission to prohibit access. Ultimately, the Applicant listened to the neighbors and revised the plan accounting for the location as permitted use, adequately addressing traffic concerns, a use that will fit the area, and thus urging the Board to approve the location as modified. Per questions of the

Board, Attorney Heller addressed the red light that was lost when the Montville Commons was built per the State Traffic Commission and no mentioning of their being two (2) entrances and exits to the location, only possible lane restriping or a right in or right out only.

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 with a reminder to each to state their name and address and not to repeat information on the record from the recording of the last meeting.

Resident Michelle Lemieux, 32 Podurriel Lane, gave a thank you for consideration of all the changes as discussed previously and asked that thought be given to residents who are turning right and pulling out with cars flying through the light. She was not sure how it can be resolved.

Resident Lawrence Duprey, 64 Podurriel Lane, thanked everyone for considering the residents but said his main question concerned the vegetation as indicated on the plan and whether it would remain north of the Applicant's location and what is the use or its purpose on the corner.

Resident Chuck Scopelitis, 155 Derry Hill Road, thanked the Applicant for the changes made and considering the residents as he grew up on Podurriel Lane. He is also a 51- year member of the Mohegan Firehouse. He was surprised to hear about a preemption of a left turn lane at the firehouse which would pose a traffic issue during calls from it as there appears to be one when he is inside of the firehouse. He spoke of his review of State of statutes and a traffic study for the project. Chairman MacNeil acknowledged Planning & Zoning will review the Applicant's application and apply appropriate measures but the Board will endorse the location.

Resident Al Mandler, 22 Leisure Road, stated he was not opposed to the proposed changes to the plan and thanked the Applicant for taking into consideration voters, friends, taxpayers, and families who live there. His only opposition concerned the preventive signals device in the firehouse and its controls regarding egress on the southern portion of the gas station findings which he gave to Board Member Attwater-Young. Attorney Heller interrupted and spoke to the total inappropriateness of his contact with a Board member which he deemed illegal. Resident Mandler objected to the Attorney yelling and interrupting him while speaking as discussed earlier regarding rules and regulations by the Chairman. As chair of the Board, Chairman MacNeil stated that the Applicant is Attorney Heller's client and that no contact is permitted with the Board whether helpful or not and is deemed completely inappropriate and illegal. Resident Mandler then spoke to the egress as a cost saving to the Applicant.

Resident Pamela Gonski, 55 Podurriel Lane, spoke of her review of the maps concerning the retention ponds at the end of Podurriel Lane and the dam built there previously when Home Depot was built causing residents one-day from their homes. She stated there are no catch basins at the end of the lane and referenced water that used to flood into the former State building. Chairman MacNeil responded the Applicant would address questions.

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

comments. He stated there is a 240-foot distance from Podurriel Lane for the proposed lane. As to the control of traffic lights, Route 32 is a State highway and alterations to the signaling will be addressed through encroachment and site plan processes as well as examined by DOT regarding traffic demand. At the corner, there is a proposal for a storm water quality and storm water retention basin at Podurriel Lane and Route 32. It is designed to serve two (2) purposes—to meet the standards of the 2004 Storm Water Quality Manual to Town Zoning requirement to address management of storm water peak rain runoff that will not exceed existing runoff and per his review today of the Certificate for Condition of Approval for Montville Commons with the Town there is an agreement that the preemption device for the traffic light be disabled. Additionally, the Applicant location is in the Route 32 corridor and any traffic concerns must meet with the approval of the State Department of Transportation.

As to Board questions, Board Member Gladue addressed the prior situation per the building of the Montville Commons regarding the dam and water drainage that Attorney Heller addressed it stating the area will not be built up as it is only 5-feet deep. He also asked about the elimination of highway lanes in front of the Applicant's location.; Attorney Heller responded about the possibility of restriping of the lane or a right turn ingress/egress only.

Motion by Chairman MacNeil; seconded by Board Member Adams to close the Public Hearing, 22 ZBA 1. Voice vote: 5-0, all in favor. Motion carried.

Motion by Chairman MacNeil; seconded by Board Member Adams for a 10-minute recess for the Chairman to confer with Town Planner Burdick. Discussion: none. Voice vote: 5-0, all in favor. Motion carried. *The meeting recessed at 6:49 p.m. and reconvened at 6:58 p.m.*

- 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.)*

Motion by Chairman MacNeil; seconded by Board Member Adams to APPROVE Application #22 ZBA of Applicant/Property Owner Hassan Hussain, LLC for Location Approval pursuant to §14-321 of the Connecticut General Statutes to allow the operation of a motor vehicle fueling facility (gas station/convenience store) at 2040 Route 32 (M/B/L 103-001-00A), Uncasville, CT in accordance with a plan set entitled “INLAND WETLAND SUBMISSION 2040 ROUTE 32 PROPOSED CONVENIENCE STORE 2040 ROUTE 32, UNCASVILLE, CONNECTICUT APPLICANT: AMER CHOUDREY, Dated April 28, 2022, Revised June 22, 2022,” with a finding that the subject property is suitable for the business intended. Prior to discussion, Chairman MacNeil asked Board Member Attwater-Young whether he could be impartial with a decision based upon the ex parte communication he received. Board Member Attwater-Young stated on the record that he could be impartial. Discussion: Board Member Adams traveled Podurriel Lane over the past month and liked the changes presented by Attorney Heller regarding entrance and exit to the lane given the number of businesses in the area. Board Alternate Montorsi liked the changes presented by Attorney Heller but still had concerns regarding safety regarding Route 82. Board Member Attwater-Young was thankful for the changes regarding entrance and

exit to Podurgiel Lane and observed the sites stating the no turn on red sign is too far from the light and having the area on both sides mowed and a part of the fence removed for sight purposes with each task directed to the DOT and the Town, respectively. **Motion to Amend** by Chairman MacNeil; seconded by Board Member Adams to include the provision concerning no egress as a condition of approval. Discussion: none. Roll Call vote: *In favor:* Board Members Adams, Attwater-Young, MacNeil, and Gladue. *Opposed:* Board Alternate Montorsi. 4-1 vote. Motion carried. *The original motion was not approved as amended on the record.*

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

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 7:06 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.**