

Town of Montville Zoning Board of Appeals
Regular Meeting Minutes – March 1, 2017
Town Hall – Town Council Chambers

1. Call to Order.

Chairman MacNeil opened the regular meeting of the Zoning Board of Appeals at 7:00p.m.

2. Roll Call.

Present were Board members Denise Gladue, Richard Gladue, alternate Carl Freeman, and Chairman John MacNeil. Also present was Zoning and Wetlands Officer (“ZWO”) Liz Burdick.. Board members Joseph Aquitante III and Joseph Berardy were absent.

Chairman MacNeil stated alternate Carl Freeman would be seated as a full member for a quorum of the Board with voting rights.

3. Minutes: Approve the Minutes of the February 1, 2017 Meeting.

Motion by Chairman McNeil; seconded by Board alternate Freeman; to approve the Minutes of February 1, 2017, as written. Discussion, none. **Voice vote, 4-0, all in favor. Motion carried.**

4. Executive Session. None

5. New Business:

- A. #217ZBA01 – 306 Route 163 (Map 28, Lot 60), Uncasville CT—Property Owner, William Shallcross, Sr. – Applicant Jeffrey S. Pearson for Location Approval for State of CT Dept. of Motor Vehicle Dealer & Repair License per C.G.S. Section 14-54 for New Operator of Existing Facility.**

Present was Applicant, Jeffrey Pearson.

For the record, the staff report for **Application #217ZBA01 – 306 Route 163 (Map 82, Lot 60)** is as follows: Application is for Location Approval for an auto dealer and repair facility per C.G.S. Section 14.54 (copy attached). Location approval for a facility at this location was granted to William Shallcross, Jr. by the Montville ZBA on April 1, 1998. Current location approval is requested in order for the Applicant, Jeffrey S. Pearson, to obtain a Dealer & Repair License as the new operator of the existing facility. No changes are proposed to the site.

Regarding the requirement for a public hearing, a 2011 State Superior Court case (*East Coast Towing vs. Zoning Board of the City of Stamford*) held that the legislature’s 2005 *repeal* of C.G.S. Section 14-55, which section had required a public hearing process, that the ZBA (or the PZC in some towns), *should* hold a public hearing, *except* that it stated, in relevant part, ”In any case in which such approval has been previously granted for any location, the local authority may waive the requirement for a hearing on an application

wherein the previously approved location of a place of business is to be enlarged to include adjoining or adjacent property.”

It is the staff’s opinion that this is not necessary to hold a public hearing based on the previous use for auto and motorcycle repairs, however, it is ultimately up to the Board as to whether or not a public hearing is necessitated. If the Board determines a public hearing is required such hearing would be scheduled for a later meeting date.

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

- The subject property is the site of the former facility motorcycle and prepare facility.
- The subject property is located in the I Zone (Industrial Zoning District) on a State road in an industrial/commercial corridor.
- The subject site has been used for motorcycle and auto repairs since April 1, 1989.
- The application has been submitted to the Board for review per the requirement of the Department of Motor Vehicles (Dealer/Repairer Division) for the change of licensee.
- Before the use is permitted to operate at this site, Mr. Pearson is required to obtain a zoning permit for this location for the change of user and any signage.

ZWO Burdick summarized the staff report by stating that the property location formerly operated as a business, B & S Cycle, and the Applicant wants to take over the business but must first get location authorization, however, William Shallcross will retain ownership of the building. ZWO Burdick cited the C.G.S. Section 14-54 that requires the Applicant, who resides in a municipality with a population less than 20,000, such as Montville to obtain and present a certificate for location approval prior to licensing for dealing and/or repairing motor vehicles. Per the statute, the certificate shall be approved by the board of appeals. The ZWO also cited 2011 case law referenced in the staff report giving authority to waive a public hearing although there used to be a statute requiring a public hearing that was repealed. She also stated if the Board determined the matter required a public hearing one would be set. ZWO Burdick also noted a copy of the site plan approved for Mr. Shallcross dated June 14, 2007. She concluded by clarifying that the legal notice for the pre-existing use is April 1, 1998, not 1989, as indicated in the staff report.

Chairman MacNeil deemed that ZWO Burdick had fully summarized the intent for the application. He asked the Applicant, Pearson, if he had any comments—the Applicant stated he did not. Chairman MacNeil then asked if anyone wanted to speak in favor of the application—there was no response. He then asked if anyone wanted to speak in opposition to the application—there was no response. Chairman MacNeil concluded by asking whether anyone had questions for staff or the Applicant—there were none. For

the record, ZWO Burdick stated that the date in the draft motion regarding the pre-existing use should be revised to read April 1 1998.

Motion by Chairman MacNeil; seconded by Board member R. Gladue, to close the discussion for Application #217ZBA01. Discussion, none. **Voice vote: 4-0, all in favor. Motion carried. ZWO Burdick noted for the record that a public hearing was not held. Chairman MacNeil clarified the same for the record.**

Motion by Chairman MacNeil; seconded by Board member D. Gladue, to **GRANT** Application #217ZBA01 as follows: I move to approve Application #217ZBA01 of Applicant, Jeffrey S. Pearson, for Location Approval pursuant to Section §14-54 of the Connecticut General Statutes to allow the operation of an automotive dealer & repair facility at 306 Route 163 (Map 82, Lot 60), Uncasville, CT, owned by William Shallcross, Sr., in accordance with a plan entitled “B & S Cycle, Site Development Plan, 302 Route 163, Montville, CT, Prepared for William Shallcross, Prepared by Reynolds Engineering Services, LLC, Dated 6/14/07, Revised to 12/12/07,” with a finding that the subject property is suitable for the business intended and, with due consideration given to its pre-existing use since 4/1/98, the requirement for a public hearing is waived. Discussion: Chairman MacNeil commented that the “business is there to unlock the door” and modification of use was approved by Planning & Zoning. **Voice vote, 4-0, all in favor. Motion granted.**

6. **Public Hearings/Applications.** -- None

7. **Old Business.** -- None

8 **Other Business.** -- None

9. **Adjournment**

Motion made by Chairman MacNeil; seconded by Board member R. Gladue, to adjourn the meeting at 7:14 p.m. Discussion, none. **Voice vote, 4-0; all in favor. Motion carried.**

Respectfully submitted by:

Gloria J. Gathers
Recording Secretary, Town of Montville

**AN AUDIO RECORD OF THE MEETING IS AVAILABLE AT THE
TOWN CLERK’S OFFICE.**