

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF OCTOBER 15, 2008, MEETING

Present

Members: Ralph Chase, Frank DeFelice, Cathy Devaux, George Eames,
Richard Eriksen, Dave Foley, Jim Kowolenko, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove
Alternates: Mike Geremia, Stuart Keating

Absent

Alternate: Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m.

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the agenda of the October 15, 2008, meeting as presented. Motion carried unanimously.

1. Public Session

Diana Cruise addressed the Commission regarding a trailer that is parked outside at Greenland Realty (and has been there for at least 2+ months). According to the minutes of the Planning and Zoning Commission meeting of February 15, 2006 (page 4), Diana Cruise read a portion stating that only vehicles belonging to the drivers of the Greenland trucks could be parked outside.

Geoffrey Colegrove stated that he has not issued a cease-and-desist order. Richard Eriksen noted that he had observed a flatbed truck parked outside the building. He asked for clarification of the conditions of approval as well as a copy of the approved site plan, recalling that he believed everything was "to be under cover." He stated that Greenland should either be asked to come before the Commission for a site plan revision or the conditions of approval should be enforced.

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Geoffrey Colegrove will send the conditions of approval and the site plan to all Commission members as well as contact Greenland Realty's attorney, Joan Malloy. Richard Eriksen suggested that a site walk be held, if necessary.

Attorney John Corona stated for the record that he had recently learned of a situation with a resident on Agerola Road being found in violation of yard requirements. He suggested that the Commission might wish to review the regulations from the standpoint of addressing yard requirements, structures, etc., as there is a fair amount of ambiguity in the interpretation. The current definition of structure indicates anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, with the exception of trailers. Interpreted literally, this could even mean a driveway—however, that was not the original intention of the Commission. Rather, it was to preclude buildings from being constructed too close to adjacent property lines. If a height limitation were to be adopted, this could become problematic (i.e., stone walls are generally not objectionable; but there appears to be a trend with more formalized stone structures, patios, big fireplaces, etc.).

Mike Geremia raised the question of what the intent is with the setbacks—to maintain 'elbow room' between neighbors or to create visual space between properties. Commission members added their ideas. Jim Kowolenko noted that a driveway should not be subject to a setback. Frank DeFelice noted that most municipalities reference anything "that is built."

Richard Eriksen suggested that a committee be established to look at structures and define the language. Geoffrey Colegrove stated the simplest approach would be to redefine structures. Some towns do have exclusions—i.e., patios that do not extend more than one foot above the ground, driveways, etc. However, if it exceeds the one-foot height (as in a stone mailbox structure, stone wall, etc.), it then becomes a problem of interpretation. It is likely that there will be some exclusions in any adopted language.

Frank DeFelice pointed out that one of the reasons sideyard language might have been included was to address the need for servicing septic systems at the back of properties.

Dave Foley asked a hypothetical question about installing a retaining wall at a property line (if there were no sideyards) and then installing a pool.

In terms of the stone-patio structure on Agerola Road, Geoffrey Colegrove explained that there had been a building permit pulled; through an administrative mixup at town hall, Geoffrey Colegrove did not see this permit (he indicated that he would not have signed it had it come through him).

This led to a lengthy discussion about the procedures for signing off on building permit requests and zoning permit requests. There are two problems—one, with the regulations and definition of structure/sideyard requirements/etc. and, two, with how the permitting process works with the building department.

Frank DeFelice suggested that there be a common form that ‘travels’ with an application throughout the entire sign-off process. Stuart Keating concurred. Richard Eriksen indicated that in another town where he owns property, there is a very methodical permitting process that includes sign-offs according to a specific procedure. Geoffrey Colegrove agreed that there needs to be a change in the permit process at the building and land use department.

The Commission asked that Geoffrey Colegrove obtain definitions of structures from other towns and to discuss with the building department a systematic procedure for permitting.

2. Durham Auto Center, Request for Modification to Site Plan, 428 Main Street

Attorney John Corona addressed the Commission on behalf of the applicant, M&M Ventures/Michael Corona. Engineer Pat Benjamin addressed the Commission, addressing some of the concerns raised at the site visit.

Pat Benjamin described the movement of one landscaped area at the front of the property further to the north. A landscape architect has been consulted and certain plantings and architectural features have been recommended.

The owner of Parsons Lane, Jim Blanke, is willing to grant an easement over a portion of Parsons Lane to Durham Auto Center for the proposed exit from the property. Pat Benjamin then described ASHTO requirements for a turning radius (the standard used is a 19-foot Suburban with a 24-foot radius allowed for the outside wheel movement). He explained why relocating the back retaining wall would not be feasible; all utilities come in from that edge of the property. The traffic impact of exiting vehicles on Parsons Lane will be minimal; Parsons Lane is currently a low volume use at about six cars an hour. The highest number of cars likely to back up would be two, even at rush hour. He pointed out that not all cars will exit to the north.

George Eames stated that the site walk revealed the site to be very congested and crowded with a lot of vehicles on site and little room to move around. Attorney John Corona concurred, pointing out the need for the exit to Parsons Lane. He added that cars are parked on the site in appropriate areas; boats are currently parked there temporarily.

Frank DeFelice asked Pat Benjamin the benefits that might inure to coming onto the site via Parsons Lane and then exiting to the south. Pat Benjamin explained that this wouldn’t be desirable to have all the incoming traffic on Parsons Lane. Jim Blanke was willing to grant the easement for exit-only traffic; he has made significant improvements to his site and doesn’t want to overly increase the traffic. There was also discussion about current parking needs at the site. Using the example of three full-time mechanics each handling 15 cars a day, there could be up to 45 transient cars on the site on any given day wherein people drop them off in the morning and pick them up at the end of the day.

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Pat Benjamin explained that with an exit to the north, the original permits are not violated and all coverage requirements continue to be met (this remains the case even if the house to the south is cut off from the balance of the property).

To Frank DeFelice's idea of moving the electrical service, Pat Benjamin explained that this would be very expensive and is not feasible. To Ralph Chase's query regarding proximity of the new exit to the well, Pat Benjamin stated that it is about ten feet away from the driveway. No drainage improvements will be required.

The proposed sign location near the southerly driveway has been moved to be opposite a rip-rap drainage moat; this will help ensure that the sign is not accidentally struck.

To Richard Eriksen's query regarding who has use of Parsons Lane, Jim Blanke has title certification and easements have been provided to the Whitehouse, Page, and former Pedersen properties.

The exit driveway is close enough to Route 17 so as not to cause light spillage from exiting cars onto adjacent Parsons Lane houses. To Mike Geremia's question regarding distance from Route 17 to the proposed exit cut for the driveway, Pat Benjamin indicated that it is about 45 feet.

Proposed plantings were discussed; George Eames stated that he would like to see this handled as quickly as possible, it will be an asset to the property.

Motion by Dave Foley, seconded by Tom Russell, to approve the modified site plan of Durham Auto Center, 428 Main Street, with provision that plantings will occur this year as proposed and the relocated sign as noted on the plan (with Commission seeing the actual sign graphic for subsequent approval). Motion carried, 8-1 with all in favor with the exception of Richard Eriksen (in abstention).

3. Dighello Brothers Builders and Developers, LLC, Request for Release of Maintenance Bond, Olde Yankee Way

Geoffrey Colegrove stated that the Board of Selectmen had previously accepted this road and has been maintaining it. The only outstanding issue is the fact that three trees have not survived. The town engineer, Brian Curtis, recommends retaining \$700 for replacement of those trees if necessary.

Motion by Richard Eriksen, seconded by Gene Riotte, to recommend release of all but \$700 of a maintenance bond, Dighello Brothers Builders and Developers, LLC, request for release of maintenance bond, Olde Yankee Way, for replacement of three trees. Motion carried unanimously.

4. Ron Melnik, Informal Discussion of School Athletic Field, Coginchaug High, Pickett Lane

Bill Currin, from the Board of Education's building committee, Susan Viccaro, superintendent of schools, and Ron Melnik, business manager, were present to speak with the Commission. Bill Currin addressed the Commission first, explaining the need to replace several wells and leaking rooftops throughout the district, on top of the planned replacement/repairs to the athletic complex. He stated that with the delay in approval for bonding as a result of the problems with the notice-posting for the referendum, no formal drawings have yet been prepared. Once the bonding is approved, the Board can retain engineers/architects and then present formal applications to the Planning and Zoning Commission and Inland Wetlands Commission.

Ron Melnik then addressed the Commission. To George Eames' query regarding funding to repair/replace the track, Ron Melnik indicated that this would be included in the scope of work. The roofs that will be replaced (Lyman and Memorial) will be tin-metal roofs with a 40-year-life. The well replacement is because of locations; there are no issues with water quality or potability, simply changes in health department regulations.

Ron Melnik also explained that the district will be seeking state reimbursement once the bonding approval has been received. Conceptual drawings have been developed. For the athletic complex along Pickett Lane, there are five tennis courts planned for the area that presently accommodates four. These five plus the two town-owned courts will enable the school to have seven courts available to host schools for tennis matches. A field at Strong School will be renovated to provide for baseball and soccer field practice (no lights will be installed).

The majority of work for the athletic complex pertains to the track. The current track is nonfunctional—except for occasional walkers; it has been deemed a safety hazard and the school is not allowed to hold track team meets on it. The current track is within the setback of the adjacent wetlands area; there is discussion with the Inland Wetlands Commission about relocating and giving back different land to reset those wetlands, which were manmade. As part of the project, bleachers will be installed along the hill. At this point, a decision has not been made as to whether a natural or artificial surface will be installed. Lighting will be necessary in all four corners of the field. The back parking area is proposed to expand by 48 spaces; no determination has been made as to surface (possibly pavers, tar, or traprock). A number of decisions will need to be made once funding and approval are in place so that drawings can be professionally developed.

Geoffrey Colegrove indicated that he had forwarded information in an e-mail to Ron Melnik regarding a company that installs lighting for athletic complexes that provides for minimal off-site impacts. This will help to mitigate light trespass and impact; this method is being used around the state of Connecticut. Ron Melnik indicated he would follow up on this once approvals are in place; at that point, vendors can be contacted.

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Geoffrey Colegrove stated that the two primary issues of concern will be lighting and sound.

Frank DeFelice raised a question about the lighting at the baseball field on Pickett Lane; lights were replaced apparently without the approval of the Planning and Zoning Commission. This field is on town-owned property and not under the school district's purview.

To Richard Eriksen's query regarding flagging of wetlands before ground-breaking, Ron Melnik indicated that this would be done.

Susan Viccaro stated that everything is dependent upon validating legislation. She reported that her conversations with local legislators have revealed that this will not be realistically likely until March of 2009. The district cannot do anything until that time (bonding cannot occur until there is validating legislation).

Bill Currin stated that this delay may positively affect bonding rates, making them lower. In addition, contractors are cutting prices because of the economy/slowing work opportunities; the district is anxious to move ahead as quickly as possible to secure favorable quotes once the bonding matter is resolved.

Ron Melnik indicated that this was an informal discussion merely to keep the Planning and Zoning Commission informed; he will return once the district is in a position to move forward.

5. Proposed Zoning Text Amendments to Add New Sections 02.15.02 and 04.07 to Prohibit "Outdoor Wood-Burning Furnaces" in All Zones

Geoffrey Colegrove distributed proposed language for the Commission's consideration, the key points providing for a definition for outdoor wood-burning furnaces, the possible inclusion of separating distances and chimney height (not to exceed the maximum allowed by the regulations, 35 feet, as compared with the DEP's limit of 55 feet), and possible exclusions that would enable farms, kennels, and other agricultural purposes to have outdoor wood-burning furnaces.

There was significant discussion by Commission members. Referencing the definitions for a farm, the current language expressly excludes several things, including dog kennels. If the state definition of a farm is considered, virtually everything is permitted. The Commission also discussed the intent of trying to create adequate separation distances and the need to require a permit (i.e., perhaps allowing less than 225 feet with the need to secure a special permit).

There was additional discussion as to whether the Commission was considering something that might necessitate a new public hearing. However, Geoffrey Colegrove explained that the regulations currently allow outdoor wood-burning furnaces (they are

not specifically addressed); the proposed amendment and subject of the public hearings was to prohibit them altogether. As the Commission was contemplating an amendment that would not be as restrictive as total prohibition, it was determined that a new application/hearing process was not required.

The Commission was in general agreement that agricultural interests are important to consider in allowing outdoor wood-burning furnaces; however, there needs to be protection for neighbors. Frank DeFelice also urged inclusion of language that would stipulate use of an EPA-approved or recommended unit. He added that using a 225 foot distance from any property line would effectively mean a parcel minimum of 225' x 225'; at 43,560 square feet, this is 4.65 acres. There was further discussion that if a property could meet the 225-foot setback from all property lines, it might not be necessary to restrict to just a farm use.

Ralph Chase pointed out that furnaces meeting the latest EPA regulations for emissions are very efficient, burn at about 1800 degrees, and generate no pollution. Talk ensued about the Commission not dictating furnace types *inside* homes and the need for doing so for these external furnaces. Frank DeFelice pointed out that some towns do stipulate lighting by type and brand.

Geoffrey Colegrove suggested that if someone can meet the 225 foot setback from all property lines, there might not be a need to require a special permit.

Frank DeFelice asked what Commissioners were concerned with: Smoke? Stack height? He stated that if designed and operated properly, there are no significant emissions. He stated that he personally was troubled by 45-foot stacks; Geoffrey Colegrove noted that 35 feet would be the limit. Frank DeFelice also stated that a catalyst is part of what regulates emissions; forced combustion instead of draft-regulated produces better results. The point is to not have units that smolder.

Richard Eriksen pointed out that this language would "be a start" that could always be adjusted a few months down the road.

There was some discussion as well about possibly wanting the fire department to sign off on the building permits for these furnaces (if permitted).

The Commission was in general agreement that there should be a requirement to select a unit from the EPA-approved list. There was also discussion that perhaps setbacks would not be necessary if an EPA-approved unit is installed and properly operated.

Stuart Keating felt strongly that there should be a setback to prevent a neighbor from installing a unit directly along the property line of another resident.

Motion by Tom Russell, seconded by Cathy Devaux, to approve the zoning text amendment to add new Sections 02.15.02 and 04.07 to the regulations for outdoor wood-

burning furnaces as per the following highlighted language, effective November 10, 2008:

Add new section under definitions:

02.15.02 Outdoor Wood-Burning Furnace:

Outdoor wood-burning furnace means an accessory structure or appliance designed to be located outside living space ordinarily used for human habitation and designed to transfer or provide heat, via liquid or other means, through the burning of wood or solid waste, for heating domestic, swimming pool, hot tub or Jacuzzi water. "Outdoor wood-burning furnace" does not include a fire pit, wood-fired barbecue or chimney (Public Act 05-227).

Add new section under General Requirements:

04.07

Outdoor wood-burning furnaces as defined in Public Act 05-227 (as may be amended) are permitted in all zones by a zoning permit providing the proposed unit complies with all the requirements of Public Act 05-227 (as may be amended) and is located a minimum of 225 feet from any property line and the chimney does not exceed the maximum height of structures permitted in the Zone and using EPA-approved list of equipment as may be amended.

Motion carried, 7-2, with all in favor with the exception of Richard Eriksen (in opposition) and Dave Foley (in abstention).

6. Town Planner's Report

Geoffrey Colegrove stated that Brian Curtis, town engineer, has looked into the depth of backfill over a bridge structure that will not permit the normal burying depth for guiderail posts for the Stone Bridge Crossing subdivision.

George Eames spoke with Attorney Thomas Byrne regarding the CSK Realty, LLC, matter (large animal crematorium). His professional advice is to proceed with the Commission's action to defend its approval; Geoffrey Colegrove noted that the entire record has already been prepared, expense has also been incurred for Attorney Byrne's review time, and staff has spent time assembling the full record. All that remains is the trial.

Attorney Byrne's professional opinion was that the records are "in good shape for the town" and that he doesn't "see a problem with defending the Commission's position."

Richard Eriksen expressed concern with spending any more money on this case. However, George Eames noted that it would not be wise to drop everything at this point.

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Jim Kowolenko and Frank DeFelice stated that it would send the wrong message to drop matters and that it was appropriate to finish the action already commenced.

Dave Foley asked the hypothetical question of fellow Commissioners: "Where else in the heavy industrial zone would such a use be approved?" The location approved is in the heavy industrial zone "as far from residences as it could possibly be."

Motion by Jim Kowolenko, seconded by Tom Russell, to advise Attorney Thomas Byrne to proceed with representation of the Commission on the matter related to the crematorium approval defense. Motion carried, 6-3, with all in favor with the exception of Ralph Chase and Richard Eriksen (in opposition) and Dave Foley (in abstention).

Motion by Richard Eriksen, seconded by Ralph Chase, that the Commission be apprised of the costs related to defending action on crematorium decision/defense from Attorney Thomas Byrne in preparing the case (full costs). Motion carried, 6-3, with all in favor with the exception of Cathy Devaux, Frank DeFelice, and Jim Kowolenko (in opposition).

7. Payment of Bills

Motion by Ralph Chase, seconded by Frank DeFelice, to approve payment of the following bills:

- Attorney Thomas Byrne -- \$3,100.00 (CSK Realty)
- Attorney Thomas Byrne -- \$1,400.00 (Arrigoni, LLC)
- Absolute Advantage -- \$395.47 (minutes Oct. 1, 2008, meeting)
- Alwaz First -- \$1,300.00 (transcription, CSK Realty)
- Midstate Regional Planning Agency -- \$6,247.27
- William Wrang -- \$43.50 (Schwan's legal service)
- William Wrang -- \$45.00 (M. Esparro legal service, subject to verification by bookkeeper, K. Antin)

Motion carried unanimously.

8. Approval of Meeting Minutes

This agenda item was tabled until the next meeting.

Motion by Ralph Chase, seconded by Frank DeFelice, to adjourn the meeting at 9:32 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

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RECV'D: Office of the Town Clerk
October 23, 2008 at 9:36am