

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF NOVEMBER 19, 2008, MEETING

Present

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

Absent

Member: Richard Eriksen
Alternates: Mike Geremia, Mark Laudano

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

Motion by Ralph Chase, seconded by Gene Riotte, to approve the agenda of the November 19, 2008, meeting as amended to reflect postponement of Greenland Realty to enable site plan development per the request of Attorney Joan Molloy. Motion carried unanimously.

1. Public Session

Attorney John Corona addressed the Commission, advising that Durham Auto Center had completed the landscaping project this past weekend. George Eames stated that the site looked good.

Attorney Corona asked that the site be officially inspected and, if deemed satisfactory, that the bond (somewhere around \$4K) be returned. He added that the property owner hopes to make the cut to Parsons Lane (for the approved site exit) prior to winter, if possible; however, asphalt availability may be limited.

Motion by Tom Russell, seconded by Cathy Devaux, to release the bond to Durham Auto Center in the amount of between \$4K and \$5K following satisfactory inspection by Geoffrey Colegrove that all site plan requirements are met. Motion carried, 8-1, with all in favor with the exception of Dave Foley (in opposition).

2. Deborah Ericksen, Request for a Proposed One-lot Subdivision, Cream Pot Road

Pat Benjamin, a professional engineer, addressed the Commission; the parcel is 5.63 acres in size, to the south of the town garage and east of Route 77. Most of Cream Pot Road in front of the site is unimproved. The Inland Wetlands Commission has granted approval for a driveway that will be located within 100 feet of the wetlands. The site has been approved for an engineered septic system with fill (using newer guidelines that allow for greater separation between leaching units to overcome hydraulic limitations of a site); the installation will require supervision.

A 12-foot driveway up to the house will be created. The minimum rectangle can be accommodated on the site. Soil testing was completed.

Ralph Chase queried the specific site location, noting that the Conservation Commission is planning to erect a gate across a portion of Cream Pot Road to prevent access by ATVs. It was determined that the proposed gate site will need to be moved slightly beyond where the proposed driveway will be.

Motion by Jim Kowolenko, seconded by Ralph Chase, to approve the one-lot subdivision request of Deborah Ericksen, Cream Pot Road. Motion carried unanimously.

3. O'Neill Industrial Corporation, Request for Modification to Site Plan for Addition to Existing Building, 105 Commerce Circle

Pat Benjamin, a professional engineer, addressed the Commission on behalf of the applicant, Justin O'Neill. He referenced an approved site plan from two years ago that included two additions representing an incremental 5,400 square feet. That project was never built and now the applicant is seeking a downsized addition to accommodate storage of materials for Sikorsky. There is no change to the septic system (already oversized) as there will be no new employees. The one-story building will be 1,942 square feet in size, 14 feet high and constructed of dark brown corrugated metal for the storage of fabrics. The building will be heated and used for storage purposes.

The discharge to the wetlands does not change, just the location of the inlet.

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the request for modification to site plan for addition to existing building, O'Neill Industrial Corporation, 105 Commerce Circle. Motion carried unanimously.

4. Mark Rosenblit, Request for Proposed 1-lot Subdivision, Pisgah Road

Brandon Handfield, a professional engineer with Anchor Engineering in Glastonbury, Connecticut, addressed the Commission on behalf of Mark Rosenblit. This project had previously been before the Commission in 2005-2006 for a two-lot subdivision. Now a one-lot subdivision is being proposed to the southwest of Laurelbrook Road; the overall area of disturbance is reduced by at least half as compared with the previous application.

The parcel size is 5.86 acres in the farm-residential zone. The site previously had received approval for two separate septic systems; now one system is proposed in the same location. Overall site slopes range from 3% to 45%; the driveway does not exceed the 15% maximum allowed. Soils are a Hollis-Chatfield complex, very rocky, with ledge outcrops toward Pisgah Road. Soils will be required to enable four feet below the septic system; there is already four feet above to the native ledge. The site itself is primarily wooded with tree vegetation and some scrub brush.

Excavation and fills have been minimized with a leveling off of the site near the proposed house pad for a turnaround and garage. Previous drainage concerns raised by the town engineer have been reviewed; drainage calculations have been revisited, the existing drainage pipe under the road can accommodate flows from a 10-year storm as required by the regulations. The proposed retaining wall has been increased to create a six-foot shelf next to the driveway with a five-foot high berm. An articulated concrete block wall will be built. The shelf will allow for snow plowing and storage of snow; cars will be able to pass and larger vehicles can negotiate the corner. The lower side of the driveway will be curbed and have a guardrail.

George Eames asked that Bill Milardo again review the project and provide a letter of approval to the Commission.

Brandon Handfield stated that he had met with the Conservation Commission the previous week; that group had four recommendations relative to the limits of disturbance (now just over an acre), drainage review, and use of a double row of sedimentation controls. There will also be check dams every 50 feet to ensure velocities aren't excessive in the area of swales. All slopes 2-to-1 or greater will be covered with erosion control matting. This lasts for two to three years and enables good root development. There will not be a new roadway cut from Pisgah Road; the same cut will be utilized.

Frank DeFelice commended Brandon Handfield for "the most thorough drawings he has seen in a while."

To Geoffrey Colegrove's query, Brandon Handfield stated that about 700 cubic yards of material will be removed (under the 1,000 cubic yard limit; therefore, a special permit is not required); the regular permit for removal above 300 cubic yards can be issued by the Zoning Enforcement Officer.

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George Eames also asked that the town engineer review the project, especially from the standpoint of runoff issues that were expressed as an area of concern by adjacent property owners during the previous application process.

Ralph Chase will ensure that a copy of the minutes from the Conservation Commission's recent meeting be provided to Brian Curtis.

The Planning and Zoning Commission will hold a site walk on Saturday, November 29, at 9 a.m.

5. Discussion of Definitions for Yard, Wall, Structure, Fence and Building

George Eames read into the record a memo from the building official, Dick McManus, dated November 10, 2008, with regard to the DeMartino property at 47 Agerola Road. The building department issued a permit for a 'large masonry deck-like area measuring 14' x 20' with a construction value of \$20K.' No other work was included on the permit. The memo also stated that "the item that was the center of attention was never issued a building permit."

Geoffrey Colegrove indicated that he was in error at the last meeting when he stated that he thought the permit was for a fire pit. The fire pit was shown on plans submitted, but the application was only for a patio-deck area related to the pool. He had met with Dick McManus to go over the drawings—just the deck-porch addition was highlighted with magic marker and subject to the permit. He added that the remaining part of his previous discussion with the Commission remained accurate—that he did not see those permits and would not have approved them had he had the opportunity.

Letters from Hugh Pearson dated November 5 and November 19, 2008, were read into the record citing numerous concerns with the structure, fire pit, smoke, and erosion/drainage to his adjacent property.

Geoffrey Colegrove referenced potential language in a conceptual discussion. The definition of buildings is straightforward—something affixed to the ground with a roof—and buildings cannot be within setbacks.

A central problem is defining structures and exceptions (i.e., driveways, dog houses, etc.). One idea is to stipulate those items exceeding a certain square footage and/or height. The current language could be expanded to read "that which is built or constructed *above or below ground.*"

After some discussion, it was generally agreed that it would be impossible to list all the items that could be deemed objectionable in a side or rear yard setback. Four feet is a height that is used arbitrarily in a number of town regulations, as in, "that which is built or constructed above ground and is not more than four feet in height." In other words, exemptions would be required for fences and/or retaining walls exceeding four feet.

Another standard in some towns is that no more than 10% of a side yard can be occupied.

If interpreted literally in terms of side yard or rear yard violations, a ZEO would need to work 100-hour weeks and have extensive legal funds available to pursue violations. This would not be a practical approach; however, there was general agreement that Geoffrey Colegrove needs to be provided with better tools for managing this going forward (as opposed to relying on interpretation, past practice, and judgment).

Frank DeFelice stated that it is an onerous task to enforce such things to begin with; in most cases, people are responsive to neighbors. He noted that a well arc can go right up to a property line; however, this is not a structure. He added that he did not think it responsible of the Commission to be reactionary and change what has generally worked so well in 99.9% of cases.

Geoffrey Colegrove indicated that he is considering withdrawing the order against the DeMartinis. To pursue that would likely result in at least 30 instances of requests for enforcement of other violations rampant throughout town. There needs to be a reasonable, workable solution.

Jim Kowolenko suggested limited structures based on square footage and height instead of a laundry list of items that are prohibited. The language currently leaves too much to interpretation.

Geoffrey Colegrove pointed out that if someone builds a 10' x 8' storage shed against a property line (obviously a building), it is protected after three years (without complaint); no enforcement action can be taken after three years as it is protected by statutory language.

Frank DeFelice suggested revisiting the original idea behind the side yard setbacks—public safety (access for septic tank servicing or fire-fighting equipment). Setbacks vary depending on timing of a lot approval (prior to 1978, 10 feet).

Geoffrey Colegrove indicated that evolutionary practices of the Commission have effectively decreased density considerably—with minimum rectangle, changes to frontage requirements, setback, and well arc all leading to larger lot sizes and, now, a two-acre minimum.

Average height calculation was discussed; Jim Kowolenko suggested a fixed point be the first floor of a house. Stuart Keating pointed out that this could vary (i.e., for a split level or raised ranch).

Dave Foley stated his opinion that one of the reasons there are setbacks is to help eliminate or minimize disputes among neighbors—not simply to provide access for fire trucks. Had setbacks been adhered to, the current problem on Agerola could have been

avoided. He added that the regulations require a survey if necessary to establish actual property boundaries for fence installation. He stated that while he is not in objection to possibly reducing the setback, there should nonetheless be a setback that is inviolate. He also noted that there could be consideration to making a differentiation between front yard and side yard in order to address such things as signs and front walls.

Dave Foley also stated that if the regulations are changed at this point, he believes the Commission would be setting itself up for a lawsuit. He pointed out that Attorney John Corona is 'being paid to be here.'

Geoffrey Colegrove indicated that the Zoning Board of Appeals exists for situations where there is a hardship and where there is a legitimate reason to violate a setback. He noted that the more complicated a definition or interpretation is, the more 'holes for an attorney to come in for an exception.' He added that some towns have a ratio for height-to-setback. He would ideally like something that is rational, makes sense, and is not arbitrary. In terms of the DeMartino structure, had he seen a permit request for the firepit, he would have said no; its bulk and size relative to the property line would have prohibited it, in addition to it being a structure. Dick McManus had issued a permit for a 14' x 20' patio; no other work was included on the permit.

Geoffrey Colegrove also stated that the DeMartinos are not seeking a variance; they are, instead, seeking to overturn Geoffrey Colegrove's order, claiming that the 'item' in question is not covered by the regulations and that structures are not required to meet minimum required setbacks. He would like to see language drafted that provides for the least amount of exceptions (instead, perhaps speaking to square footage, exemption based on height, etc.).

Motion by Frank DeFelice, seconded by Dave Foley, to table discussion of yard, wall, structure, fence, and building. Motion carried unanimously.

6. Payment of Bills

Motion by Gene Riotte, seconded by Dave Foley, to approve payment of the following bill:

- Absolute Advantage -- \$420.43 (minutes Nov. 5, 2008, meeting)

Motion carried unanimously.

George Eames indicated that he had asked Karin Antin, town bookkeeper, to request tearsheets from the *Middletown Press*.

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7. Approval of Meeting Minutes

Motion by Ralph Chase, seconded by Dave Foley, to approve the minutes of the November 5, 2008, meeting as amended to reflect that Dave Foley and Gene Riotte were not in attendance. Motion carried, 8-1, with all in favor with the exception of Gene Riotte (in abstention).

8. Town Planner's Report

Geoffrey Colegrove stated that he had provided the package about the Jackson situation on Main Street (violation of home occupation permit and accessory apartment provision) to Attorney Tom Byrne for legal enforcement.

Jan Melnik advised the Commission that pursuant to the request of the Commission at the previous site plan review for Regional School District #13, the suggestion that the stairway access for one of the newly approved dugouts was enacted and that the stairway was placed along the side of the building.

Frank DeFelice asked that Geoffrey Colegrove review the light fixtures on the outside of Dolphin Days; he stated that the lights visible coming from Wallingford toward Durham on Route 68 are 'almost blinding.'

Motion by Ralph Chase, seconded by Frank DeFelice, to adjourn the meeting at 9:30 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
11/25/2008

RECV'D: Office of the Town Clerk
November 26, 2008 at 8:45am