

# TOWN OF DURHAM

## **Planning and Zoning Commission**

P.O. Box 428

Durham, Connecticut 06422-0428

### **MINUTES OF NOVEMBER 5, 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  
Alternate: Stuart Keating

#### Absent

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 Tom Russell, to approve the agenda of the November 5, 2008, meeting as presented. Motion carried unanimously.

#### 1. Public Session

Hugh Pearson, 55 Agerola Road, addressed the Commission; however, as the matter of definitions for yard, wall, structure, fence, and building was later on the agenda, discussion was deferred until later in the meeting.

#### 2. Zoning Enforcement Officer's Report

Geoffrey Colegrove stated that he had provided information to Attorney Tom Byrne about the Jackson property at 305 Main Street. A number of attempts have been made by Ed Grimes to clarify residency. Attorney Byrne will be asked to draft a letter—perhaps seeking affidavits from abutters as to there being no residency by Mr. Jackson. The site holds two permits that are now in violation because of a lack of residency by Mr. Jackson: the accessory apartment provision and the home occupation permit.

Frank DeFelice asked for clarification on the Jackson property as to the issues. Geoffrey Colegrove explained that to have the accessory apartment, the owner must live in one of the residences; to have a home occupation permit, the owner must reside in the dwelling in which the business is being operated from. At the moment, the house is a two-family and there is also an apartment over the garage—with three separate tenants living in the three dwelling units. The published address for the business is 305 Main Street.

The garage apartment was converted illegally—but a variance was provided by the Zoning Board of Appeals; however, the owner must still live on the premises.

Back in June, Mr. Jackson had indicated that he would be returning shortly to Durham—he was living in a property he owned in Middletown that had been sold, but was still vacant (to protect it from vandalism); he has still not returned to Durham.

Geoffrey Colegrove stated that Ed Grimes has inspected a junkyard situation on Saw Mill Road, doing an inventory of all cars.

3. Ron Melnik, Regional School District #13, Site Plan Review for Baseball Dugouts, Coginchaug High School, Pickett Lane

Ron Melnik introduced the chairman of the Building Committee, board member Bill Curlin. Bill Curlin described plans for two buildings—one on the softball field and one on the boys' major league field. The softball field already has a dugout; the plans are to add a second story at the same time the roof is replaced. The footprint will not change and there will be no water-plumbing-electricity, just a light over the door. The building for the boys' major league will be built on a slab and include a press box on the second floor and storage/concessions on the first. Both projects are being completed without the need for town funds through donations raised via the Babe Ruth organization as well as fundraisers conducted by District #13 athletic director Ted Lombardo.

The dugout at the softball field will have a maximum height of 16 feet at the peak with the addition of the second story. It was recommended that the stairs be moved to the side of the softball field dugout (i.e., moving it 90 degrees). Ron Melnik stated that this would certainly be considered.

The new buildings at the boys' major league field will be located just to the side of an existing dugout. The maximum roof height will be just under 22 feet. Only prepackaged foods will be sold through the concession (no need for kitchen facilities/plumbing).

There is already a public address system and scoreboard; a generator is planned for the future. There is an existing sign in left field, which is illuminated. The public address system is used for calling games, which are played during the day (beginning usually at 3:45 p.m. and over by 6-6:30 p.m.). The Babe Ruth club uses the facilities as well from June through the fall (mornings and afternoons; again, generally done by 6 p.m.).

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Twilight games are generally over by 8 or 8:30 p.m. (when it is dark, as there are no lights for the field).

The closest residences are the Millpond condominium residents and the Curtises. Richard Eriksen expressed concern about noise, but pointed out that there is a noise ordinance to address any problems based on decibel level.

Ted Lombardo stated that the public address system would not be used during practices.

Ron Melnik reiterated that both projects are standalone and not a part of the bigger future bonding project for the district; they are being funded from outside sources, including in-kind donations of labor and materials.

To questions about direction of the public address system, it faces away from houses and would not be used at night as there is no light on the boys' major league field.

To Frank DeFelice's question about hours of usage, referencing the football practice field, Ron Melnik recapped that it is Monday through Friday from about 6 p.m. to 8 p.m. September through November, with several Saturday morning practices.

One of the Babe Ruth members noted that there has been a public address system for years—as well as lights—and never in 6-8 years had he heard of any complaints.

Stuart Keating suggested that a sound study could be done by engineers. George Eames stated that a town ordinance does provide for noise controls, but that an extensive study in this matter was not necessary.

Motion by Richard Eriksen, seconded by Cathy Devaux, to approve the site plan review for baseball dugouts, Coginchaug High, Pickett Lane (two facilities as presented). Motion carried unanimously.

4. Raymond and Isabel Wimler, Request for a Proposed One-lot Subdivision, East Side of Guilford Road

Attorney John Corona described the area and the plans to create a lot around two acres and an existing house; the well arc can be accommodated within the two acres on the lot as drawn. Nothing is changing, there is an existing septic system and well; this is simply to put a lot around a two-acre one-lot subdivision; the balance of the parcel (about 13 acres) will be labeled not a building lot. The one-lot subdivision will enable property transfer to a family member.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve a one-lot subdivision, Guilford Road, Raymond and Isabel Wimler. Motion carried unanimously.

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

Attorney John Corona advised the Commission that Pat Benjamin had indicated that he was unable to attend the meeting on this matter. However, he is handling the application and in the process of making arrangements for the next level of improvements to be made to a section of Cream Pot Road (one of the stipulations for development along this road). The applicant is not ready to proceed with the application at this time.

6. Housewright Development, Inc., Discussion of Building Permit and Subdivision Under Construction, Stone Bridge Crossing

Attorney John Corona advised that Attorney Molloy of Wallingford, representing the applicants, had contacted him with her understanding that from discussions with Geoffrey Colegrove, while a building permit could be secured for a house on the property, a certificate of occupancy could not and would not be issued until the road/bridgework was completed. There are two building permits pending with the building department; one of these permits will be withdrawn. Only one can go forward, but no CO or lot transfer can happen until completion of 80% of the bridge and road work as well as bonding for all remaining work.

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

Geoffrey Colegrove distributed information for review of Commission members earlier. Some towns have definitions for all of these items, some for just several.

Geoffrey Colegrove explained that this becomes more complicated the more you get into it. Our definitions are quite typical of many towns. The definition of yard should perhaps be redefined to talk about minimum required yard.

It was noted that buildings and structures are not interchangeable; all buildings are structures, but not all structures are buildings. The Commission 'talks about' buildings and property lines (not structures and property lines). Structures are inherently more numerous than buildings and could involve stonewalls, patios, sidewalks, parking areas, etc. Many definitions in other towns exempt certain uses from structures (like driveways, sidewalks, flagpoles, parking areas, walls, fences, etc.).

In Durham, a swimming pool, which is a structure, has been considered like a building with side or rear yard requirements. Frequently, other structures have been allowed to encroach on minimum side yard requirements.

Attorney John Corona presented photographs of a variety of structures around town, including gazebos, bus-waiting sheds, propane tank, elaborate stone structures, fences, freestanding gates, grape harbor, wood sheds, patios, etc.

There was agreement from a number of Commission members that while stonewalls and fences along property lines did not generally seem objectionable, a large structure does not belong on a property line adjacent to another property. When the issue arises, the Zoning Board of Appeals is then the authority that says yes or no.

Geoffrey Colegrove said that for structures under four feet, there are generally no regulations; an exception would be underground structures (i.e., a pool), which “we all know” is not supposed to be within 25 feet of a property line. However, these “rules” are not published, simply accomplished through common sense and consistency of practice.

The Commission’s discussion included the goal of providing Geoffrey Colegrove/the building department with a structure within which to work. The building department issues permits—they are supposed to know what the setbacks are. However, there continue to be problems.

Richard Eriksen commended Geoffrey Colegrove for the job he has done to date. The problem is, of course, that not “everyone” knows what should/should not be put along a property line (in other words, “one person’s common sense is not another person’s common sense”).

Attorney John Corona stated that in the regulations discussing yard, an “open unoccupied area” is mentioned. He asked rhetorically what this means: Free of vegetation? Free of a building? A structure? The regulations do not specify—and do not dictate what can and cannot be in a side yard. It is left “to people’s common sense” to interpret and construe.

Frank DeFelice referenced a customary industry standard: “A structure is that which is built” and, at one point, suggested that perhaps nothing need be changed except to omit the “unoccupied” clause in the language. He added that the language is really adequate; what is at issue is the permitting process and the procedure for how permits are handled and property owners are informed of what they can/cannot do under their permits.

Geoffrey Colegrove stated that with regard to the matter of the structure on Agerola Road (a very large fireplace/patio structure very near the property line of another property owner), he would never have signed the permit *had he seen the permit*. However, through a breakdown in administrative process at the town hall, the permit went through with the property owner believing all steps had been followed properly. Geoffrey Colegrove stated that he would have viewed the proposed structure “similar to an above-ground pool” and insisted it adhere to setbacks from side yard. This, again, is based on interpretation and practice, not through explicit language in the regulations. Permits are routinely issued for driveways on side yards and grade-level patios.

Discussion ensued as to the rationale for the side yard and rear yard requirements in the first place—with the primary thought being to establish clear areas between houses for emergency equipment access. Another reason might be privacy.

Attorney Corona stated that in conversations with professional engineer Pat Benjamin, through all regulations, it appears that about 46% of a lot is actually controlled, which is not fair or reasonable.

Hugh Pearson addressed the Commission. He is a resident of Agerola Road, an architect, and the neighbor of Attorney Corona's client (who has constructed the previously mentioned fireplace-patio structure adjacent to the shared property line). He stated that the state building code as well as an international building code, which is a globally accepted document, defines structure as that which is built or constructed; that is *all* that it stipulates. The code is intentionally broad in scope and, therefore, anything that is built is a structure. It was his interpretation that nothing can go into a side yard/rear yard that is manmade. He stated that to try to further define structures would create even greater mayhem and loopholes.

Geoffrey Colegrove indicated that there is a provision in the statutes for buildings (not structures) erected in violation of yard requirements—after three years, *if not cited*, it becomes nonconforming, but action cannot be taken against the offense.

Richard Eriksen indicated that the Zoning Board of Appeals takes into consideration how side or rear yard violations affect adjacent property owners and neighborhoods.

Attorney Corona stated that deferring to the Zoning Board of Appeals might not be the most responsible way to approach this matter.

Hugh Pearson explained that the five-foot fireplace-patio structure near his property line also creates smoke that crosses onto his property. Frank DeFelice pointed out that this is regulated by the Department of Environmental Protection (smoke is not supposed to cross property lines).

There was some discussion as to how side yards are calculated. For newer lots, 25 feet is the standard. Lots before 1978 achieve the 25 feet in aggregate (10 on one side, 15 on the other). Main Street-Residential has a provision for accessory buildings being closer to property lines if they are under a certain height restriction.

Richard Eriksen asked Geoffrey Colegrove for direction in terms of what he requires to better “do his job,” the reply being: the simpler and more straightforward, the better. Geoffrey Colegrove will obtain various alternatives to present for the Commission's further consideration. There should probably be certain exceptions. But in order to be enforceable, the language must be able to be clearly interpreted.

Hugh Pearson explained that in the matter of his neighbor's structure, what is visible is "the tip of the iceberg." There has been a lot of fill brought onto his neighbor's site, which has changed the overall contours and thus altered the natural drainage patterns, increasing flow to his property. He has grave concerns about his property being devalued.

Several Commission members pointed out that civil action could be pursued.

Geoffrey Colegrove reiterated that a permit was taken out by the applicant and signed by the building official and put into the building file; Geoffrey Colegrove was never given the permit to sign (again, an administrative breakdown at the building department). Therefore, Geoffrey Colegrove had never signed off on the zoning part of the permit. However, because of a lack of process altogether and the absence of a notification process, the applicant *thought* he had done everything he was supposed to do (and, under the current process, such as it is) had. The problem is with the lack of procedures at town hall. The statutes do indicate that there must be zoning approval prior to issuance of a building permit. There is no closed loop on the current permitting process. The applicant went through the procedure, as it exists, and would technically not appear to be in error. Thus there would appear to be a hardship situation that can go before the Zoning Board of Appeals.

Frank DeFelice stated that there is clearly a need for an improved sign-off procedure. Geoffrey Colegrove indicated that the problem is with lack of a notification process, noting that in Haddam, for instance, a copy of all signed permits is returned to applicants. He will obtain a copy of that town's procedures for permitting for review.

Joseph Pasquale, in attendance at the meeting, stated his agreement with Frank DeFelice, regarding "the process being broken." He asked that the chairman take the matter to the first selectman, Laura Francis, so that the process can be addressed.

## 8. Payment of Bills

Motion by Ralph Chase, seconded by Stuart Keating, to approve payment of the following bills:

- Attorney Thomas Byrne -- \$2,650.00 (Cushing)
- Attorney Thomas Byrne -- \$1,525.00 (Arrigoni, LLC)
- Absolute Advantage -- \$470.35 (minutes Oct. 15, 2008, meeting)
- Midstate Regional Planning Agency -- \$7,430.58 (September)
- Midstate Regional Planning Agency -- \$3,899.92 (August)

Motion carried unanimously.

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9. Approval of Meeting Minutes

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the minutes of the October 1, 2008, and October 15, 2008, meetings as presented. Motion carried unanimously.

Richard Eriksen asked Geoffrey Colegrove the costs for the crematorium suit; including coordination of the record, transcripts, and Attorney Byrne's fees, the cost is \$12,821.16.

10. Miscellaneous

Frank DeFelice mentioned training by the Department of Environment Protection (scheduled for December 11).

There was also discussion about impact of affordable housing statutes on Durham, particularly as a community with limited septic capacity because of lack of public sewers.

Motion by Ralph Chase, seconded by Frank DeFelice, to adjourn the meeting at 9:20 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

11/12/2008

RECV'D: Office of the Town Clerk  
November 12, 2008 at 2:00pm