

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF DECEMBER 3, 2008, MEETING

Present

Members: Ralph Chase, Frank DeFelice, Cathy Devaux, George Eames,
Richard Eriksen, Jim Kowolenko, Gene Riotte
Town Planner: Geoffrey Colegrove

Absent

Member: Dave Foley, Tom Russell
Alternates: Mike Geremia, Stuart Keating, 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 December 3, 2008, meeting as presented. Motion carried unanimously.

1. Public Session

Braulio Santiago, 9 Laurel Brook Road, addressed the Commission, asking for a public hearing to be scheduled for the one-lot subdivision request of Mark Rosenblit. He stated that a similar application (for a two-lot subdivision in the same area) was denied by the Commission. He added that the conditions that formed the basis of the previous denial are still in place.

George Eames pointed out that while the Commission had held a site walk of the property, not all information had been received from the Town Engineer in review of this application; therefore, the matter would be on the agenda of the next meeting and Mr. Santiago could speak at that time.

2. Zoning Enforcement Officer's Report

Geoffrey Colegrove provided a copy of the letter written by Attorney Thomas Byrne to Mr. Jackson, 303-305 Main Street, regarding violations of the accessory apartment permit as well as the home occupation permit. Mr. Jackson has the option of making an appeal to the cease-and-desist order.

Geoffrey Colegrove also stated that there has been a new complaint about a junkyard situation on Wheeler Hill Road (Starr property). The Commission had spent considerable time on this issue in the past, ending a number of years ago with the Commission dropping the court action that had been underway because the property had been cleaned up and brought into compliance. Geoffrey Colegrove will ensure that the property is inspected with unregistered cars on the site counted.

Geoffrey Colegrove also stated that he had sent a letter to the DeMartinis withdrawing the cease-and-desist order (at least temporarily, while the matter is being reviewed by the Commission). This concerns the fire pit that has been subject of numerous discussions. The situation can be reevaluated in the future and the Commission can decide whether or not it wishes to reissue the order.

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

Brandon Handfield, a professional engineer with Anchor Engineering in Glastonbury, addressed the Commission. He stated his earlier misunderstanding about not providing plans to the town engineer and sanitarian; he will remedy that the following day. He noted that a site walk was held on November 29; the neighbor (Mr. Santiago) and Dave Foley were present.

Brandon Handfield stated that anyone could drive to the location and see where the driveway has been staked out; the location has not changed from the previous site plan. The large ledge outcroppings have been preserved; the driveway meanders around them. He also stated that there is little chance of seeing the house once constructed from Pisgah Road during much of the year because of the outcroppings; nor will the house be visible from Mr. Santiago's home (except possibly the peak of the roof).

He also stated that he had attempted to address concerns regarding drainage during the site walk. According to Mr. Santiago, he has attempted to address drainage problems on his own property three times (with driveway reconstruction). The plans developed for the one-lot subdivision pick up water that currently is going to Mr. Santiago's property and diverts it through pipes and a reinforced swale to go below Pisgah Road. This will slightly improve the drainage presently going to Mr. Santiago's property over what currently exists. The town engineer will be reviewing the proposed drainage plans.

Frank DeFelice asked the distance from the property line to Mr. Santiago's home; it is about 45 to 50 feet from the property line to the house and about ten feet from the deck to the property line.

A block wall is planned for construction (retaining wall), about six feet from the property line.

Richard Eriksen recommended the Commission exercise its prerogative and schedule a public hearing for this application, in particular because there will be blasting. He also

pointed out that there are new Commission members not previously serving when the earlier application was reviewed.

Brandon Handfield pointed out that disturbance to the site is less than 50% of what it was previously when there were two lots and two houses.

This application will be scheduled for the December 17 meeting; at that time, the town engineer's report should be available.

Geoffrey Colegrove clarified that even though this is for one lot, the parcel itself was broken off without benefit of subdivision previously and, therefore, needs to be handled as a one-lot subdivision.

Although a public hearing is not mandated by the regulations, the Commission does have the option of scheduling one whenever desired.

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

Geoffrey Colegrove distributed information for discussion with regard to yard requirements. Using the two-acre minimum zoning and a lot size of about 200 by 440 feet, then applying the current requirements for front, side, and rear yards, about 35,500 square feet is encumbered, leaving 60% of a two-acre lot (52,500 square feet) for actual use by the owner. Applying similar requirements to a corner lot (with two 50-foot setbacks) leaves 44% of the lot size. The most prevalent lot size in Durham, one acre, a 40,000 square foot builder's lot (200x200), is diminished even further. The majority of lots in Durham were created prior to two-acre zoning.

Prior to 1978, side yards were calculated using an aggregate of 25' (and could be achieved several different ways, i.e., 10 feet on one side, 15 on the other; 12.5 on each side; etc.).

The Commission then discussed what should not be permitted within the setback area—clearly buildings and accessory buildings are not allowed. Geoffrey Colegrove also stated the following could be considered for exclusion: dwellings, garages, barns, utility/storage buildings, above/inground pools, cabanas, hot tubs, pergolas, gazebos, greenhouses, temporary buildings designed for storage or habitation and recreational facilities such as tennis courts (requires impervious surfaces and fencing).

Items that might be considered for being allowed in the setbacks: fences and stone walls.

Items excluded could be such underground facilities as septic, leaching fields, utilities, and tornado shelters.

The Commission discussed possibly using five or six feet as the maximum height or restricting how much space is occupied to not more than 10%. Rather than listing all

exemptions, those items that are portable and not permanent in nature could be used as criteria.

Geoffrey Colegrove stated that the statute of limitations on enforcement of violations refers to buildings only (not structures).

Frank DeFelice stated that fences and walls should be held to the same height (i.e., six feet) for simplicity's sake. But he asked how height would be determined, in particular, from the two sides of a retaining wall where height could be substantially higher on one side than the other. Geoffrey Colegrove stated that many regulations frequently exclude retaining walls.

Richard Eriksen stated that retaining walls would have been on the original site plan and not put in after building a house. However, it was pointed out that some home owners do add them as part of landscaping work.

Richard Eriksen stated that the Commission seems to be trying to change the regulations in order to address a problem. He added his belief that the regulations should be reasonable and allow for interpretation; people always have the option of going to the Zoning Board of Appeals or to court for resolution of problems. He suggested that perhaps the language in the current regulations does not need to be changed; Frank DeFelice concurred.

Jim Kowolenko stated that he thought a paragraph or statement should be added to identify those items allowed under specific stipulations.

Richard Eriksen stated that he did not think propane tanks should be in the setback area. Geoffrey Colegrove stated that currently, he does not sign permits for propane tanks. They must go before the building official and the fire marshal and must meet fire code requirements; the current stipulations are more than adequate.

Vehicles were discussed, including campers and other vehicles. If they are registered, they are permitted. There was also discussion of the portable structures used to cover boats or trailers.

It was agreed that Geoffrey Colegrove should be provided with the tools to do his job—and language necessary to objectively make decisions.

Geoffrey Colegrove stated that there was no application for the fire pit on the DeMartino site, only for a raised patio. At the hearing before the Zoning Board of Appeals, it was learned that the contractor handling the project had contacted the town hall and was informed no permit was required. Upon discovery of the construction, a permit was secured for the deck after the fact.

Language will be presented at the next meeting. Then regional referrals will take place and a public hearing scheduled.

Frank DeFelice expressed concern about the Commission being asked to respond to an isolated incident by rewriting the regulations. Geoffrey Colegrove indicated that he would draft language that would give him the tools he needs for the Commission's consideration. He stated that clarification would be good to have.

5. Approval of 2009 Meeting Dates

Motion by Ralph Chase, seconded by Gene Riotte, to approve the 2009 Planning and Zoning meeting schedule as follows:

- January 7, 21
- February 4, 18
- March 4, 18
- April 1, 15
- May 6, 20
- June 3, 17
- July 1, 15
- August 5, 19
- September 2, 16
- October 7, 21
- November 4, 18
- December 2, 16

Motion carried unanimously.

6. Town Planner's Report

Geoffrey Colegrove indicated that there was a special Board of Selectmen's meeting the following week concerning smart growth.

7. Payment of Bills

Motion by Gene Riotte, seconded by Ralph Chase, to approve payment of the following bills:

- Attorney Thomas Byrne -- \$2,100.00 (Silver Eagle)
- Midstate Regional Planning Agency -- \$4,665.00 (October expenses)
- *Middletown Press* -- \$117.56 (new charges)
- Absolute Advantage -- \$357.53 (minutes Nov. 19, 2008, meeting)

Motion carried unanimously.

George Eames indicated that he had asked Karin Antin, town bookkeeper, to request

December 3, 2008

Page 6

tearsheets from the *Middletown Press*.

8. Approval of Meeting Minutes

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the minutes of the November 19, 2008, meeting as submitted. Motion carried unanimously.

9. Miscellaneous

Frank DeFelice asked for the status of the lighting at Dolphin Days Daycare; Geoffrey Colegrove will contact the electrician (Battista) who handles the projects in that area and have them install retrofit lighting fixtures to address the problem.

Richard Eriksen stated that at a recent meeting of Midstate Regional Planning Agency, he learned that a horse crematorium is being established in Meriden. Based on that and given that there is still a court date for the case the Commission is pursuing, he thought the cost to the town was unwarranted for the continued legal costs. He recommended the Commission abandon the case and save the taxpayers money.

George Eames pointed out that at a previous meeting, the Commission voted on this matter—to conclude the case legally. In addition, the majority of the legal expenses in the case have already been incurred.

Richard Eriksen reiterated that he is opposed to continuing this action. He does not believe there is any economic benefit to the town and that it represents a squandering of taxpayer money.

Frank DeFelice stated that an agricultural clinic will be held at the town hall on December 18th from 6:00 to 8:00 p.m.

Motion by Ralph Chase, seconded by Frank DeFelice, to adjourn the meeting at 8:41 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

12/9/2008

RECV'D: Office of the Town Clerk
December 11, 2008 at 9:23am