

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF MAY 7, 2008, MEETING

Present

Members: Ralph Chase, Frank DeFelice, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko

Town Planner: Geoffrey Colegrove

Alternates: Cathy Devaux, Mike Geremia, Mark Laudano

Absent

Member: Dian O'Neal, Gene Riotte, Tom Russell

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Cathy Devaux was seated on the Commission in Dian O'Neal's place. Mark Laudano was seated on the Commission in Gene Riotte's place. Mike Geremia was seated on the Commission in Tom Russell's place.

Motion by Frank DeFelice, seconded by Ralph Chase, to approve the agenda of the May 7, 2008, meeting as presented. Motion carried unanimously.

1. Public Session

No business.

2. CT Horse Cremation, Request for a Proposed Zoning Text Amendment to Section 07.04.004.(18) of the Zoning Regulations to Allow Large Animal Crematories in the Design Development District

Motion by Frank DeFelice, seconded by Ralph Chase, to accept the withdrawal of the Connecticut Horse Cremation, Request for a Proposed Zoning Text Amendment to

Section 07.04.004.(18) of the Zoning Regulations to Allow Large Animal Crematories in the Design Development District. Motion carried unanimously.

3. CSK Realty, LLC, Request for a Proposed Zoning Text Amendment to Section 07.01.03.(23) of the Zoning Regulations to Allow Large Animal Crematories by Special Permit in the Heavy Industrial Zone

Jeff Blashke and Dominic Gambardella addressed the Commission. They stated that they had heeded the advice of the Commission and the wishes of the neighbors at the previous meeting and had withdrawn their original application. They have since found a location in the heavy industrial zone on Commerce Circle. It is the furthest building from Route 157. It is a former concrete building bordered on each side by empty lots and in the back by the railroad tracks. There are no residential lots in the immediate area, simply industrial uses (fireworks manufacturer, insulation, concrete, etc.).

All of the standards, procedures, etc. would be identical as presented during the public hearing. Disinfectant-laden pads would be used and accompany the horse on the trailer into the incinerator. A letter was also issued by the Connecticut Health Department stating that the regulations for human crematoriums do not apply to animal crematories or large animal crematories in any way (in other words, the 500-foot setbacks do not apply).

Jeff Blashke stated that a question about dioxin was raised at the public hearing. Further research was done on this topic and a letter providing details was presented. He was then encouraged to hold off on the details until the time of the public hearing. Jeff Blashke stated that they really want to be part of the Durham community.

Frank DeFelice asked if the proposed location was more than 500 feet from a residence; Jeff Blashke stated that they would be. There is not a house visible at all from the property.

Discussion ensued about the public hearing (two will be necessary); they will be scheduled for June 4 (amending the use table, then an actual application for the planned business).

Geoffrey Colegrove stated that the sign (public hearing notice) should be posted by May 21 (to allow for two full weeks).

4. Dolphin Days Learning Center, Amendment to Site Plan, Fence for Screening, 7 Ozick Drive

Mr. Sibilis addressed the Commission, discussing the proposed amendments, which include the storage shed being drawn on the plans as well as designated trailer parking. They would also like to change the use of the overflow parking area to reflect owners' access to the storage shed. They would like to put in a 6 foot by 24 foot PVC fence along the side where the trailer and the shed are, to block the view from Mountain Road. The

fence would be behind the plantings and in front of the trees. The trailer parking would accommodate just the one trailer. The parking lot would be used by the owners only for access to the shed.

Geoffrey Colegrove stated that in order to complete the process, if/when the Commission approves the amendment, a permanent mylar needs to be created and filed.

Mike Geremia asked about the distance the fence must be from the street/front yard. Geoffrey Colegrove stated there is a restriction on fence height in front yards—however, the property has three front yards. Ozick Drive is the actual address. Therefore, the fence would be along a side yard (to either Route 68 or Ozick Drive).

The fence will be installed next to the gate. Mrs. Sibilina stated that the purpose of the fence is to shield the view of the trailer from the neighbors.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to approve the amended site plan for Dolphin Days Learning Center to incorporate the fencing as proposed, the storage shed, and storage/parking space for one trailer. Motion carried, with all in favor with one abstention (Mike Geremia).

5. Approval of Minutes

Frank DeFelice questioned the minutes of April 2, 2008, page 7 (near the bottom) where Mike Cote asked what would happen if the Dolphin Days sign were ‘taken out’—could it be replaced. He said that while the response was not in the minutes, it was his recollection that Geoffrey Colegrove stated that it could not be replaced.

Geoffrey Colegrove stated that there is a provision for catastrophic issues—if the sign were hit by a car, it could be pursued with some kind of diligence and replaced. A structure, including a sign, could be replaced within one year, just as a business use in a nonconforming situation—provided there was not an intent to abandon.

Frank DeFelice clarified that if the sign’s owner voluntarily took down an internally illuminated sign without any permit to replace it, then the Commission would state that the regulations were voluntarily complied with and the sign could not be reinstalled.

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the minutes of April 2, 2008, as submitted. Motion carried, with all in favor with the exception of George Eames and Mark Laudano.

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the minutes of April 16, 2008, as submitted. Motion carried unanimously.

6. Miscellaneous

George Eames asked if anyone was in attendance representing the farmers' market (there was not anyone). He said at a meeting with the Board of Selectmen on Monday, Melynda Naples indicated she had received a letter from Geoffrey Colegrove stating that the Planning and Zoning Commission had approved the farmers' market application. He stated that the motion made by the Commission was to approve the concept and referred it to the Board of Selectmen for final disposition.

Richard Eriksen stated that the viewpoint the Commission had taken was akin to an A-24 review on this matter.

Geoffrey Colegrove stated that Judy Snyder had drafted the letter based on the motion faxed to his office the morning following the Commission's meeting. The motion reads, "To recommend to the Board of Selectmen that the weekly farmers' market on the green be approved subject to the Board of Selectmen being the regulating authority for such use." Ralph Chase stated that it was ultimately up to the approval of the Board of Selectmen.

George Eames stated that at the time of the Commission's meeting, it was not clear who had the authority for approving the farmers' market. Richard Eriksen stated that a recent newspaper account did reflect that the Commission had recommended that all farmers' market activity take place at the north end of the green. George Eames stated that the north end of the green is what the first selectman, Laura Francis, had recommended; restrooms at the town hall would be opened up. In terms of signage, it was the preference of the first selectman that one sign be posted a few days before the event, then removed the day after the event.

Motion by Ralph Chase, seconded by Jim Kowolenko, to recess the regular meeting for the public hearing. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: Planning & Zoning Commission
Request: Proposed Zoning Text Amendment,
Section 05.01.01.01.23 "Office"

George Eames read the legal notice for the public hearing. Geoffrey Colegrove stated that the zoning language had been in place since about the late 1970s with the conversion of non-residential buildings along the Main Street residential zone. Some of the buildings are permitted uses and some are non-conforming uses; however, they are not residential

in nature. For example, the post office, the Durham Academy/Pythian Building (which did convert), and the Grange Hall. At the time that the original language was adopted, it was thought that doctors' and dentists' offices would generate too much traffic and these were excluded uses. In researching definitions of offices, the current definition is quite broad. The Commission is currently trying to create additional opportunities within these buildings. The present definition of office is "a building or portion thereof, room or series of rooms in which the affairs of business, professional group, or governmental unit are carried on." That includes everything from doctors and dentists to accountants, personal services, etc.

Two applications have come before the Commission—one was Durham Manufacturing. They acquired the house at the edge of the parking lot adjacent to Strong School. That was an eligible structure; a special permit was approved for conversion to a conference area/office use. The Pythian Building was also granted a permit, but has since been converted back to a house.

Frank DeFelice asked about the distinction between the language in the subject section versus that for home occupations. One is an accessory use (home occupation) and one is a principal use. The buildings listed under principal use mean that there is no residential component.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to close the public hearing on the proposed zoning text amendment, Section 05.01.01.23 "Office." Motion carried unanimously.

Motion by Frank DeFelice, seconded by Richard Eriksen, to reconvene the regular meeting. Motion carried unanimously.

7. Proposed Zoning Text Amendment, Section 05.01.01.01.23 "Office"

Motion by Richard Eriksen, seconded by Jim Kowolenko, to approve the proposed zoning text amendment, Section 05.01.01.23 "Office," with an effective date of June 1, 2008. Motion carried unanimously.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to approve payment of following bills:

- Midstate Regional Planning Agency — \$6,523.63 (March expenses)
- *Middletown Press* (George Eames will match up tearsheets with the bills presented; the Chairman was authorized to audit the bills first and then authorize payment)

Motion carried unanimously.

8. Town Planner's Report

Geoffrey Colegrove stated that, at Gene Riotte's request, he has followed up with the John Jackson matter (roofing business on Main Street where he is not residing presently). There is also an accessory apartment over the garage. There are three dwelling units on the property: the original house, a conversion in the garage, and then an apartment over the garage. The home owner and business operator must live in either the house or the accessory apartment in order to keep the two permits. This is the second time a letter has been sent. If the matter is not brought into compliance within ten days, the Commission will turn the matter over to counsel; fines were also mentioned.

Tim Mack converted his barn to a dwelling without building permits. This is directly across from Durham Market. There are tenants that were living in the barn. There is a legal obligation for the owner (Mr. Mack) to pay for housing for his evicted tenants. Letters have been sent with regard to permit issues, code violations, various building problems, septic violations, lack of heat, etc.

George Eames noted an ad in the *Town Times* by Mike Gerchy, owner/builder, 35 Maiden Lane, seeking jobs. He has not pursued a home occupation permit; Geoffrey Colegrove will follow up on this.

Geoffrey Colegrove stated that he had received several complaints. One is a corner lot (two front yards, therefore, setbacks of 50 feet from each). In the past, staff has interpreted if you have two front yards, you have two sideyards. However, the regulations do not spell this out clearly. This issue came up recently. Geoffrey Colegrove conferred with Attorney Thomas Byrne, who indicated this is a reasonable interpretation. In reviewing the subdivision approval for the site in question, however, the site development maps show this particular property as having two front yards, a rear yard, and a side yard. Attorney Byrne's advice on this matter was because of the approval of those plans, that would take precedence over the other customary interpretation. Therefore, the 40-yard setback on the rear yard must be complied with.

In a different matter, a substantial fireplace was constructed on a raised stone patio with seating built into the wall of the patio at another property. Attorney Byrne stated that a yard speaks about 'unoccupied' area—this would clearly represent a structure. A letter will be sent. Of course, the home owner could then go before the Zoning Board of Appeals.

9. Miscellaneous

Frank DeFelice stated that at one point in time, Jim Lyman was permitted to operate a farm stand at the former Behren's station. It then turned into a bookstore and is now a lawnmower business. Geoffrey Colegrove stated that the site is zoned commercial. The bookstore operator did get a zoning permit as well as a sign permit. The lawnmower

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business was formerly located in the Kelly Enterprises building (former Parsons' site). The farm market came before the Commission because of changes to the site itself; the commercial activity itself is not an issue.

Jim Kowolenko stated that the recent town referendum has enabled the school district to proceed with constructing a number of things in connection with the athletic facilities. The school district will need to come before the Commission. He stated that representatives should come in to confer with the Commission before the drawings are prepared (citing the Strong School project wherein the parking lot was placed in the front—instead of possibly off Pickett Lane—because plans were already drawn when the Commission was approached).

Geoffrey Colegrove noted that wetlands will need to be flagged as well. There will probably be additional lighting that will need to be approved. Richard Eriksen discussed that there may be some question with artificial turf. Geoffrey Colegrove will send a letter to the superintendent's office about the issues that will need to be discussed prior to actual planning. An informal discussion will be recommended before formal plans are developed. Geoffrey Colegrove indicated that Ron Melnik and Rob Francis had presented the last plans to the Commission; Bill Curlin is chairman of the building committee for the project. Vendors will be sought for bids.

Frank DeFelice stated that he recalled lighting approved for the football practice area in the area of a berm (south side of Pickett Lane). There were recently lights installed on the opposite side of Pickett Lane. There was no recollection of lighting for little league fields (north side of Pickett Lane). This will be addressed when the informal meeting is held.

A gentleman addressed the Commission regarding the corner lot complaint (Gina Drive and Anna Terrace). He thanked the Commission for their involvement in the matter.

In terms of the Arrigoni application/federal appeal, Attorney Tom Byrne has indicated that he'll be meeting with another attorney about the case (one with more recent federal experience). The appeal may be flawed, according to Attorney Byrne, because the applicants went to the Zoning Board of Appeals for a waiver of the regulations—traprock mining in industrial zone—where it was turned down. However, that decision was never appealed. Therefore, the applicant didn't exhaust all "administrative remedies" (i.e., appealing the ZBA decision).

Motion by Ralph Chase, seconded by Richard Eriksen, to adjourn the meeting at 9:05 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
5/18/2008