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TOWN OF DURHAM

Planning and Zoning Commission
P.O. Box 428
Durham, Connecticut 06422-0428

MINUTES OF MAY 6, 2015, MEETING

Present

Members: Alana Adams, Lisa Davenport, Frank DeFelice, Richard Eriksen, Chris Flanagan, Dave Foley, Dan Melnik, Joe Pasquale
Alternates: Campbell Barrett, Norm Jason
Town Planner: Geoffrey Colegrove

Absent

Member: Steve DeMartino
Alternate: Bonnie Ryder

Members:

The meeting was called to order by Richard Eriksen, Chairman, at 7:30 p.m. All members present were seated.

Campbell Barrett was seated on the Commission in Alana Adams' place. Norm Jason was seated on the Commission in Lisa Davenport's place. Alana Adams and Lisa Davenport arrived at 7:31 p.m. Campbell Barrett was reseated in Steve DeMartino's place; Norm Jason was unseated.

Motion by Dave Foley, seconded by Frank DeFelice, to approve the agenda of the May 6, 2015, meeting as submitted. Motion carried unanimously.

Motion by Chris Flanagan, seconded by Frank DeFelice, to transpose items #8 and #9 (Discussion of Business in MR Zone; Arrigoni, Bros., LLC, Site Plan Review of Existing Special Permit, Madison Road) on the agenda. Motion carried unanimously.

1. Public Session

Jim McLaughlin addressed the Commission regarding "Farmhouse Concerts and Garden Tours" being held at the Gastler Farm on Route 147 to support the Kalmia Garden Chamber Music &

Arts Foundation. Richard Eriksen stated he had received an inquiry into the type of activity and possible necessity of securing a permit.

Jim McLaughlin and Tim Gastler explained that three weekend musical events are held annually (total of six concerts this year: Sat. and Sun., May 23-24 and May 30-31; Fri. and Sat., June 5-6), each accommodating no more than 55 people. The concerts are held inside the house. Tickets are sold in support of the nonprofit foundation, the goal being to support appropriate activities that will allow a farm to sustain itself (garden tours) while promoting classical music through this cultural music series. There is parking on site for 50+ people (similar to when the Gastlers sold pansies and numerous cars were able to park on the property). Two rooms of the house have been opened up to accommodate 55 guests; there are several entrances into the house where the events will occur.

Jim McLaughlin stated that he did not realize a permit was needed for such events. He also noted that in addition to these musical events, there is an interest in also hosting “farm suppers” on the property.

Richard Eriksen indicated that public safety is a factor and that what is being proposed is not simply a one-time wedding or private party. Joe Pasquale added that for nonprofit activities and individual house parties, tickets are not sold. Lisa Davenport indicated that tickets are, in fact, frequently sold for nonprofit events.

Joe Pasquale queried whether there needed to be criteria considered for hosting events and/or selling tickets, i.e., minimum lot sizes.

Jim McLaughlin indicated that his house had been included on several tours sponsored over the years by the YMCA and the Garden Club (both not-for-profit organizations). He said upwards of 350 people passed through his home over the course of two days; there was no permit needed, but there was a charge for tickets.

Campbell Barrett indicated that this proposed use (inside a house, but open to the public via sale of tickets) is different from the Camp Farnum’s “Fall Down” event that also sells tickets, but extends over several days with outside activities and vendors.

Richard Eriksen noted that as a repetitive, scheduled, annual series of events, public safety is a concern and that public notice is likely necessary, even if he didn’t think personally that a permit was required. He suggested that the Board of Selectmen, public safety personnel, and fire department should be apprised.

Geoffrey Colegrove referenced the previous special permit granted for the William Kent Charitable Foundation (Howd Road), falling under the category of charitable and religious institutions. Activities there are limited to a certain number of people being on the site as well as a parking plan.

Frank DeFelice noted that 100 persons would be the maximum that could be accommodated in an area without there being an “issue of assembly” that needed to be addressed. Lisa Davenport hypothetically asked what issue there would be if someone hosted 55 people every weekend in their home.

Richard Eriksen reiterated the question that had been presented to the Commission regarding whether or not the Gastlers needed to conform to a parking plan, ensure public safety, etc.—in other words, secure a permit for these ongoing events.

He also pointed out the issue of fairness—the Shadle farm on Haddam Quarter Road was denied a permit for offering dinners and parties on their property in a farm-residential zone.

Campbell Barrett explained that the Shadle application was for a different type of activity that included not only a commercial kitchen/"restaurant" operation, but yurts for sleeping in a bed-and-breakfast type of arrangement.

Jim McLaughlin cited the desire to further promote agri-tourism that is expanding in the state, finding ways of keeping farms viable and not sold off for house development.

Tim Gastler stated an interest in expanding the garden operation through an on-site organic gardener who could instruct classes in organic farming, lead tours, etc.

Dave Foley suggested tabling discussion until such time that the Commission reviewed language from regulations used in the town of Madison.

As a separate matter, Jim McLaughlin indicated the building inspector was reviewing the barn for a certificate of occupancy; however, that is not where the musical events take place.

Norm Jason noted that he had attended a previous concert at the property and that it was a "classy" event, advantageous to the town from the standpoint of preserving the farm and benefiting the foundation.

Tim Gastler stated that the proposed activities have generated interest in his two daughters for preserving the farm (as opposed to dividing the land for house lots). He briefly cited Leah's background (will be graduate of Julliard as well as Rice University; connected to a number of young musicians from good institutions around the country). Leah is one of a small cohort of talented musicians that will be performing.

These plans help to support not only the perpetuation of farming (tours of the garden), but sustained interest in classical music.

Website: http://www.farmhouseconcerts.com

2. Bill Anderson, Informal Discussion, Classic Car Event, 980 New Haven Road

Bill Anderson, who operates Artie's Grill on New Haven Road, described plans to hold a classic car event each Monday beginning Memorial Day in the parking lot of his establishment between the hours of 5 p.m. and 8 p.m. He noted that the clientele and the "place" has completely changed its character under his management with a positive reputation. Geoffrey Colegrove concurred that there had not been one complaint or issue registered since Bill Anderson had taken over the site.

To a query regarding the number of vehicles that would be participating, this is an unknown element. There are a number of cruise-in events held throughout the area in the summertime; there could be a handful of cars or perhaps as many as 30. There will be no charge for admission and no trophies/prizes will be given.

Bill Anderson stated that there would be 50s and 60s music by a DJ on the inside of the restaurant (nothing outside).

Chris Flanagan asked about the parking area; it is not defined with lines—there is "only so much property there." He suggested that Bill Anderson possibly have someone on staff organize the parking of cars.

Geoffrey Colegrove said that because the site is a nonconforming use and because there had been issues in the past under previous ownership, he'd suggested informal discussion occur before the Commission.

The Commission thanked Bill Anderson for coming forward in informal discussion and found the proposed activities not to be an expansion of the nonconforming use.

3. Arrigoni Brothers, LLC, Site Plan Review of Existing Special Permit, Madison Road

Joe Pasquale recused himself from this discussion.

Tom Arrigoni addressed the Commission. The property has been dormant since 2008; the original earth excavation and removal permit had been issued in 2005. TJ Russell, the prior applicant, failed to complete the project due to economic conditions and health reasons. Tom Arrigoni stated that in reviewing the project parameters, the site had not been excavated below any stipulated elevation limits. Some of the project site has been partially excavated, restored, and "treed."

Marked up site plans were distributed showing the areas of the site disturbed and those remaining to be excavated.

Geoffrey Colegrove stated that the special permit was granted before an annual renewal process had been instituted by the Commission. There is already a special permit for the property and a cash bond is in place (property owner: James Mesick); however, because this was so many years ago, Geoffrey Colegrove recommended that the town engineer review the bond to determine if it is still adequate.

Dave Foley suggested this be at least one condition of any approval contemplated. The present site plan does provide for a number of conditions (completion; screening; treatment of materials; traffic pattern; hours of operation as 8-4/M-F, excluding weekends; erosion control; fencing; buffering; no fueling on property, etc.). There was also a stipulation that all work on the site be performed by the applicant or employees under the control of the applicant. Tom Arrigoni asked if that condition could be modified to include a different truck hauler as well as to reflect the direction of excavation work (presently bottom-to-top; he would like to reverse this, keeping topsoil behind him as he works, spreading it as work progresses).

The applicant was asked to formalize the intention to go forward with the project by providing the Commission with a full-scale, up-to-date map with changes in conditions desired. Then, coupled with the town engineer review, the Commission could resolve the special permit.

4. Discussion of Business in MR Zone

Geoffrey Colegrove advised that the St. Pierres (who had addressed the Commission several months ago around possible mixed use zoning on Main Street) had moved forward with purchasing a home on Main Street. He distributed bullet points for the Commission to consider in determining the key elements to be decided when contemplating mixed use zoning—including whether or not the owner of the business must reside on the premises, hours of operation, and a number of other salient points.

Geoffrey Colegrove stated that the Commission had discussed mixed use zoning on Main Street about 15 years ago; at that time, there was roughly a 50/50 split among those with interests on Main Street as to whether or not mixed use zoning was desired. The Commission took no action at that time. The current Plan of Conservation and Development describes Main Street as having a viable residential neighborhood in the preamble—with many people living on Main Street.

Lisa Davenport stated that she had discussed this topic with a number of professionals from Durham, Wallingford, Middletown, and Chester—who would love to both live on Main Street in Durham and operate their businesses along Main Street. This would represent uses long established hundreds of years ago along Main Street with low-impact professional uses on the first floor and residences on the second floor. With professionals living in and operating businesses on Main Street, dilapidated properties would 'disappear.'

Commissioners discussed the differences between professional uses (i.e., offices for attorneys, accountants, etc.) and retail uses (requiring more parking). Previous applications that had not gone forward were also discussed—from use of the Grange Hall for an antique business that included retail sales (and the inherent site limitations from water to septic) to the Durham Academy being considered for a tea room/children's party locale before being turned into a private residence.

Geoffrey Colegrove indicated that a number of area towns handle their Main Streets differently (Portland, Wallingford) and suggested that it might be practical to proceed by taking small steps—perhaps starting with professional offices first before considering or jumping into retail uses.

In referencing the Plan of Conservation and Development, Joe Pasquale stated that the Commission would need to understand the opinion of those who own properties on Main Street—in other words, "low impact" may not be a concern "until it impacts you." He suggested inviting property owners along Main Street to weigh in on this discussion before spending hours crafting regulations that might not be of interest to the public.

Campbell Barrett stated that Durham's Main Street is a very special place and that few towns—perhaps Wethersfield—have a Main Street as bucolic as Durham's. He suggested that the Commission is a steward of that. He recognized the good points being made about combining

commerce with residential use of Main Street, but noted it "is a slippery slope," requiring a deft touch in dealing with something as historic and special as Main Street.

Joe Pasquale stated that many families buy homes on Main Street in which to live; Lisa Davenport noted, however, that many of the houses on Main Street are rental properties.

The Commission agreed to review the talking points and discuss at the next meeting. There was consensus to formulate some preliminary ideas first before inviting the public to discuss. While a suggestion was made about having a 'closed meeting' with the Historic District Commission, no meeting can be closed (other than very specific matters reviewed under Executive Session).

Other issues brought up include the fact that the portion of Main Street under possible consideration for mixed use zoning is actually less than a mile in length, bookended by commercial districts on either end. Frank DeFelice suggested reviewing the Plan of Conservation and Development to consider this matter from a planning perspective.

5. Discussion of Sign Regulations

There was generally positive response at the public hearing and many businesses in favor of the proposed changes to the sign regulations. Geoffrey Colegrove distributed modifications to amend Section 02.19.02 regarding illuminated signs that are fully within an enclosed building and not visible from the outside along with Section 11.01.02.08 regarding the structural support for the sandwich board sign being included in the nine square foot limitation. In addition, it was agreed to separate out some of the language so that parcels with more than one business would be addressed specifically (see attached).

Language was not included in the final, proposed sign regulations regarding signs at athletic fields and for the Durham Fair.

Motion by Frank DeFelice, seconded by Campbell Barrett, to adopt the proposed sign regulations presented at public hearing on April 1, 2015, and as amended per language presented and clarified at May 6, 2015, meeting (attached). Motion carried, 6-3 with all in favor with the exception of Chris Flanagan and Joe Pasquale (in opposition) and Dave Foley (in abstention).

6. Approval of Minutes

Motion by Dave Foley, seconded by Frank DeFelice, to approve the minutes of the April 15, 2015, meeting as presented. Motion carried, 3-6, with all in favor with the exception of Alana Adams, Campbell Barrett, Lisa Davenport, Chris Flanagan, Dave Foley, and Dan Melnik (in abstention).

7. Payment of Bills

Motion by Dave Foley, seconded by Frank DeFelice, to approve payment of the following bills:

- Attorney Steve Byrne - $1,425.00 (Aberdeen)
- Attorney Steve Byrne - $2,220.00 (Merriam)
- Absolute Advantage - $496.04 (minutes of April 1, 2015)

Motion carried, 8-1, with all in favor with the exception of Dan Melnik (in abstention).

8. Town Planner's Report

Geoffrey Colegrove provided an update. A home occupation permit is required for the paving business opposite Pisgah Road.

The sign regulations are being reviewed by the Board of Selectmen; it is the belief that the selectmen will likely adopt the new regulations, including the spacing of signs on the green (however, it is unknown how this might be enforced).

Geoffrey Colegrove noted that there is a potential sale of the Merriam property in process. There is a question regarding the nonconforming uses at the site and grandfathering that may exist (even following tear-down of buildings). At Geoffrey Colegrove's direction, Attorney Steve Byrne has been reviewing the record, the nonconforming status of the property, superfund activities, usage of the site after the fire, records from a prior federal law suit (Merriam and Durham Manufacturing), and the files of the building department. It appears that approx. 7,000 sq.ft. is grandfathered and inconclusive as to the balance of the site. It has not yet been clarified if uses were intentionally abandoned or not, with seemingly nothing in the record. Hence, the Commission, in all likelihood, has the discretion to determine uses going forward.

Chris Flanagan asked about the status of the older house/lot adjacent to the subject site. While a separate parcel, this house and land are part of the contract for sale.

9. Miscellaneous

Geoffrey Colegrove reported that the Aberdeen project is moving forward; there have been numerous conversations between the parties, bank, etc. The terms of the bond must be resolved. The project has a shared community water supply, but individual septic systems. As for the ongoing legal issues, discovery is in process at present with wrap-up anticipated by July (and into 2016 for the trial).

There was discussion among Commissioners as to the advisability of incurring ongoing legal costs with the Commission's counsel to enforce the bond posting (and Campbell Barrett's suggestion of understanding from Attorney Byrne the cost-benefit analysis of such pursuit). It was agreed that Attorney Byrne would be invited into an execution session with the Commission to discuss these matters and determine the best plan for going forward.

There is a cease-and-desist relative to violation of conditions of approval already in the record. Acceptance of bonding is one of the items of enforcement action (and zoning enforcement is the subject of the Commission's court case). No further certificates of occupancy will be issued for the property.

Motion by Lisa Davenport, seconded by Frank DeFelice, to adjourn the meeting at 9:50 p.m. Motion carried unanimously.

Respectfully submitted,
Jan Melnik, Recording Secretary

5/13/2015