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TOWN OF DURHAM

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

MINUTES OF MAY 20, 2015, MEETING

Present

Members: Lisa Davenport, Frank DeFelice, Richard Eriksen, Chris Flanagan, Dave Foley, Dan Melnik, Joe Pasquale
Alternate: Bonnie Ryder
Town Planner: Geoffrey Colegrove

Absent

Members: Alana Adams, Steve DeMartino
Alternates: Campbell Barrett, Norm Jason

The meeting was called to order by Richard Eriksen, Chairman, at 7:37 p.m. All members present were seated. Bonnie Ryder was seated on the Commission in Steve DeMartino's place.

Motion by Frank DeFelice, seconded by Dave Foley, to approve the agenda of the May 20, 2015, meeting as amended to reflect inclusion of item 5(a), discussion of Merriam Manufacturing site with Commission counsel, Attorney Steve Byrne. Motion carried unanimously.

1. Merriam Manufacturing – Discussion with Attorney Steve Byrne

Attorney Steve Byrne addressed the Commission regarding the Merriam Manufacturing site and, in particular, whether or not the 7,000 sq.ft. manufacturing facility that survived the fire was grandfathered for future use despite being a nonconforming use that may/may not have been abandoned. Attorney Byrne cited case law demonstrating that while there is no support for allowing a nonconforming use to expand, an exception would be a quarry operation. Otherwise, a reasonable interpretation is that a nonconforming use must remain in an existing spot and not expand.

There was discussion about the site and recollection by Commissioners that the back building, while originally thought to be used for storage, was, in fact, used for industrial manufacturing.

This was by tenants after Merriam Manufacturing relocated its operations to a different site. The nonconforming use that remained in that small structure could be said to have survived, separate from the main buildings destroyed in the fire and subsequently razed.

Attorney Byrne stated that the burden of proof would be on the owner of the site to demonstrate the uses on the site and the intention to abandon or not to abandon the use. There is the thought that a use does not go away if there is no intent to abandon a nonconforming use. The EPA then oversaw the tear-down of that remaining structure and remediation of the site. It is unknown if there was ever an intention to return to the site or to develop/sell the property. The former operation is continuing in some form in Middletown (Aztec/Merriam/estate of Adams).

Joe Pasquale stated that by 2008, the building discussed previously had already been abandoned.

Geoffrey Colegrove noted that Jan Exman had previously approached the Commission and the Board of Selectmen about purchasing the property for back taxes a number of years ago; that did not occur.

Frank DeFelice stated that just because the EPA gets involved with remediation of a site does not change the property's ownership or use. At this point, there is no application for any proposed use and while there has been interest in purchase of the site, it has not yet changed hands.

Like many of the sites along Main Street, the front portion of the site is Main Street Residential and the back portion is Farm-Residential.

2. Public Session

Mark DeAngelis, Aberdeen/Stagecoach, asked for an update on the bonds for the project. Attorney Steve Byrne stated that enforcement action was still pending and that the Middletown court clerk indicated a trial date could not be expected for at least eight months. United Bank, which holds the mortgage on the undeveloped part of the project, is trying to work with a new builder (Ken Boynton from Vernon) to take over the project with a possible attempt to change the requirements for bonding; there have apparently not been any discussions in the past month or two. Attorney Byrne explained that any changes to the bonding requirements would need to come before the Commission.

Richard Eriksen stated that no further certificates of occupancy would be issued (this has been in place for some time).

To Mark DeAngelis's question about nothing being done, Richard Eriksen indicated that the Commission has pursued legally the steps that it can. Attorney Byrne stated that the minutes of a Commission meeting a number of months ago reflect that he had indicated it would take a year to a year-and-a-half to get through the case legally.

Mark DeAngelis expressed his frustration with the developer's stalling strategies with the court and said that the matter should have been brought forward. Attorney Byrne explained that while the matter is frustrating, it does not represent a health/safety/welfare concern that would prompt the court to take emergency action.

Geoffrey Colegrove reported that he had talked with the attorney for United Bank two weeks ago and discussed the bond. That attorney stated he had been in contact with owners of properties within the development.

It was reiterated that any change to the bonding requirement would necessitate a return to the Commission and a public hearing in order to consider or change the conditions of approval. Without the approval of the four property owners, there is little likelihood of a change. Per the bank's attorney, the prospective developer (Ken Boynton) was "losing interest."

There was additional discussion about bonding; there could be, of course, different ways to calculate the bonding amounts, possibly using an amortization schedule for the four units already developed.

Geoffrey Colegrove stated nothing was proposed or on the table for consideration. Mark DeAngelis queried if a developer doesn't come forward, would owners be tied up for what amounts to two years and unable to sell. He added his opinion that the town created the problem by not collecting the bonds and that it should be the town's responsibility to make the developer pay the bonds. If the bonds had been posted, there wouldn't be this problem.

Mark DeAngelis said the Commission's stance was unconscionable. He asked if the developer's attorney had marked off the case. Attorney Byrne replied that twice Tom Briggs' attorney tried to have his name removed from the complaint, but this did not occur.

While the residents have rights under due process, our country's legal system also protects the rights of the developer. Mark DeAngelis stated that the legal fees paid to pursue Tom Briggs should be recouped in the legal proceedings.

Also under Public Session, Artie's Bar and Grill was discussed. At a recent Commission meeting, the Commission discussed informally Bill Anderson's plans to hold a classic car event every Monday from 5 to 8 p.m. throughout the summer.

Mrs. Anderson addressed the Commission, stating that the previous Sunday, there was an incident at the site prompting calls and neighborhood complaints. She explained that Artie's Bar and Grill would be participating in the Memorial Day parade with a musical float. There would be entertainment (patriotic songs). A local band had set up on a trailer outside the bar on Sunday after around 3:45 p.m. for about an hour to 'test' the ability to move on a float and perform; three to four songs were practiced, but not in their entirety. By 5 o'clock, the practice was over. However, neighbors complained about the outside music (not permitted). An email was received from the Forlines detailing the problem; in addition, a copy of the stipulated agreement from 2003 for the site (spelling out everything prohibited) was provided as an attachment. That stipulated agreement for the site stays with the property, regardless of who is operating a business.

Geoffrey Colegrove stated that when the cruise night was discussed a few weeks ago, the issue was primarily one of noise—and that there would be no music or external speakers outside the building during the car events. While the current operators of Artie's Bar and Grill should have

been provided with a copy of the stipulated agreement and the restrictions by the property owner, Mr. Gambardella, this was not done.

The email from the Forlines mentions an expansion of the parking lot; however, the parking lot has not been expanded under the Andersons' purview. Richard Eriksen stated that a fence was supposed to have been installed to the north; this was never done by the property owner.

There was considerable discussion about the proposed cruise night. Bill Anderson had stated that Artie's Bar and Grill was not sponsoring the event; cars could simply come and park their cars at the site between 5 and 8 p.m. on Mondays throughout the summer. The website for the business does discuss classic cars and hot rods—but not a cruise-in (which would typically have outside noise/music). There was also discussion about the classic music/garden tour events at the Gastler property discussed at the previous meeting and whether or not a permit is required for that activity. For some Commissioners, at issue is the sale of tickets for an event. If more than 100 people convene, it constitutes assembly.

It was noted that the language from the town of Madison distributed during the Gastler event discussion actually prohibits music in similar types of events. The event at the Gastlers will be held inside the house. However, because of the number of people on the site, public safety may need to be considered.

Revisiting the cruise night, there was some debate as to what constitutes a cruise night. Joe Pasquale referenced the stipulated agreement in which an applicant is not precluded from making an application, even for something that is prohibited per the stipulated agreement; this wouldn't implicitly assure any kind of approval.

If Bill Anderson is going to have Artie's Bar and Grill sponsor the car events, then an application should probably be presented. Geoffrey Colegrove stated that, at the Forlines' request, they would be notified if an application comes forward; such application would need the signature of the property owner, Mr. Gambardella.

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 and presented a new map. Language regarding conditions of approval was distributed reflecting amendments to the original 2004 conditions. A three-year completion date is prescribed unless there is an extension request.

Town Engineer Brian Curtis will evaluate if the current bond already in place is adequate—or if an update is required. Fueling was discussed; there was originally a provision for a pad if fueling is done on site. It was agreed that the language for this section would read: Any fuel spillage shall be immediately reported and remediated in accordance with applicable law.

Tom Arrigoni will ensure that the conditions are placed on the plan, then the mylars will be filed reflecting any update to the bond.

Motion by Frank DeFelice, seconded by Dave Foley, to approve the site plan for an existing earth excavation and removal permit for Arrigoni Brothers, LLC, 310 Madison Road, in accordance with conditions of approval dated January 21, 2004, and amended May 20, 2015, with modifications made during meeting by Commission along with town engineer's review of bond/updated amount to be posted by applicant in accordance with town requirements. Motion carried, 6-1, with all in favor with the exception of Bonnie Ryder (in opposition).

4. PermaTreat Corporation, Construction of 26' x 52' (1,352 sq.ft.) single-story office building on slab; no additional employees are proposed

Pat Benjamin, engineer for the project, and Don Ponko, General Manager, explained that the company has decided to construct a new office building (following the fire in February and destruction of the former office). The offices are now in a temporary trailer on the site. The plans were reviewed for the relatively flat site; there will be a septic system with primary/reserve areas and associated grading proposed. Inland Wetlands has approved the plans. With the new structure, site coverage will still not exceed 40% within this Industrial Zone.

Exterior construction details were reviewed. Vinyl shakes are proposed in a pattern with complementary trim. The roof will be constructed using architectural shingles. No public water supply is required as there are not more than 25 employees.

Bill Milardo reviewed and approved the site plan on April 23, 2015.

To Chris Flanagan's question about the damaged building, Don Ponko explained that this will become storage (building torn down and rebuilt), once an insurance settlement is received.

Pat Benjamin will submit the lighting plans for the two sconce lights proposed over the door and end of the building using full cutoffs (70 watt LED lights); these will generate about one foot candle 20 feet away from the source.

Motion by Frank DeFelice, seconded by Chris Flanagan, to approve the application of PermaTreat Corporation, construction of 26' x 52' (1,352 sq.ft.) single-story office on slab in accordance with site development plan, April 2015. Motion carried unanimously.

5. Discussion of Business in MR Zone

Geoffrey Colegrove stated that he had discussed with Martin French, tax collector, the number of rental properties on Main Street (versus those that are owner-occupied); there is no way to be 100% sure which properties are rented. However, a rough approximation might be one-third are not owner-occupied. He distributed a document outlining possible options for nonresidential uses in the Main Street Residential Zone for Commissioners to consider. Criteria to be weighed and considered might include the following:

1) the percentage of total living area to be used for nonresidential activities (i.e, 25%, 50%, a stipulation that if the building is more than one story—the nonresidential use is restricted to the first floor only, and 100%)
2) the residential use of the property (restricted to owner-occupied, absentee owner with a rental, or none)

3) possible uses (retail based on trip generation table and available parking; professional uses in the traditional sense and available parking; all professional uses and services licensed by the state and available parking; retail services by appointment/available parking; antique shops/tea rooms/similar uses and available parking; bed and breakfast and available parking)
4) approval process (special permit, site plan review, as of right by zoning permit, as of right)
5) sign size (square feet: 2, 4, 6, 9, 12)
6) number of signs (0, 1, 2, 3)
7) sign illumination (internal, external, none)

Joe Pasquale asked the key factors driving consideration of implementing nonresidential/mixed uses in the Main Street Residential Zone (besides an applicant approaching the Commission), i.e., economic benefit? tax revenue/relief? He suggested there might be a greater gain to looking at the Industrial Zone for possible places in which to bring in additional business.

Dave Foley noted that this type of consideration falls under the "planning" part of the Planning and Zoning Commission's responsibility—developing a vision or plan for what can and can't be done on Main Street rather than being reactive to a potential applicant.

Lisa Davenport stated that bringing in mixed uses along Main Street would be an enhancement to not only the downtown area of Durham, but provide benefits to the community and to other small businesses. The current small businesses in town are "tapped" as far as being approached by local civic groups, school kids, little league participants, etc., asking for sponsorship and donations. More businesses in town will provide more support for the community. While industrial growth can be examined, there are many limitations with respect to availability of water, gas, septic, etc. Mixed use zoning on Main Street provides an opportunity to grow the community.

Lisa Davenport also reflected on having worked outside of Durham herself, operating her business in Glastonbury and Middletown. Now, her business is located in Durham and her money stays in Durham.

Frank DeFelice stated that if the goal were tax revenue, then industrial zoning would likely generate more revenue. However, a reason for pursuing mixed use zoning on Main Street has more to do with creating a vibrant Main Street and creating a mechanism with set criteria and guidelines that will allow for appropriate, in-home business pursuits. A side benefit is enhancing the appearance of homes along Main Street.

The Commission agreed that to move forward on this, it makes sense to present some ideas to the public for their opinions (as opposed to being totally open-ended with nothing presented).

Geoffrey Colegrove stated that an analysis of the Industrial Zone was done many years ago; he suggested examining this differently—possibly looking at coverage requirements, required open space limitations, and yard requirements. There are generally limited opportunities to create more taxable base through zoning. He also noted that it might be worthwhile to examine uses in the Farm-Residential Zone, especially for larger parcels (in excess of five or seven acres, perhaps).

It was noted that the preamble of the Plan of Conservation and Development discusses the concept of Main Street being a viable residential zone.

Dave Foley referenced the "dumbbell" description of Main Street coined by former Planning and Zoning Commissioner Brian Ameche many years ago: Main Street Residential bookended by commercial zone uses on either end. There is limited parking along most of Main Street and a necessity to consider uses that don't generate high turnover or intense need for parking (i.e., professional offices with visits by appointment). Some properties along Main Street might allow for conversion with wider driveways and better parking capacity.

Bonnie Ryder stated that mixed use zoning along Main Street would be in alignment with green trends and encourage non-driving pursuits (i.e., walking or biking to work).

Geoffrey Colegrove will email all Commissioners the table of options and the previously distributed punch list and asked that feedback/markups to the drafts be provided before the next meeting. He will also attempt to get more information from Martin French. This will be reviewed at the June 3 meeting and, from Commission input, a proposal can be drafted. At that point, it was agreed that approaching this as a workshop instead of a public hearing would be appropriate so as to gather input from both the Historic District Commission and the public as a whole.

Joe Pasquale discussed the floating zone concept and noted he had secured information from the Office of Legislative Research (designating a type of use allowed in a municipality). Geoffrey Colegrove noted that it is effectively the same thing as a zone change except that it is attached to a certain geography. As an instrument, a floating zone is more "appeal-proof" than a special permit that has been granted.

Bonnie Ryder suggested that consideration be given to mixed use zoning on a long-term basis—while only two or three buildings might be interested in pursuing a mixed use at present, it is certainly possible that many more properties could be interested in this in the future if it were available as an option.

6. Payment of Bills

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

- Attorney Steve Byrne - $1,410.00 (Aberdeen)
- Attorney Steve Byrne - $1,755.00 (Merriam Manufacturing)
- Absolute Advantage - $433.12 (minutes of May 4, 2015)

Motion carried, 7-1, with all in favor with the exception of Dan Melnik (in abstention).

Richard Eriksen stated that the end of the fiscal year is approaching, June 30; the Commission has already run over budget in legal fees and administrative costs. For the next fiscal year, the Board of Finance has cut $4,000 from the Commission's budget for the previous year.

7. Approval of Minutes

Motion by Frank DeFelice, seconded by Lisa Davenport, to approve the minutes of the May 6, 2015, meeting as amended to reflect correction in Lisa Davenport's comment about mixed use

zoning—that people have expressed interest in living in Durham and operating businesses on Main Street. Motion carried, 7-1, with all in favor with the exception of Bonnie Ryder (in abstention).

8. Town Planner's Report

Geoffrey Colegrove stated that an effective date was needed for the new sign regulations approved at the previous meeting.

Motion by Dave Foley, seconded by Frank DeFelice, to make the sign regulations approved at the May 6, 2015, meeting effective June 17, 2015. Motion carried, 7-1, with all in favor with the exception of Bonnie Ryder (in abstention).

Richard Eriksen recommended sending a form letter to anyone who posts tag sale signs and doesn't remove them (where addresses listed on the signs make this possible).

Geoffrey Colegrove stated that the RiverCog has just updated the transportation portion of the POCD. He noted that consideration was being made to extend the Valley Railroad to Middletown at a projected cost of about $5.3M. This can provide for greater regionalization with travel between Middletown and Old Saybrook. This compares to alternative options of providing freight service ($30.5M) or regular passenger service ($100M). Over the years, there has been encroachment by adjacent residents into the rights-of-way; these are now being re-established and enforced.

9. Miscellaneous

No business.

Motion by Lisa Davenport, seconded by Dan Melnik, to adjourn the meeting at 10:17 p.m. Motion carried unanimously.

Respectfully submitted,
Jan Melnik, Recording Secretary

5/27/2015