

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF JUNE 3, 2015, MEETING

Present

Members: Alana Adams, Lisa Davenport, Richard Eriksen, Chris Flanagan, Dave Foley,
Joe Pasquale
Town Planner: Geoffrey Colegrove

Absent

Members: Frank DeFelice, Steve DeMartino, Dan Melnik
Alternates: Campbell Barrett, Norm Jason, Bonnie Ryder

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

Motion by Dave Foley, seconded by Chris Flanagan, to approve the agenda of the June 3, 2015, meeting as presented. Motion carried unanimously.

1. Public Session

Attorney John McHugh, with Cranmore, FitzGerald & Meaney, and Cynthia Cos, Vice President of Special Assets, were in attendance representing United Bank. They addressed the Aberdeen/Stagecoach matter; United Bank holds the mortgage and, with the permission and consent of Aberdeen, LLC, were seeking approval of the Planning and Zoning Commission to schedule a public hearing to modify one of the conditions of approval placed on the original project. Attorney McHugh explained that the requirement for posting of a septic system bond has proven onerous and the applicant would like this removed from the conditions. He stated that this request carries the approval of the four existing unit owners at the property (per their legal counsel).

Attorney McHugh stated that the existing developer does not have the financial wherewithal to finish the project. A new developer is willing to provide the erosion and sedimentation bond of

\$5,300 as well as bonding for landscaping of \$49,000, but not willing to take over the septic bond posting requirements.

The association is proposing to self-fund the septic bond requirement, presented as contributing \$35 per unit per month to build up to a \$30K reserve minus about \$3,400 already in a segregated account. As new units are completed and granted certificates of occupancy, \$840 from each would be added to this account. There would be an obligation to have the individual septic tanks pumped every five years to ensure a long-lived system.

The reason that the developer is not willing to bond for the septic system is that unlike the sedimentation and erosion bond and the landscaping bond, these funds would possibly be tied up for 30 years.

Richard Eriksen stated that the Commission's counsel, Attorney Steve Byrne, has indicated that the Commission would need to hold a public hearing to consider this request. In the meantime, no certificates of occupancy will be issued until all bonding issues are resolved. An actual application will need to be provided to the Commission to move this forward to a hearing.

Geoffrey Colegrove stated that part of the problem was the significant delay between the start of the project and the present time (without completion). The project has individual septic systems on common land owned by the association.

To Dave Foley's query regarding the status of the current septic systems, four are active and there are two additional inactive systems for two units that do not have certificates of occupancy. There will be six additional septic systems once the project is fully built out. Richard Eriksen pointed out that the town sanitarian, Bill Milardo, has been inspecting the site and is aware of the situation.

Motion by Dave Foley, seconded by Lisa Davenport, to schedule a public hearing on June 17, 2015, for the forthcoming application of Aberdeen/Stagecoach. Motion carried unanimously.

In a continuation of the Public Session, Kathy Forline, New Haven Road, addressed the Commission regarding the property on Route 17 almost opposite Artie's Bar and Grill. The property and the one behind it have legal right of way via Forline Way, a private drive. This front property is running an apparent garbage truck business from the home without a home occupation permit.

Geoffrey Colegrove stated that a permit is required for the home occupation. Use of a private right of way/trespass is not a planning and zoning issue; the Commission cannot enforce whatever provisions may exist for the right of way. In some instances, people are allowed to bring home a commercial vehicle used for business purposes; but where a business is being run from the property, a home occupation permit is required. The Commission will send notice that this individual should appear before the Commission to apply for such permit.

Chris Flanagan stated that the business operator has appeared before DMIAAB on several occasions, interested in providing trash removal services (Goduti Waste and Recycling, 997 New Haven Road).

2. Bill Anderson, Change of Use, Classic Car Appreciation Night, 980 New Haven Road

Bill Anderson addressed the Commission. He indicated that when he appeared before the Commission about a month earlier, he had erroneously used the terms “cruise night” and, instead, should have described the planned activities as “classic car appreciation nights.” He stated that there will be no music outside and no vendors (both activities associated with traditional cruise nights). People will simply, of their own accord, drive classic vehicles to the property on Monday evenings and families can walk around and view the cars.

Richard Eriksen explained that because of previous litigation, the site is under a court stipulation with regard to activities. The stipulation states that there can be changes considered by the Commission with a public hearing. That is the recommendation going forward—to allow for such an activity as the appreciation night, a public hearing is required so that the permit for this nonconforming site can be amended. It is because of the court decision and the fact that the site is already a nonconforming use that an application is required (for expansion of a nonconforming use) along with a public hearing.

Geoffrey Colegrove stated that this was an oversight on his part; he had not recalled the stipulated agreement being in place. At the recommendation of the Commission’s counsel, for such an activity to be considered, a public hearing is necessary. The applicant was advised to obtain the signature of the property owner (Mr. Gambardella) on the application (or to obtain a letter from Mr. Gambardella granting permission) and to ensure that one public hearing notification sign is posted facing Route 17 ten days in advance of the hearing.

While Bill Anderson was not made aware by the property owner that the property he leases is encumbered with court-mandated stipulations, it doesn’t relinquish him from the responsibility of pursuing this through proper application/hearing channels. The need for this process to be followed has nothing to do with the manner in which Artie’s Bar and Grill has been/is being operated. Geoffrey Colegrove stated that as long as an application is pending, no enforcement action will be taken.

Geoffrey Colegrove asked Bill Anderson to ensure that the application is detailed in spelling out exactly what activities are proposed *and* what activities will not be taking place on the site so that it all becomes part of the official record. He clarified that the stipulation and prohibitions on the property run with the property and its assigns and successors. Even if the property were sold to a different owner, the court order remains in place. A brief discussion followed regarding the activities that had led to the problems more than ten years ago (excessive exterior noise, parking issues, staged events, photo shoot, hundreds of bikers, etc.).

Richard Eriksen reminded members of the public that they will have full opportunity to speak at the public hearing so that any comments become part of the official record.

Bill Anderson stated that he was unaware a public hearing would be required until learning of it at this evening’s meeting; Geoffrey Colegrove stated that the Commission’s attorney had just provided that information.

Richard Eriksen stated that on the night of the public hearing, the Commission can (a) continue the public hearing; (b) close the public hearing (and possibly secure additional information from counsel or staff); and/or vote yes/no on the application. If there were to be any kind of legal appeal, a judge would review the record to determine whether or not the Commission's decision was founded and supported in the record.

Motion by Joe Pasquale, seconded by Dave Foley, to schedule a public hearing of Bill Anderson, change of use, classic car appreciation night, 980 New Haven Road, on June 17, 2015. Motion carried unanimously.

3. Discussion of Business in MR Zone

Geoffrey Colegrove distributed colored maps depicting the zones along Main Street. He stated that the proposed table for discussion had been revised to reflect Joe Pasquale's input regarding the floating zone. Also being developed is information about absentee landlords and multifamily homes as well as nonconforming uses for the Commission's consideration; this information, being created in concert with the tax collector, will be ready for the Commission's review at the next meeting.

Joe Pasquale raised a question about a property being split between the Main Street Residential Zone and the Farm Residential Zone, as many are on Main Street—and how this might impact consideration of a site for supporting activities (i.e., a business use for the front of the property using the back FR portion of the site for parking for that business).

Geoffrey Colegrove stated that there were not good property maps available many decades ago when the zone lines were drawn (hence so many split properties). Aerial photographs were used in attempting to draw the lines where good mapping didn't exist at the time.

Joe Pasquale also suggested that buffers may be appropriate to require for properties considered for mixed use when abutting pure residential properties. It was also noted that there are wetlands at the back of a number of properties at the south end of town.

There was discussion of whether or not mixed use zoning should require a residential requirement for operating a business. Lisa Davenport stated that if a building is owner-occupied with a professional office on the first floor (and residence on the upper floors), it is likely to be better maintained; however, it could be a deterrent to require residency. She added that while she would not like to see Main Street changed drastically, having businesses would be an enhancement.

Geoffrey Colegrove stated that this can be accomplished gradually, with professional offices initially, then those providing services by appointment only, etc., before seguing to the more difficult-to-accommodate retail uses (because of parking limitations).

4. Payment of Bill

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

- Absolute Advantage - \$496.04 (minutes of May 20, 2015)

Motion carried unanimously.

5. Approval of Minutes

Motion by Dave Foley, seconded by Lisa Davenport, to approve the minutes of the May 20, 2015, meeting as presented. Motion carried, 5-1, with all in favor with the exception of Alana Adams (in abstention).

Motion by Dave Foley, seconded by Joe Pasquale, to approve the minutes of the May 20, 2015, Executive Session as presented. Motion carried, 5-1, with all in favor with the exception of Alana Adams (in abstention).

6. Town Planner's Report

The activities of Red Frog Events were discussed. They are planning to use Greenbackers for parking and then transport attendees to a tough mudder-like event at Camp Laurelwood in Madison. The Commission discussed at length the appropriateness of using a farm for parking in town when the activity and numbers of attendees will not be engaging/supporting any event/activity in Durham, but in another town. Potential safety issues were discussed, the matter of whether or not there will be fees charged for parking, etc.

There is a big distinction between the Durham Fair having a parking plan as part of its special permit for an event *in Durham* and this activity. The event happened for the first time last year and the Commission didn't know about it. This year, there is cognizance, but still no application before the Commission. Geoffrey Colegrove will issue a letter to the operator of Red Frog Events/Alex with a copy to the Greenbackers stating that this would not be consistent with the regulations and that there is no special permit in place to allow such parking.

7. Miscellaneous

Motion by Lisa Davenport, seconded by Joe Pasquale, to adjourn the meeting at 9:15 p.m. Motion carried unanimously.

Respectfully submitted,
Jan Melnik, Recording Secretary

6/10/2015