TOWN OF DURHAM

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

MINUTES OF JUNE 17, 2015, MEETING

Present

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

Absent

Member: Steve DeMartino
Alternate: Bonnie Ryder

The meeting was called to order by Richard Eriksen, Chairman, at 7:30 p.m. All members present were seated. Norm Jason was seated on the Commission in Steve DeMartino's place. Campbell Barrett, who arrived at 7:39 p.m., was present, but unseated.

Motion by Frank DeFelice, seconded by Chris Flanagan, to approve the agenda of the June 17, 2015, meeting as modified to reflect a change in the order of agenda items prior to the 8:00 p.m. public hearings. Motion carried unanimously.

1. Public Session

No business.

2. Payment of Bills

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

- Absolute Advantage - $307.28 (minutes of June 3, 2015)
- Attorney Steve Byrne - $1,081.50 (Aberdeen)
- Attorney Steve Byrne - $795.00 (Aberdeen)

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

3. Approval of Minutes

Motion by Dave Foley, seconded by Joe Pasquale, to approve the minutes of the June 3, 2015, meeting as presented. Motion carried, 6-3, with all in favor with the exception of Frank DeFelice, Norm Jason, and Dan Melnik (in abstention).

4. Town Planner's Report

Geoffrey Colegrove stated that he had completed work on the study of mixed uses along Main Street, culling information from the assessor's records, personal knowledge, observation, and input from the tax collector. He distributed a chart detailing 90 total parcels, of which (with some overlap) 32 are non-owner occupied, 5 have nonconforming uses, and 16 have nonresidential uses. The previously distributed chart of nonresidential uses of Main Street included Joe Pasquale's recommendation to possibly incorporate a floating zone. At the request of the Commission, he will provide property owners' names.

Geoffrey Colegrove stated that there are some discrepancies—for instance, properties listed as single-family, but with multiple electric meters on the exteriors. To Chris Flanagan's query about the Grange Hall, this was used as a dance studio for a number of years back in the 1980s. While a permit was sought many years ago for retail use/antiques/gifts, it was denied, primarily because of septic/water limitations and minimal parking. There have since been some serious structural issues with the property; despite a new roof and more recently done ground work, water is seeping into the building.

With respect to enforcement, Geoffrey Colegrove stated that there have been continued complaints about 19 Fowler Avenue. While the vehicle itself is not in violation (each property can have one unregistered vehicle), the junkyard/prevalence of tires is a problem. A file including photographs has been sent to Attorney Steve Byrne.

Richard Eriksen stated that the town of Portland recently adopted a blight ordinance; perhaps Durham should consider this. Frank DeFelice stated this typically applies to structures, not what would be found in yards. Chris Flanagan noted that there could be difficulty with enforcing a blight ordinance (asking if towns have dropped enforcement because of how onerous it is to pursue such). Geoffrey Colegrove responded that this would be a good question for the Connecticut Conference of Municipalities.

Geoffrey Colegrove advised that he is following up on the Red Frog/Greenbacker farm parking situation on Route 68.

Frank DeFelice stated that he had recently attended a RiverCOG meeting with Geoffrey Colegrove and Laura Francis. A new program (using $411K in grant funding) is providing boundary surveys for every town and incorporating all data into one format. There can be a significant impact from these boundary surveys (i.e., "some lines don't match up" with historical memory/actual practice). Durham's boundaries are fairly well set, although the assessor's records don't reflect a 250-acre parcel that was located.

First Selectman Laura Francis will be investigating how the town of Durham can access this information (without purchasing the costly software).

Motion by Dave Foley, seconded by Frank DeFelice, to recess the regular meeting for the public hearings at 8:00 p.m. Motion carried unanimously.

PUBLIC HEARING

1. Applicant/Owner: Aberdeen LLC
   Proposed Location: Aberdeen Way
   Proposed Activity: Amendment to Conditions of Approval Contained in a Special Permit approved on August 4, 2004, to Aberdeen, LLC. Delete items 2.c & 2.d. Item 2.c requires a five-year update to the replacement cost of the septic systems. Item 2.d requires a cash bond to be posted equal to 20% of the cost of the septic systems.

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

Richard Eriksen, Chairman, opened the public hearing. Commissioners were seated; Norm Jason was seated on the Commission in Steve DeMartino's place. Campbell Barrett was present, but not seated.

Jan Melnik read the legal notice for the hearing into the record. Geoffrey Colegrove noted that the signs for the public hearing had been properly posted, one at Route 17 and one on Stagecoach Road. Notice of the public hearings had appeared in the *Middletown Press* on June 5 and June 12.

Geoffrey Colegrove stated that he had received a letter from the attorney representing the current Stagecoach residents indicating that they are in favor of the proposed removal of the septic bond and have an alternate means of funding a reserve septic account.

Attorney John McHugh, with Cranmore, FitzGerald & Meaney, was in attendance representing United Bank. Attorney McHugh indicated he had the authority to represent Aberdeen LLC with regard to amending the conditions of approval on the original permit. An actual application was provided to the Commission.

A letter was provided from town sanitarian William Milardo regarding the individual septic systems (they do not fall under the town's authority as they are not part of a community septic system). A letter from the town engineer Brian Curtis also explains this.

Attorney McHugh stated that he had worked with the attorney representing the existing unit owners to devise a proposal for modifying the existing conditions to change the septic bond requirements. In lieu of the septic bond, the association itself will create its own fund that will eventually grow to a $30K balance—with a transfer of just over $3,000 already in an account paid by each of the existing unit owners [$840 each] plus funding at a rate of $35 per month per

unit. These monies would only be used for repair and maintenance of the septic system and only released for such purpose with the permission of the town sanitarian. The funds would be used for no other purpose. The association would require each septic system to be pumped out every five years (or less) in order to maintain the integrity of the system itself. The condominium documents would be amended to require this.

Boynton Construction is the proposed developer who will take over the project. He is prepared to address having in place the landscape and erosion and sedimentation bonds, but is not interested in assuming responsibility for the septic bond (money posted for landscape and erosion and sedimentation bonds is returned upon completion of the projects; the septic bond funding would remain in place 20 or more years). The existing developer "wants out" from the project.

Geoffrey Colegrove stated that the association would bear the burden of responsibility for ensuring that individual septic systems are pumped out every five years. The existing homeowners have agreed with this and it could be made a condition of approval.

To a query from Frank DeFelice regarding the segregation of the septic funds as well as whether a majority vote of homeowner association members could disband the association, because of the common elements comprising the condominium, this would not be possible.

Geoffrey Colegrove stated that many towns have a registration system for pumping of septic systems; at a minimum, pumping could be required by a licensed hauler who then provides a certificate to the town. Condominium documents could be revised accordingly.

To Joe Pasquale's query, homeowner Debra DeAngelis, 19 Aberdeen Way, stated that the septic systems have never been pumped out; there is no evidence of any problem.

Paul Whitman, 21 Aberdeen Way, stated that he had moved into his home in June of 2013. He and his wife are in favor of the amendment and hope to see the project get back on track. He referenced individual septic systems in his former town of Guilford.

Geoffrey Colegrove explained that at the time the project was approved, it did not qualify for a community septic system; individual systems were designed.

Motion by Dave Foley, seconded by Frank DeFelice, to close the public hearing of Aberdeen/Stagecoach, special permit approved August 4, 2004, proposed deletion of items 2.c and 2.d at 8:23 p.m. Motion carried unanimously.

PUBLIC HEARING

2.	Applicant:	William Anderson
	Owner:	DHI Enterprises, LLC
	Proposed Location:	980 New Haven Road
	Proposed Activity:	Special Permit per section 9.05.05 "Change of Non-Conforming Use" to Permit a Classic Car Appreciation Night on a Weekly Basis from Memorial Day to Labor Day.

Present

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

Richard Eriksen, Chairman, opened the public hearing. Commissioners were seated; Norm Jason was seated on the Commission in Steve DeMartino's place. Campbell Barrett was present, but not seated.

Geoffrey Colegrove read the legal notice for the hearing into the record and noted that the signs for the public hearing had been properly posted. Legal notices appeared in the *Middletown Press* on June 5 and June 12.

Motion by Dave Foley, seconded by Frank DeFelice, to recess the public hearing of William Anderson/DHI Enterprises for the regular meeting. Motion carried unanimously.

Motion by Dave Foley, seconded by Frank DeFelice, to reconvene the regular meeting at 8:26 p.m. Motion carried unanimously.

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5. Aberdeen LLC, Aberdeen Way, Amendment to Conditions of Approval Contained in a Special Permit approved on August 4, 2004, to Aberdeen, LLC. Delete items 2.c & 2.d. Item 2.c requires a five-year update to the replacement cost of the septic systems. Item 2.d requires a cash bond to be posted equal to 20% of the cost of the septic systems.

Motion by Dave Foley, seconded by Frank DeFelice, to approve the request of Aberdeen, LLC, to amend conditions of special permit approved August 4, 2004, with deletion of items 2.c and 2.d (2.c requires 5-year update to replacement cost of septic systems; 2.d requires a cash bond to be posted equal to 20% of the cost of the septic systems) subject to the agreement of the condominium association as detailed in correspondence provided as well as requirements of the June 17, 2015, town engineer Brian Curtis's memo and the June 16, 2015, town sanitarian Bill Milardo's memo, along with requirement for certificate of septic system pumping to be provided to the town by a licensed hauler a minimum of every five years. Motion carried unanimously

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Motion by Dave Foley, seconded by Frank DeFelice, to recess the regular meeting at 8:28 p.m. for resumption of public hearing. Motion carried unanimously.

RESUMPTION OF PUBLIC HEARING

2. Applicant: William Anderson
Owner: DHI Enterprises, LLC
Proposed Location: 980 New Haven Road

Proposed Activity: Special Permit per section 9.05.05 "Change of Non-Conforming Use" to Permit a Classic Car Appreciation Night on a Weekly Basis from Memorial Day to Labor Day.

Geoffrey Colegrove indicated that a letter approving the application was provided by the property owner, Joseph Gambardella.

A letter was also provided by the applicants detailing the uses intended for the site. This includes a "classic car appreciation night" to be held Monday nights from Memorial Day through Labor Day, from 5 p.m. to 8 p.m. The evenings will feature:

- dinner specials
- free meals for kids under age 12
- root beer
- 50s and 60s juke box music in the main building
- invitations to owners of hot rods, muscle cars, and classic cars (sharing information about their mutual hobbies)
- families and children experiencing the "car industry" in a safe environment
- cultivating interest in town, stopping at other establishments (from Time Out Tavern and Carmines to the Dairy Serv, etc.)

The evenings will *not* feature: vendors, live music, photo shoots, or classic car trophy awards.

A letter from Kenneth and Elizabeth Daugherty, 970 New Haven Road, was read into the record. They purchased their first home at this address one year ago and had been advised against it because of the proximity to a bar and grill (too loud, people coming and going, etc.). However, in the year they have lived there, they have found the neighboring bar and grill to be courteous and respectful, they have no complaint with noise, and no issues with the clientele. They encourage this business to thrive and hope to keep it as a neighbor.

Property owner Joseph Gambardella stated that he was happy to answer any questions.

Richard Eriksen briefly provided the background for the property. It came to the Commission's attention when a practice was held for the Memorial Day float that the informal discussion a month earlier about a classic car event appeared to be expressly prohibited in the litigated case for the site some years ago, resulting in a stipulated judgment.

Eleanor Anderson, one of the proprietors, asked if the business were to be involved with the Memorial Day parade next year and wished to have a practice (to ensure safe operation of a band on a traveling float), could this be done on the site or at a different location? Richard Eriksen stated that the Commission wasn't in a position to offer approval; however, he suggested that abutters be notified in an attempt to mitigate any problem.

There was significant discussion as to whether or not a classic car appreciation night was the same thing as a classic car cruise night and how these could be construed under the definition of "event." William Anderson stated that it was not an "event," but, rather, a gathering of classic cars. Most owners of classic cars want their vehicles safely garaged by dark (hence the 8 p.m. ending time). However, there would be no way to 'guarantee' that people who were at the establishment would leave by a certain time.

There would be no parking on the road. To a query regarding parking capacity on the site, Joseph Gambardella stated that he did not know the specific number of vehicles that could be accommodated.

In referencing the stipulated judgment from the court case, Dave Foley asked a series of questions corresponding to the prohibited activities; those queries and the applicant's responses appear below:

1) Conducting activities outside the building? *No.*
2) Transporting motorcycles for display? *No.*
3) Photoshoots? *No.*
4) Entertainment for patrons outside the building? *No.*
5) Erection of tents or toilets? *No.*
6) Vendors and tables? *No.*
7) Patrons of bar consuming alcohol outside? *No.*
8) Speakers placed/used outside the building? *No.*
9) Piping of music outside the building? *No.*

John Forline, 957 New Haven Road, addressed the Commission. He stated that he also owned property directly in front of Artie's Bar and Grill. He referenced the stipulation from the court case—a permanent order restraining DHI Enterprises, its agents, successors, and assigns, from using the premises for conducting activities outside the building. He said that any discussion needed to begin with those legal documents. He said that the applicants were seeking a "change in use"—if it were simply cars driving in, there'd be no need for that and no controls on when cars drive in or leave the premises. He stated that rules and regulations are in place because this is a nonconforming property in the Farm-Residential zone. Any change in use contemplated should not make a site *less conforming*; that should be the standard for considering any change in use. He also noted that if there were a change in use, given the problems associated with the past cruise nights at the property, this would represent the "tip of the iceberg." He asked that the Commission keep the property within the confines of the zoning regulations and believed that the previous court case from 15 years ago settled the problem "once and for all."

John Forline then discussed minutes from a 2000 meeting wherein a letter was submitted by him at that time citing a number of violations of the zoning regulations. At the time, there was a lot of talk about plantings, berms, and curbs (none of which happened) and expansion (twice) of the parking area. To Frank DeFelice's query, John Forline stated that the parking lot was expanded to the north when material was bulldozed; the entrance itself became about a 50-foot span/opening. He referenced areas of the regulations requiring shielding of light from adjacent properties and measures that would "facilitate harmonious adjacent land use." Although this is not a commercial property, as a nonconforming business, it is being operated in that manner and, as such, buffers are needed.

John Forline summarized, indicating a desire to keep the property in compliance. Driving cars to the property does not sound like a change of use.

It was noted for the record that in the stipulated judgment, there is language that says nothing precludes an applicant from applying for a use (with no assurance of such being granted).

Lisa Davenport stated that she personally had no objection with cars stopping at the property and enjoying classic car appreciation night.

John Forline stated that previous cruise evenings included cars popping hoods, revving their engines, engines running incredibly loudly, and cars "burning out" when leaving the property.

There was much discussion as to what would differentiate a cruise night from an appreciation night (or what criteria could possibly be used to say "this vehicle is okay," but "this vehicle is not").

Richard Eriksen explained that the Commission had *asked* the applicants to come forward with an application for a change of use in light of information brought to their attention regarding the stipulated judgment.

John Forline acknowledged that there has not been a repeat of all the problems from many years ago—however, they are hoping to avoid that occurring again with a change of use. It takes just one straight-pipe bike at midnight to create "a can of worms" again. He said it was "great" if the business is kept inside the building. As it is, there is audible noise/music late into the evening that he can hear at his property.

Katharine Forline addressed the Commission, requested that the application be denied, and presented a detailed file of documents for the record, including:

a) Permanent injunction restraining activities outside building
b) 09.05.02, no nonconforming use of land, buildings, etc. changes to use substantially different except to use permitted in district and no greater injurious impact and use is as conforming or more conforming than previous, nonconforming use
c) Change of use – substantially different if higher generator of traffic, required increased parking, number of employees increased (possible), detrimental effect on adjacent properties or use constituting hazard or public safety on/off property
d) A change to less conforming use prohibited – but if allowed – require conformity with commercial regulations … buffers/plantings/fences/berms have never been installed
e) Topography of narrow valley – outdoor activity is heard and noise travels
f) Impacts future development value of 57 acres of Forline family land – across street
g) Even if business keeps events in check, a change in use stays with property and weakens limitations on the nonconforming use
h) Allowing change invites more need and expense for enforcement by state police, liquor commission, taxpayers of town, zoning enforcement, etc.
i) Bar's entrance is in middle of passing zone – posted limit 45 mph
j) Parking needed/used for type of event created by "expansion of use" by property owner years ago without applying for or receiving permit and no remedial action was ever taken
k) Neighborhood of families/elderly of modest income – significant financial hardship to employ attorney to fight legal battle

l) She has permitted home office for massage therapy business and noise impacts available hours and income
m) Sense of history of nonconforming use issue and previous letters

She expressed appreciation for the Commission's work, noting that she had served on the Zoning Board of Appeals and Board of Assessment Appeals.

Joseph Gambardella addressed the Commission. He stated that he had discussed with Geoffrey Colegrove paving the parking lot and installing fencing and shrubs, but instead put the "money on the mortgage." The aprons and driveway were in place before he bought the property and the Department of Transportation added the curbs. He stated that he had done everything discussed with Geoffrey Colegrove back in 2000.

Joseph Gambardella stated his attorney had contacted then-First Selectman Ray Kalinowski regarding the incident that raised so much difficulty 15 years ago, but wasn't able to reach him until after the weekend in question.

To Campbell Barrett's question regarding the difference between a classic car cruise night and a classic car appreciation night, the essential difference seems to be the presence of a DJ in the parking lot (characterized by many cruise night events around the country). He asked the Andersons if they had, in fact, advertised the event as a cruise night themselves (they had—before being informed of the existing stipulated judgment).

William Anderson indicated he had been asked to come before the Commission, had done so in informal discussion, and was told "okay" by the Commission to hold a classic car cruise night. Advertising then went out, but he was subsequently contacted and informed about the stipulated judgment and asked to come back before the Commission. Ads were then pulled.

At the Commission's request, Jan Melnik read the relevant content of the May 6, 2015, meeting minutes concerning the informal discussion:

> 2. <u>Bill Anderson, Informal Discussion, Classic Car Event, 980 New Haven Road</u>
>
> 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.

This matter was also discussed at length at the May 20, 2015, meeting, but minutes of that discussion were not read into the record.

To Joseph Gambardella's query about Katharine Forline operating a business, he was informed that she has a home occupation permit from the Commission.

Katharine Forline stated that she has no problem with the current operation of Artie's Bar and Grill; the concern is about a potential "opening of a can of worms" through any slackening of the court-stipulated judgment and stated that a change of use could weaken that document. She stated that there had been no complaints registered until the cruise night activities were advertised. She mentioned that she wasn't sure if the existing signage was in conformity with the regulations. She summarized that there was a hard-fought battle to keep the site limited to its nonconforming use many years ago and that this is what zoning regulations are intended to do.

Eleanor Anderson stated that the restaurant/bar is a business operation and that marketing is how business is attracted that will help the business owners profitably operate and pay taxes. She and her husband have done everything asked by the Commission, from informal discussion (for which they received approval), to having that approval withdrawn, removal of advertising, and submission of an application. They simply want their business to succeed and bring additional business to Durham.

To Frank DeFelice's query as to any current problems, John Forline stated that the neighbors could hear the band on the trailer in the parking lot before Memorial Day and on a Saturday night, if the doors at the bar are open, they can hear the music inside their home.

Another neighbor, Jim Catarano, stated that the neighborhood had gone through the same thing 15-18 years ago. "Windows rattle" when music is playing. He characterized the operation as "better than it was" since the court injunction.

Frank DeFelice suggested a possible approach might be to treat the proposed activities as an "event" (similar to the annual dog fair) with a one-year (three-month) approval.

William Anderson stated that, as the owners, they did not want to change the use—cars are simply going to be in the parking lot—but they were *asked* by the Commission to submit an application (at the recommendation of the Commission's counsel).

Campbell Barrett stated that in the situation of a nonconforming use, the provisions of the regulations as well as the permit need to be strictly construed. The Commission has definitions for what is conforming and what is nonconforming and a nonconforming use must not intensify. The stipulated judgment outlines nine prohibited uses very clearly. The presence of a court order, agreement, and stipulated judgment makes very clear what the Commission needs to consider. While there is language in that judgment indicating an ability to apply, it is not within the

discretion of the Commission to consider this simply based on a "change of personnel" (operation of the bar and grill). While it appears that the current operators of the business are more responsible than in 2000, that's not enough given the very specific prohibitions reduced to a court order that was approved by a superior court judge.

Campbell Barrett stated that this is a residential neighborhood that has a preexisting, nonconforming use in place. That property existed before zoning, but the activities and operation are limited to the parameters of intensity that existed at the time (and defined in 2003).

Geoffrey Colegrove stated that he asked William Anderson to come before the Commission when the word "sponsor" was used for the cruise activities; he stated he had initially forgotten about the court order at the time of the first meeting in May, but was reminded of it by the Forlines. Initially, the activity appeared benign; however, Attorney Steve Byrne reviewed the history of the site and, because of the stipulated judgment, stated that an application should be provided and a public hearing held.

John Szewczyk of Stagecoach Road addressed the Commission. He stated that he was approximately half a mile away; he built his home in 2007 and had done his due diligence in advance, speaking with the Forlines before buying a property near a bar. He said for the past six or seven years, it has been loud (music) on the weekends, but he has never made a complaint. He worried that if the stipulated judgment/court order were abandoned, there could be problems. He urged that there be no change in use.

Motion by Frank DeFelice, seconded by Joe Pasquale, to close the public hearing of William Anderson/DHI Enterprise, Artie's Bar and Grill, at 9:46 p.m. Motion carried unanimously.

Motion by Dave Foley, seconded by Frank DeFelice, to reconvene the regular meeting at 9:47 p.m. Motion carried unanimously.

6. William Anderson/DHI Enterprises, LLC, 980 New Haven Road, Special Permit
   Per Section 9.05.05 "Change of Non-Conforming Use" to Permit a Classic Car Appreciation Night on a Weekly Basis from Memorial Day to Labor Day.

Joe Pasquale stated his agreement with Campbell Barrett concerning regard for appropriateness of an activity of a nonconforming nature within a residential neighborhood, its impact on adjoining property owners, and conditions that could constitute a hazard for public health and safety—all of which prove not to be conducive, in his opinion, to approving the application before the Commission.

He stated his understanding of the Andersons' efforts to run an appropriate business and, while they are doing a fine job, any approval by the Commission "runs with the property," regardless of the tenants in place at the time. The court injunction was a hard-fought battle, the Commission expended resources for a reason, and there is a very high risk to any change in use with the possibility of the previously offensive activities reoccurring. Having a cruise night or classic car appreciation night promotes outside activity. Given testimony from neighbors as far away as half a mile (hearing music in the evenings) and given what everyone in the area went through 15 years ago to garner the stipulated agreement, he could not support a change.

Dave Foley stated that he wholeheartedly agreed that there is no change in use. He did not believe the applicants should have applied for a change of use. What has been proposed is simply promoting business at the establishment—attendance by people who happen to drive the same kind of car and park in the parking lot. If classic cars were to fill the parking lot, he asked why this would be prohibited: It is good marketing. The operators of the business should not be prohibited from inviting whomever they wish to their establishment.

Lisa Davenport and Frank DeFelice concurred with the sentiment that while it is difficult to characterize the difference between a classic car appreciation night and a cruise night, they also had a problem with the stipulated judgment including the language that the applicant could apply for a change—in conflict with saying you "can't do something."

Frank DeFelice stated that things appear to be running much smoother at the site and he expressed hope that as a neighborhood bar, hopefully neighbors and operators could work together to make something happen.

Dan Melnik commented that every prohibition in the stipulated agreement had been reviewed by Dave Foley point by point and the applicants indicated "no" to every prohibited activity. He added that people can't be stopped from simply showing up at the site with their classic cars.

Lisa Davenport stated that every activity discussed will be held inside the building; the Commission is not in a position to tell the business owners how to operate or market their businesses.

Campbell Barrett reiterated the "very fine and bizarre distinction" between the reality of classic cars congregating at a site and then the sponsoring of such an event. He stated his opinion that this had devolved to an up or down vote when, in fact, the issue is comparing the application to the 2003 court order and the esoteric legal argument that the Commission is now addressing. People showing up at the property by word of mouth are, of course, permissible under the court order. But he stated that the applicants themselves gave credence to the notion of cruise night by using that very language initially—language describing a prohibited activity (unknowingly—because they were not aware of the existing stipulated agreement and had not been provided with that information by their landlord).

Joe Pasquale stated that while the landlord should have provided the tenants with the details of the court order, this falls outside of the Commission's responsibility. However, the Commission does have to uphold its regulations. He believed that the "outside" element is the key factor in each of the prohibited items and that is central to the whole argument before the Commission presently.

Dan Melnik and Lisa Davenport asked the hypothetical question about where else cars would park (outside).

Chris Flanagan stated his belief that this should not be a change of use: the organized parking of cars outside does not represent an increase in activity or a change in use.

Joe Pasquale agreed that if advertising were for pizza and burgers inside the building, that would be an activity promoted inside the building… but if the advertising is to bring "a classic car,"

then that is an activity being promoted outside the building and goes against the stipulated agreement.

Joseph Gambardella said he was told by Geoffrey Colegrove (and, originally, then-First Selectman Ray Kalinowski) there would be no problem as long as a permit was sought.

The applicant was given the opportunity to withdraw the application (thus not requiring the Commission to vote); however, Joseph Gambardella and the Andersons did not wish to withdraw the application.

Motion by Richard Eriksen, seconded by Dan Melnik, to approve the application of William Anderson/DHI Enterprises, LLC, 980 New Haven Road, special permit per section 9.05.05, "Change of Nonconforming Use" to permit classic car appreciation night on a weekly basis from Memorial Day to Labor Day. Motion denied, with all in opposition with the exception of Dan Melnik (in favor).

Joseph Gambardella asked that if any Commission meetings were held at which his property was being discussed, he would appreciate notification so that he could have his attorney present.

7. Boynton Construction, Informal Discussion of Revised Landscaping Plan, Stagecoach Farms

Ken Boynton, a Vernon builder-developer with 30 years of experience, addressed the Commission. He provided buffering plans and described areas in which the property already is well-buffered as well as areas for which plantings were originally proposed (but are illogical: white pines over septic lines). In addition, there is a steep bank with a heavy growth of trees that does not require additional buffering. He asked for an adjustment to the plans to reflect actual field conditions. He has met with all homeowners, explained the proposed modifications to the plans, and secured verbal approval for his plans.

Ken Boynton stated that he is working with United Bank on the project. The previous developer did not leave proper topsoil, so with monies saved on the landscaping plan, topsoil will be purchased. The project has the potential to look very nice once complete, he stated.

Paul Whitman and the DeAngelises, still in attendance, expressed approval for the modified landscaping plans.

Geoffrey Colegrove stated that these plans had been discussed with Attorney Steve Byrne and that a public hearing is not required. The modified landscaping plan will accomplish the provisions of the original plan.

Ken Boynton was asked to provide the Commission with actual modified plans detailing the type and quantity of the proposed plantings. It will be handled as a site plan review. The landscaping in front of each of the units will remain as originally approved.

8. Miscellaneous

Jan Melnik advised the Commission that her position with the Planning and Zoning Commission had been terminated and that she had enjoyed working as the Commission's recording secretary for the past 25½ years (and as an elected Commissioner for 12 years). She thanked Commissioners and said she had been informed by the chair, Richard Eriksen, that there was not funding for the support services provided by her in the town's budget that begins July 1.

Richard Eriksen stated that Mary Jane Malavasi had advised him that meetings would be recorded and that town staff would prepare minutes. He added that the Board of Finance "wouldn't budge," but that one lawsuit would more than make the current expense worthwhile.

Chris Flanagan stated that it was time that the town entered the 21st century with a community-wide recording system.

Commission members expressed surprise and several noted that if enough members contacted the Board of Finance/Board of Selectmen and justified the need for the minutes to keep the Commission "out of trouble" (i.e., defending decisions in legal matters) and continuing Jan's service, perhaps the decision could be overturned.

Campbell Barrett stated that Jan provides much more than the recording of minutes; he stated that she serves as the Commission's parliamentarian, on point with the right procedures at the appropriate times. He noted that when the Commission was discussing the Artie's Bar and Grill application earlier during public hearing, within 20 seconds, she provided a verbatim read-back of contents in the minutes relevant to the Commission's deliberation.

Frank DeFelice indicated that Jan served as the Commission's historian with institutional knowledge. Dave Foley stated that this was a serious mistake and that for more than 20 years, she had provided documentation that had supported the Commission's decisions in court cases. He suggested that to eliminate her role would be penny-wise and pound-foolish. He recommended that they, as Commissioners, go to the First Selectman/BOS, the Board of Finance Chair and Vice-Chair, and Mary Jane Malavasi with their concerns. Joe Pasquale noted that sending a collective letter to these groups/individuals would be the next step; Dave Foley stated that he would draft a letter and attempt to provide it to Commissioners for review/execution by June 19.

The Commission asked Jan Melnik to advise them of the date of the next Board of Finance meeting. The Board of Finance will meet on July 21, 2015, in the second floor conference room at the Town Hall.

Motion by Dave Foley, seconded by Dan Melnik, to adjourn the meeting at 10:50 p.m. Motion carried unanimously.

Respectfully submitted,
Jan Melnik, Recording Secretary

6/24/2015