

Planning & Zoning Commission
7:30 p.m., Wednesday, October 21, 2015
Meeting Room, Durham Public Library

Meeting Minutes

1. Call to order

Lisa Davenport called the meeting to order at 7:30 p.m.

2. Roll Call

In attendance: Alana Adams, Campbell Barrett, Dick Eriksen, Chris Flanagan, Dave Foley, Joseph Pasquale

Absent: Lisa Davenport, Frank DeFelice, Steve DeMartino, Norm Jason, Dan Melnik, Bonnie Ryder

Others in attendance: Geoff Colegrove, Tray Racki, Dennis Ceneviva, Esq. Michelle Carlson, P.E., Mike Batista, Kati Mercier, P.E.

3. Seating of Alternates: Campbell Barrett was seated for Lisa Davenport

4. Amendments to Agenda - None

5. Approval of Agenda

MOTION BY DAVE FOLEY, SECONDED BY ALANA ADAMS, TO APPROVE THE AGENDA AS PRESENTED.
ALL AYE

6. Public Session

Richard J. Kaika, III, 999R New Haven Road, presented the commission with four photos and a copy of Section 12 of the towns zoning regulations related to his abutting neighbor David Goduti, 997 New Haven Road. He was present to express his concerns about the home occupation permit that was granted to Mr. Goduti at the commissions October 7th meeting. He noted that he was not made aware of D. Goduti coming before the commission until the night of October 7th when he was approached by D. Goduti to sign documentation, that he refused to sign, and specifically stated not to mention him during the meeting. R. Kaika reviewed the audio tapes of the meeting and stated that D. Goduti referenced him several times and stated that he gave verbal consent of the home occupation which was not the case. R. Kaika made reference to Section 12.4.2.2 of the regulations noting that these conditions were not met by the applicant and felt the commission did not have the authority to grant the permit. He noted that he supports small business but takes issue with a home based commercial business in a residential area. R. Kaika then made reference to Section 12.4.1.1, items (a) & (d), and pictures presented, stating he felt were in violation. He then made reference to Section 12.4.2.1 noting that he felt there was a clear violation of no site plan approval; then item (J) he felt he would see a substantial decrease in his personal property values due to a garbage container being stored on D. Goduti's property. R. Kaika stated that he felt town regulations are put in place to preserve the characteristics and property values in the town and allowing D. Goduti to operate a waste business from a residential location would be an injustice to the residents of

Durham and would be setting a precedent for others who are interested in doing the same. R. Kaika made reference to Section 12.4.3 (e) and asked the commission to vote to revoke the permit granted on October 7th to D. Goduti.

Geoff Colegrove stated that he was aware that R. Kaika would be attending the meeting tonight and contacted Attorney Steve Byrne to discuss (with limited background information). G. Colegrove's understanding from this conversation, under Section 8-8R once the legal notice is published, the permit stands. R. Kaika has the opportunity to take this to court within one year from the date of the decision, because of the failures in the regulations he noted. The permit cannot be revoked at this time. G. Colegrove suggested that the recordings of the October 7th and October 23rd meetings be sent to Attorney Byrne for review and comment.

Campbell Barrett stated that he would like the commission to meet in executive session with Attorney Byrne to discuss. He noted his concern of the claim by R. Kaika that there was a misrepresentation made to the commission at the last meeting; he distinctly remembers there being representation that there was signed consent by all the abutters and a verbal conversation that the adjacent property owner absolutely agreed; this was a critical component to his yes vote and if there was misrepresentation, he would like Attorney Byrne to comment. Joe Pasqual concurred with C. Barrett.

Ms. Kaika stated that she also reviewed the audio tapes and reiterated her husband's comments on misrepresentation by D. Goduti. She also expressed her concerns regarding the stench from garbage currently being stored, the washing of trucks on residential property, potential hazardous waste, and noise from the diesel trucks.

Kati Forlini, 957 New Haven Road presented a parcel map of the area and made reference to Zoning Regulations Sections 02.08.03 and 12.04.01.01 (e) & (J). She also expressed her frustration regarding no prior notification of the October 7th meeting.

Kim Garvis, Town Clerk, spoke to D. Goduti's efforts to try to do the right thing. She noted that he has frequented town hall department's months before applying for the permit and thought that D. Goduti should have the opportunity to have a small business in Durham.

D. Eriksen stated that the permit has been approved and would like to consult with the town's attorney. Once advised this will be added as an agenda item at a future meeting.

7. T. Racki, Torrison Stone & Garden, Site Plan Review, 422 Main Street

Tray Racki representing the Rockfall Company was present representing Torrison Stone & Garden renovation project. He stated that at the October 7, 2015 meeting the commission had requested him to do an A-2 survey of the existing condition and proposed conditions for the site; he presented the commission with the new plan which showed the existing fence line and existing parking. He noted that the existing parking count will not be affected. The proposed addition to the property goes to the south, and was put in the application. There is also going to be a full second floor as discussed at the last meeting. The only change to the fence line is the gate (will be moved over). He

reiterated from the last meeting that the design would be asphalt shingle roof and barn board siding; basically changing the facade from block building to a barn style showroom area.

G. Colegrove advised the commission that he had reviewed the new plan; it is certified to A-2 accuracy and meets all standards. The plan that was previously approved and the plan presented tonight are basically exactly the same representation. He noted that the site has been cleaned out since the last meeting and issues have been addressed. He did discuss an overhang on the building that is slightly in the setback line which is non-conforming; T. Racki proposed to erect a support beam in that setback area, but not extended beyond the overhang of the building. G. Colegrove did not think a variance was necessary; not a part of the building, more aesthetic, basically a design to even out the characteristics of the building than structural. The overhang is a foot inside the setback line and the one pole would be in that area but inside the overhang and not increasing the non-conformity.

D. Foley asked if the plan reflected the correct ownership. T. Racki indicated yes.

J. Pasquale asked if there were any conditions on the original approval. G. Colegrove stated no.

MOTION BY DAVE FOLEY, SECONDED BY ALANA ADAMS, TO APPROVE THE FOLLOWING APPLICATION: T. RACKI, TORRISON STONE & GARDEN, SITE PLAN REVIEW, 422 MAIN STREET. MAP REFERENCE: "ZONING LOCATION/EXISTING CONDITIONS SURVEY" PREPARED FOR TORRISON STONE AND GARDEN, PROPERTY KNOWN AS 422 MAIN STREET, ROUTE 17, DURHAM, CONNECTICUT. SCALE: 1"=20'. DATED OCTOBER 14, 2015. PREPARED BY JACKOWAK LAND SURVEYING. THE APPROVED MYLAR BE SIGNED BY THE CHAIRMAN AND FILED IN THE DURHAM LAND RECORDS PRIOR TO THE ISSUANCE OF A ZONING PERMIT. ADAMS, BARRETT, FLANAGAN, FOLEY, PASQUALE; AYE. ERIKSEN; ABSTAIN.

MOTION BY DAVE FOLEY, SECONDED BY CHRIS FLANAGAN, TO RECESS REGULAR MEETING AT 8:08 P.M. FOR PUBLIC HEARING. ALL AYE

PUBLIC HEARING

Applicant/Owner: Dennis Ceneviva/Graceful Bee Realty, LLC
Property Location: Main Street
Proposed Activity: Amend the following sections of the Durham Zoning Regulations:
Section 02. To include a definition of Coffeehouse; amend Section 06.01 to permit coffeehouses with drive thru window service and to add a new section 06.13 which provides for eight criteria a coffeehouse with drive thru window service must meet.

In Attendance: Alana Adams, Campbell Barrett, Dick Eriksen, Chris Flanagan, Dave Foley, Joseph Pasquale

Absent: Lisa Davenport, Frank DeFelice, Steve DeMartino, Norm Jason, Dan Melnik, Bonnie Ryder

Others: Dennis Ceneviva, Esq. Michelle Carlson, P.E., Mike Batista

Dick Eriksen opened the public hearing. Commission members were seated; Campbell Barrett was seated for Lisa Davenport with no objections from the audience.

Geoff Colegrove read the legal notice published on October 13, 2015 in the Middletown Press into the record.

Attorney Dennis Ceneviva was present representing the applicant Graceful Bee Realty. Mike Batista, Principal and Applicant and Michelle Carlson, P.E. were also present. He noted that the original presentation was made at the October 7th meeting where he reviewed the proposed text amendment; during the course of the meeting there was a lot of interesting points made by the commission and public. He noted that he was present tonight to present changes of a revision to the original draft. He then continued to explain each of the revised conditions.

D. Foley questioned if the commission was allowed to change the regulation during the hearing. G. Colegrove responded that he received the revision today (and the commission members received it at the meeting) and the public has not had time to review the revised proposed amendment. D. Eriksen felt that it would require a hearing where the public would have the opportunity to review the revision. J. Pasquale noted that the commission originally received an application with language for this regulation; what was being presented tonight is not close to what was originally submitted. He was concerned that the commission should be acting on the original application and not what was being presented tonight.

D. Eriksen stated that the current public hearing should be closed and the commission should vote on the original application or the original application can be withdrawn. Once this is done a new application with the revised text amendment could be properly noticed and heard by the commission.

Attorney Dennis Ceneviva agreed to withdraw the original application and submitted a hard copy of the request. He stated he would complete a new application.

MOTION BY DAVE FOLEY, SECONDED BY ALANA ADAMS, TO CLOSE THE PUBLIC HEARING AND RECONVENE THE REGULAR MEETING AT 8:31 P.M. ALL AYE

8. **Dennis Ceneviva/Graceful Bee Realty, LLC. Amend the following sections of the Durham Zoning Regulations: Section 02. To include a definition of Coffeehouse; amend Section 06.01 to permit coffeehouses with drive thru window service and to add a new section 06.13 which provides for eight criteria a coffeehouse with drive thru window service must meet.**

9. **Town of Durham, 8-24 Review, Coe Road Bridge Replacement**

On behalf of the town, Kati Mercier, P.E., of Nathan L. Jacobson & Associates was present to discuss. She noted that there is an existing box culvert that was placed in the mid 1970's. In the 1990's, two additional plastic pipes were placed in the right of way to help alleviate some hydraulic inadequacies. Since that time the box culvert and pipes continue to be inadequate and experience structural deficiencies. The town has submitted an application to the CT Bridge Program to obtain

some assistance on funding for the project that has approved and are now going forward with getting the project permitted. The project is going to involve the replacement of the failing structures with two box culverts; precast concrete boxes with cast in place, concrete wing walls. Bridge abutments on each side with guardrail. 32 feet from end wall to end wall. In order to replace the bridge some minor road repairs will be done; it's going to maintain about the same alignment of the current road. The existing road varies from 20 feet to 24 feet in width over the bridge. The main portion of the project will maintain a constant 24 foot width road. The bridge will be designed for HS20 live loading. During construction the contractor will install a steel sheet cofferdam around the perimeter of the existing structure and excavate out the existing structure and replace the bridge. There is the requirement during construction to have temporary bypass pipes to maintain the brook flow. The road will be closed during construction; most likely a six month type construction window. In order to reestablish the disturbance due to the temporary bypass during construction, they have sought guidance from wetland scientists in regards to what plantings would be appropriate. There will be work done in the town right of way and as well as out. Four temporary easements will be required for the construction of the temporary bypass and as well as area of utilities. Three permanent easements will also be required.

G. Colegrove asked what the design storm was. K. Mercier responded one hundred year, and the temporary bypass is sized standard for two year storm. She noted that there is one property that has a low lying residence so they specifically designed the temporary construction to not flood out their property any more frequently during construction than it does now. After construction the water surface elevation will substantially be relieved on their property. The CTDOT standard for a water shed that is one square mile or more is to design the water surface elevation to be one foot lower than the edge of the roadway or residence.

Dick Eriksen noted that the project did go before the Inland Wetlands Commission and was approved. K. Mercier noted that two permits; local wetlands and U.S. Army Corps of Engineers; and the 8-24 review are required.

G. Colegrove noted the CTDOT rating of the project as a four and questioned if it was hydraulic or structural. K. Mercier responded both, there is some undermining on the downstream wing walls, some of the concrete is cracked off and rebar is exposed. In addition black pipes are cracking (meant to be buried and not exposed to ultraviolet light).

J. Pasquale asked what impact the elevation change would have on the impact of the downstream side pool; there still would be a pool.

MOTION BY DAVE FOLEY, SECONDED BY CAMPBELL BARRETT TO APPROVE 8-24 REVIEW – COE ROAD BRIDGE REPLACEMENT. ALL AYE

10. Continued Discussion of Commercial Uses in MR Zone

Tabled

11. Payment of Bills

MOTION BY DAVE FOLEY, SECONDED BY ALANA ADAMS, TO APPROVE THE FOLLOWING BILLS: ALL AYE

1. BETH MONCATA, \$180.00 AUGUST/SEPTEMBER BILLING
2. BYRNE & BYRNE, ABERDEEN, \$345.00

12. Minutes of Previous Meeting(s)

MOTION BY DAVE FOLEY, SECONDED BY ALANA ADAMS, TO APPROVE THE SEPTEMBER 2, 2015 AND OCTOBER 7, 2015 MEETING MINUTES AS PRESENTED. ALL AYE

13. Zoning Enforcement Officer's Report

A notice of zoning violation (cease and desist) on 6 Little Lane, was sent on October 23rd to Nordic Marine Traders and Rosemarie Querns. The property is located in a farm residential zone and is being used as a storage area for various types of vehicles for future sale.

The box trailers on 19 Fowler Avenue were removed today but a tractor is still on site. G. Colegrove will coordinate a site visit with the towns Resident State Trooper.

G. Colegrove is reviewing a list provided to him of businesses in town that are assumed to have not applied for permits. He will report back to the commission when completed.

14. Town Planner's Report

G. Colegrove picked up new regional property maps for Durham and Middlefield, he started going through them to compare property lines; Durham is in good shape; 95% correlation. He will do an overlay of the old and new which will highlight areas in red that were not there before. Zoning; minor adjustments to accommodate the new information. He noted that the work done before by the COG and the consultant that they are using to do the mapping updates, are found to be very accurate. Does not require a public hearing. He will be putting together a list of discrepancies and will email the maps to commission members who have the version 9 of acrobat.

15. Miscellaneous

Dick Eriksen advised commission members that the appeal for the Arrigoni case was heard and the decision of the District Court was affirmed.

Joe Pasquale stated that he felt application should be reviewed more carefully before coming to the commission. He talked about the creation of checklists to be used during the application process.

16. Adjournment

Meeting adjourned at 9:15 p.m.

Respectfully submitted,
Beth Moncata