

Received: February 16, 2016
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Office of the Town Clerk

Planning & Zoning Commission
7:30 p.m., Wednesday, February 3, 2016
Meeting Room, Durham Public Library

Meeting Minutes

1. Call to order

Frank DeFelice called the meeting to order at 7:30 p.m. Boy Scouts led pledge.

2. Roll Call

In attendance: Alana Adams, Campbell Barrett, Lisa Davenport, Frank DeFelice, Dick Eriksen, Chris Flanagan, Dave Foley, Edward Fronc, Daniel Melnik, Jan Melnik, Joseph Pasquale, Will Spooner

Others in attendance: Geoff Colegrove, Boy Scouts and residents from the community.

3. Seating of Alternates – none seated

4. Amendments to Agenda

5. Approval of Agenda

MOTION BY JOE PASQUALE, SECONDED BY DAVE FOLEY, TO ADD DISCUSSION ON MERRIAM NON-CONFORMING STATUS, AND TO APPROVE AGENDA AS AMENDED. ALL AYE

6. Chairman's Comments

Frank DeFelice addressed the audience; to update them on recent activities and initiatives. He mentioned that he has been a member of the commission for more than a decade and has recently been named Chairman. He talked about the commission being comprised of respected, skilled and dedicated individuals from many diverse disciplines. He spoke about the implementation of a new P&Z application, and a proposed regulation which would allow the commission to reverse its decisions in the event false information was supplied to the commission by an applicant or council. He spoke on the need for the commission to consider and engage in discussions on new concepts; some of which must be considered because they are requirements of the state statutes. He described the importance commission members place on protecting the town's Historic District, Residential, Commercial and Industrial property values. He talked about the upcoming PoCD and the differences between the planning function of the commission and the zoning function of the commission. He asked that everyone, both the public and the commission members, treat each other with integrity and respect throughout the process.

7. Public Session

Campbell Barrett recused himself and was seated in the audience.

Comments received from the audience reflected:

- The timeline for the process of preparing a new Plan of Conservation and Development may be inadequate; the only public hearing to be held would be two weeks before the scheduled

final adoption of the Plan. A request was made that the commission schedule a public hearing earlier in the process.

- Dialogue on the Save Historic Durham Facebook page between a commission member and the public; would like to believe that commission members have an open mind and need to hear each other respectfully; the commission should be careful about mixed use and questioned other commercial property that can be utilized.
- Reminded the commission that one member likes to reminisce that Main Street had businesses; agreed that home occupation was appropriate but only if the owner lives in the home.
- The job of the commission is to expound on ideas and ideals that are important for the town; did not feel the public should be lectured.
- One speaker reminded the commission of the many different businesses which have been located on Main Street and in the Historic District through the years; and how these businesses were important to the town.
- One speaker expressed concern that the commission was concentrating on just the Historic District portion of Main Street and not the entire street.

Campbell Barrett returned to his seat with commission members.

8. Inclusion of language regarding misrepresentations to the commission

Section 04. General Requirements

04.08; All applications submitted to the commission shall include a certification that all the information provided is accurate and complete to the best of the applicant's and the owner's knowledge. The submission of false information or misleading information to the Commission in either the application or any presentation before the Commission regarding the application may result in a reversal of the approval. By signing the application, the applicant and the owner grant the Commission and/or its agent's permission to enter the property for purposes relevant to the application, for which an application has been made, provided the Commission gives 72 hours advance notice to the applicant and owner. This permission shall be valid for a period of 180 days following the statutory date of receipt by the Commission.

MOTION BY DICK ERIKSEN, SECONDED BY DAVE FOLEY, TO APPROVE AND INCLUDE NEW LANGUAGE, SECTION 04.08 IN SECTION 04. GENERAL REQUIREMENTS, AND TO HOLD A PUBLIC HEARING ON MARCH 2, 2016, 8:00 P.M. AT THE DURHAM PUBLIC LIBRARY. ALL AYE

8A. Discussion on Merriam Non-Conforming Status

F. DeFelice passed out correspondence (and asked commission members to read) received from Attorney Steven Byrne in reference to the Merriam Manufacturing Property on 281 Main Street and the motion made at the January 20, 2016 meeting to remove non-conforming status. Attorney Byrne noted in the letter that at present, there is no application pending with the commission for the use of 281 Main Street. He also made reference to his May 5, 2015 letter in regard to the non-conforming use of the property where he stated that in determining whether a non-conforming use has been abandoned involves more than just finding that a period of time has passed during which the non-conforming use has ceased. "Abandonment is a question of fact which implies a voluntary and intentional renunciation. Nevertheless, the intent to abandon may be inferred as a fact from the circumstances...The mere discontinuance of a use where there is no intent to abandon is not enough...To establish abandonment, the intention on the part of the owner (must be) to relinquish

permanently the non-conforming use...". Thus, before abandonment of a non-conforming use can be declared, the intent to permanently relinquish the use must be established. This can only be done by the presentation of evidence which the commission can then base its decision. In conclusion, before the commission considers a motion to declare a non-conforming use of a particular parcel of land abandoned, a public hearing must be held to insure that all stake holders, including the Environmental Protection Agency which anticipated recouping some of its costs when the property is sold, have the ability to participate and protect their interests.

Members discussed and were split on why there was a push to change the status, their responsibility as members to change back to conforming; current regulations and evidence that is available to them. It was decided that G. Colegrove would consult with Attorney Byrne about the intent to abandonment in order to send a notice to the owner and would also get a copy of the consent order.

9. Plan of Conservation and Development

F. DeFelice talked about revisions made to chapters from the prior workshop and noted that clean copies have been sent to members for review. He noted that the Agriculture Commission would be holding a special meeting next week to review their chapter. He also passed out travel patterns that he thought could be added to the transportation section. G. Colegrove noted that new maps and projections received from RiverCOG needed to be inserted.

J. Pasquale stated that he felt it was more apparent that the process being used to update the Plan is not fair to the members as it does not allow them enough time for review and there was not enough opportunity to let the public speak. He suggested just adding the energy and agriculture chapters and make minimal changes such as transportation numbers.

D. Eriksen reiterated the importance of getting the Plan submitted and stated that he felt the Plan is a document that should continue to be changed and revised over time. He suggested informing the Board of Selectmen and residents that it will continue to be revised.

C. Flanagan and L. Davenport both felt the Plan needed to be submitted and then continue to work on it.

J. Melnik passed out a draft Introduction for members to review and asked that they bring any comments to the next meeting.

10. PoC&D Charrette

F. DeFelice advised commission members of the following items:

- Post cards have been mailed to residents
- The event has been posted to the town website
- Signage has been received and will be going up
- Fitzgerald & Halliday are working on a survey that should be completed this Friday
- Sample materials that will be used at the charrette from Fitzgerald & Halliday were passed out
- Members were asked to schedule time to be at the charrette

11. Payment of Bills

MOTION BY DICK ERIKSEN, SECONDED BY JAN MELNIK, TO APPROVE THE FOLLOWING BILL. ALL AYE

- BETH MONCATA, Inv#946, 2/3/2016, \$240.00

12. Minutes of previous meeting

MOTION BY DICK ERIKSEN, SECONDED BY DAVE FOLEY, TO APPROVE THE JANUARY 20, 2016 MEETING MINUTES AS AMENDED. ALL AYE

13. Zoning Enforcement Officer's Report

Geoff Colegrove advised members of the following:

- Letters will be sent to the owners of 16 and 201 Main Street.
- Dick's Sunoco property is up for sale; a prospective buyer has expressed interest in the property for a convenience store/gas station. The pump island would remain the same and the car repair area would be the store area.
- He spoke with Torrison Stone and Garden in reference to the signs on the fence.

14. Town Planner's Report

Geoff Colegrove advised members of the following:

- Richard Kaika III and Richard Kaika Jr. have filed a summons against the commission.
- Laura Francis is currently working with the neighbors on the Wheeler Hill property issue.

15. Miscellaneous

No business

16. Adjournment

Meeting adjourned at 9:55 p.m.

Respectfully submitted,

Beth Moncata