RECV'D: Office of the Town Clerk September 19,201612:00pm

Planning and Zoning Commission Meeting
7:30 p.m., Wednesday, September 7, 2016
Lower Level Meeting Room, Durham Library

Minutes

1. **Call to order**
   Frank DeFelice called the meeting to order at 7:30 p.m.

2. **Roll Call**
   In attendance: Alana Adams (7:37), Lisa Davenport, Frank DeFelice, Richard Eriksen, Chris Flanagan, Dave Foley, and Joe Pasquale
   Absent: Campbell Barrett, Edward Fronc, Dan Melnik, Jan Melnik, and Will Spooner
   Others in attendance: Geoff Colegrove, Donald Smith Jr. P.E., Paul Jorgensen, AIA, Architect; Silver Petrucelli & Associates, David Stein, AIA, Principal/Project Management; Silver Petrucelli & Associates, Attorney Ken Slater; Halloran & Sage LLP, Tony Cuomo; Cuomo Construction Inc.

3. **Seating of Alternates:**
   None seated

4. **Amendments to Agenda**
   None

5. **Approval of Agenda**
   MOTION BY DAVE FOLEY, SECONDED BY LISA DAVENPORT TO APPROVE THE AGENDA AS PRESENTED. ALL AYE

6. **Public Session**
   Roger Kleeman advised the commission that a billing in question, approved by their commission at their last meeting, was posted to the Board of Selectmen's legal budget line.

7. **Cuomo, Bond Release**
   Tony Cuomo of Cuomo Construction Inc. was present to request a bond release for the Meeting Hill House Road project. Geoff Colegrove noted that a bond was posted for a total of $13,517.00; paving of parking lot and access way in the amount of $9,112.00, silk erosion in the amount of $3,425.00 and a construction entrance in the amount of $980.00. All of the paving has been completed and the grass is growing, a community garden has been put in place and the silk fencing has been removed. G. Colegrove recommended the release of $13,517.00. Joe Pasquale questioned if an RV parking area was to be put in at the north end of the property. G. Colegrove responded that there was originally one RV but it is not in use at this time. Tony Cuomo stated that this was eliminated due to rigid State requirements for curb cut.

   MOTION BY DICK ERIKSEN, SECONDED BY DAVE FOLEY TO APPROVE CUOMO BOND RELEASE IN THE AMOUNT OF $13,517.00. ALL AYE

   MOTION BY DAVE FOLEY, SECONDED BY DICK ERIKSEN TO RECESS THE REGULAR MEETING AND TO OPEN THE PUBLIC HEARING AT 8:00 P.M. ALL AYE

PUBLIC HEARING

Applicant/Owner: Town of Durham
Property Location: #37, #41, #51 Main Street
Proposed Activity: Special Permit, Public Safety Complex

In attendance: Alana Adams (7:37), Lisa Davenport, Frank DeFelice, Richard Eriksen, Chris Flanagan, Dave Foley, and Joe Pasquale
Absent: Campbell Barrett, Edward Fronc, Dan Melnik, Jan Melnik, and Will Spooner
Others in attendance: Geoff Colegrove, Donald Smith Jr. P.E., Paul Jorgensen, AIA, Architect; Silver Petrucelli & Associates, David Stein, AIA, Principal/Project Management; Silver Petrucelli & Associates, Attorney Ken Slater; Halloran & Sage LLP.
Seating of Alternates: None

Alana Adams read the public hearing notice into the record.

LEGAL NOTICE TOWN OF DURHAM
Public Hearing of the Planning and Zoning Commission

The Town Planning and Zoning Commission of Durham, Connecticut will hold a public hearing on Wednesday, September 7, 2016 at 8:00 p.m. in the Durham Public Library Meeting Room, 7 Maple Avenue, on the following application:

Applicant/Owner: Town of Durham
Property Location: 37, 41, 51 Main Street
Proposed Activity: Special Permit, Public Safety Complex Project

At this hearing interested persons may appear and be heard and written communications will be received. A copy of this application is on file in the Land Use Office, Durham Town Hall, for public inspection.

Dated in Durham, Connecticut, this 25th day of August, 2016.
Planning and Zoning Commission
Town of Durham, Connecticut

Frank DeFelice, Chairman
Publish On: August 25, 2016 and September 1, 2016

Attorney Ken Slater was present to represent the town and focus on addressing concerns and questions raised at the last meeting. The first being the question of whether or not the lots need to be combined as part of the development plan prior to the commission's approval of the land use application; this is not required and happens quite frequently at the time at which someone pulls a building permit or seek zoning compliance, all of the requirements shown in the site plan and in this case the merger of the lot would have to be demonstrated to have taken place and is not a prerequisite before coming to Planning and Zoning to get permission for the development plan. Took a look at the role of the public safety facility in the community and the special nature of the special exemption uses under regulations 13.05 recognizes the kind of use that may be necessary for the town but, the commissions job is following these regulations and to make sure that the applicant has done what they need to show that

it will not be detrimental in the location in which it is proposed. In the Plan of Conservation and Development this commission did look at the fact that the complex and the combination of the properties was something that the town had no provision for public safety facilities and that a group of citizens within the community was being formed to look into that and a consultant was hired that led into a presentation to the commission. From that plan of view, he hoped that the commission would approve after the presentations are made and the public is heard from.

Frank DeFelice asked Attorney Slater if he was aware that the applicant had already agreed to combine the parcels before doing anything. Attorney Slater replied yes, his point was in order before an approval is issued. If approval is granted by the towns people, the combination would occur. A concern that was raised is if this has to be the case right now. This can be a condition of approval, that this will happen as part of the approval. If for any reason you make this a condition of approval and this project does not go forward, the merger will not happen.

Joe Pasquale asked for clarification if this was an 8-24 review or application. Dick Eriksen stated that the 8-24 review was approved already and this was an application.

Don Smith, Engineer was present representing Durham and Public Safety Facility Committee.
After receiving comments from last meeting D. Smith presented items that they are willing to change. He then reviewed the plan describing the locations of the existing buildings, proposed construction, wetland areas, existing pavement, and proposed pavement.

<u>#37 Main Street</u>: flip flop apparatus bays being on the north side of the building. Handed out rough sketch. Looked at all traffic coming in to the complex on the south property line; the ambulance would circle up through bays, fire department into parking lot or into the back of the fire house. One entrance in, exit out from ambulance bays, exit out of fire bays and main exit at the other end of the complex. Primary issue is with this plan is the First Responder parking in the front of the building has been eliminated. First Responders would have to park at the rear of the building. There is not enough room between the two exit driveways to do anything else and does not work from a circulation or First Responders stand point.

Chris Flanagan stated that first responder parking on the original plan showed (3) in front of fire house and (6) in front of ambulance corp. He noted that First Responders for the ambulance corp could potentially already be parked in the rear of the building.

Andy Meiman clarified that there are times when ambulance personnel are already in the building and would likely be using parking in the rear. He felt it more likely be responding from home and would need access to some of those spots.

F. DeFelice thought that the issue with the traffic circulation was due to the traffic light and getting personnel into the facility. D. Smith stated that there currently is no plan to take away the lights on Main Street. The Department of Transportation no longer recognizes these types of lights once removed.

<u>Generator and propane tanks</u>: can the generator and propane tanks be moved? They were originally proposed to be located behind #37 Main Street, we are now proposing moving them up into the corner behind the new paving, off to the north of the existing paving into the middle of the property. Will encircle with bollards and vegetative buffer.

South Property Line: Proposal to put in 100-foot-long, 6-foot-high vinyl fence along south property line in an effort to control lights from cars as they come around the driveway. He felt this to be a better solution than landscaping, not very wide, only fifteen feet to property line, not a lot of room to develop a thick buffer. On side yard setback and can only put in a 6-foot-high fence.

D. Eriksen stated he received a letter from the towns engineer that stated a revision was made that after Inland Wetlands made their approval. He questioned if the latest revision being presented tonight is the one he is referring to or is this something different. D. Smith responded that Inland Wetlands has not seen the alternative generator revision being proposed tonight. He explained that the current propane tanks are within the 50 foot set back. Both the generator and propane tanks are entirely within 100-foot setback. Moving to the north they are still within the 100-foot setback within the wetlands; from a wetland point of view, they are farther into the wetlands area now. D. Eriksen stated that he would need to have Brian Curtis revise his letter or acknowledge the fact that this is not a significant issue.

G. Colegrove asked how many feet the fence was in, prior to the State highway taking line, because it is a 20-foot setback in the zone, not a 50 foot. D. Smith responded from the street line back to the fence 80-85 feet. G. Colegrove spoke to the buffering issue on the south property line and suggested bringing the fence into 25 feet of the property line and buffer the entire building of the ambulance facility. He noted how close the buildings are to each other; the setback is 25 feet, if you go beyond the setback you would require a variance. His thought was to take maximum advantage to buffer the southerly property and felt that it might worth the effort to get the variance as long as it doesn't affect the site line. D. Smith stated he stopped the fence at the back corner of the garage because he did not want to reduce the 15 feet between the garage and the property line even further by putting the fence there. With the structure behind the 6-foot fence he was not really sure it was going to do anything.

C. Flanagan spoke to the alternative generator and propane location stating the drawing notes indicate bollards and evergreens. He asked if the tanks will still be surface mounted. D. Smith indicated yes, they did not want to bury the tanks due to the high ground water table. They would have to be anchored down and felt this not to be an ideal situation.

Lisa Davenport thanked D. Smith for putting so much work into making the changes. She questioned the topography of the area behind the ambulance building in relationship to the south property that the fence is being proposed for and asked if the property was higher there. D. Smith responded that the ambulance building property was higher. L. Davenport stated the she was not convinced that the 6 feet will be an appropriate buffer and asked if a variance could be sought if regulation limited the height of the fence. G. Colegrove responded that town regulation restricts the height of the fence to 6 feet. C. Flanagan asked if there was a restriction to hedge height? G. Colegrove stated no. F. DeFelice stated that any fence would need to be approved by the Historic District Commission.

Dave Foley asked if the roadway was lower than the septic? D. Smith responded no, that it will be graded up so the sheet flows over the driveway.

J. Pasquale noted his concern regarding the buffering, if a 6-foot fence was adequate and whether trees should be put in. L. Davenport asked if a live hedge would absorb more sound? D. Smith responded that it may.

C. Flanagan noted that the project requires a fair amount of storm drainage and retention which he understands is a gallery. D. Smith responded that there some underground gallys in front of #37 and above ground area behind #51. C. Flanagan asked if the lower area will maintain everything? D. Smith responded that there is a ridge line that follows the north edge of parking lot, the parking lot drains to the south to a catch basin that comes out to Main Street. Everything to the north is flowing up to the north wetland. Have not increased any drainage area but increased the amount of pervious area. D. Smith noted that town Engineer, Brian Curtis has reviewed this several times.

Paul Jorgensen, Architect; Silver Petrucelli & Associates presented the photometric plan.
The objectives of the lighting are to not have light trespass off the site and a lot of the fixtures have cutoffs. all fixtures are building mounted. They will be replicating the existing decorative historic lighting that is already on Main Street. There will be supplemental lighting in existing back of the buildings to improve lighting. Looking at full cutoffs on all of these to reduce glare and color rendition. Not only meeting all IES Handbook guidelines for photometric plan but they will all be LED.

J. Pasquale asked if they were adding six poles to the exiting lighting. P. Jorgensen responded yes, three poles on either side, full cutoff LED, twenty feet in height. F. DeFelice asked if the color lighting has no higher temperature higher than 4000; P. Jorgensen responded yes, will be working with the Historic District on that. D. Foley asked if the lights would be on a timer, be motion activated, set from dusk to dawn. P. Jorgensen stated these would be operational questions and did not develop this level of detail at this time but acknowledged that it could be done. F. DeFelice noted that the plan did not state dusk to dawn but could specify as criteria.

F. DeFelice asked for confirmation that a fence would be around the vegetation buffer that was proposed for the propane tanks and generator. D. Smith stated that steel bollards and an evergreen perimeter were proposed. F. DeFelice asked how large the generator was. D. Smith replied it was a 200kw generator. F. DeFelice suggested putting up a fence to provide a noise barrier.

David Stein explained that generators they specify come with sound extenuators that are built in. During further design they could determine what required decibels levels are and noted it would also be subject to the towns ordinance. He noted that the generator would test/run once a week. The generator being specified for this project is a typical self-contained package generator.

G. Colegrove stated that the towns noise ordinance calls for no more than 45 decibels at night, continuous, at the property line.

Attorney Slater noted that the generator would be subject to the ordinance in order to be compliant. In reference to the lighting and “sunrise to sunset” he noted that it would be challenging to put in a condition but, if the commission were to consider a condition he suggested “as operationally necessary”, rather than being too restrictive.

Bill Curtis, Captain of the Durham Volunteer Fire Department (member of the audience) noted that the current generator at the firehouse is in a side building and is piped outside. (45kw). Runs every Sunday, once a week. Never received a complaint to his knowledge.

L. Davenport noted there have been other applications that have come before the commission that traffic has been an issue. She asked if a study had been done with all the driveways proposed. D. Smith

stated that a traffic study prepared by Milone & MacBroom was provided and presented at the last meeting.

J. Pasquale; during commissions site walk he noted that property #51, because of the high water table, has water issues on the property and in the basement. He asked at that time how was this going to be handled and was told it wasn't. He asked if this was correct. D. Smith stated that this was incorrect. A sump pump would discharge to the north; flow behind the buildings easterly into the wetlands. The water will be pumped out on to the ground and run easterly towards the carriage house to the wetland area. J. Pasquale asked if Inland/Wetlands was aware that #51 will be pumping into the wetlands area. D. Smith stated that it was not a direct discharge into the wetlands. J. Pasquale felt the volume of water in the basement being pumped to the lawn would go into the adjoining neighbor's property. S. Smith reiterated that the water would be pumped and discharged on the side of the building on to the ground then sheet flow across the surface of the ground to the wetland area. J. Pasquale asked what the distance between the northerly side of the building and property line. D. Smith stated that the carriage house is more than 15 feet and the existing structure is 12.4 feet. J. Pasquale stated he felt the volume of water in basement being pumped out on the lawn would go into the neighbor's property. D. Smith disagreed, he stated it would be a small discharge pump, pumping approximately 30 gallons of water intermittently. J. Pasquale disagreed stating there is currently a 1 ½ inch pipe from the house to the back of the property and noted there is a substantial amount of water in the basement; at some times to the floor joints. Not a substantial plan.

David Stein stated they will be significantly fortifying the basement. Structurally they will be reinforcing basement and will create a new slab and bring up moisture protection. This will significantly reduce the amount of water in to the building. He noted that water has also come from other areas of the building such as the roof and walls. They will excavate inside and outside the basement and around the foundation to reduce sheet flow and bring up moisture protection. Their plan will still have some static water pressure but will be minimal to what is currently there. J. Pasquale questioned that they hoped to achieve this but were they sure. D. Stein stated that they were confident that there are construction methods that in which they can reduce water infiltration into the building. L. Davenport asked if this lot would be an approved building lot today with the current water table. D. Smith said yes. He also noted that there is two feet vertical elevation difference from the side of the house to the wetlands, not a flat yard surface, for water table to flow.

J. Pasquale questioned the north east corner of fire house addition, there are parking stations and asked if they can be pushed or aligned with the building. D. Smith responded given the returns of the building where the door is, that they are not impeding traffic flow into the bay, but could move over to the north a little bit.

J. Pasquale asked what the two bump outs were in the firehouse bay addition. P. Jorgenson responded that they were storage features i.e. hose dry, bulk storage, and SBA storage.

J. Pasquale questioned #37 main street, the addition of the two bays and asked what the height of the ridge line is. D. Smith responded 19 ½, 20 feet. J. Pasquale made reference to regulation 05.03.02; he asked if the plan was using 25-foot aggregate; 15 feet on one side, 10 on the other and noted he felt it was 15 feet within the property line. According to town regulations; no accessory building or structure shall exceed 35 feet in height. Accessory buildings or structures constructed in subdivisions or on building lots where the aggregate side yard total can be reduced to 25 feet and the minimum width of one side yard reduced to 10 feet, shall not exceed 15 feet in height if the building or structure is

constructed less than 25 feet from the side property line. D. Smith stated that it is not an accessory building but part of the primary structure. J. Pasquale stated he the regulation "accessory buildings or structures" and if he was at 19 ½ feet it exceeded the requirement because they were within the 15-foot property line and did not meet current regulations. G. Colegrove asked what the side yard to the north was. D. Smith responded 15 feet; the existing structure to the north was 12 feet, the proposed side yard is 15 feet, and the carriage structure was more than 15 feet to the property line. G. Colegrove noted it was non-conforming to the north, existing structure; the addition will need to be conforming. South end 15 feet way; 30 feet total side yards; not taking advantage of the 10/15. The minimum set back it a total of 30 feet, 15 feet each side. Not gaining advantage of that provision. New construction meets the setback plus, the existing does not, the building was there before zoning.

Public Comment

Mia Liss resident of 21 Main Street. After the last meeting she looked at Zoning Regulation 13.05.04. General Standards (1) "the location, type, character and size of the use of any of the building or other structure in connection therewith shall be in harmony with and conform to the appropriate and orderly development of the town and the neighborhood and will not hinder or discourage the appropriate development and use of adjacent lots or impair the value thereof".

The ambulance garage is so close to a neighboring house and driveway she felt will impair the enjoyment of the residents and her house. She noted the fairly narrow backyard which is an easy shot to see the parking lot and firehouse from her home. In terms of the driveway and the idea of 6-foot fence buffer she felt it to be minimal with the garage height at 20 feet. She also asked the commission to consider that residents purchased their homes adjacent to other homes on the street, not giving any consideration that they may be part of a large project and not a residential home. She also noted her concern regarding the driveway and her children. Emergency responders and large trucks, children will be playing in the adjoining properties and felt there needed to be a physical barrier for safety. She noted that she would like to see something done with the house and would like to see it being used but felt this particular plan is not set up to be a good neighbor to the adjoining home owners. D. Smith clarified for Ms. Liss that the driveway to the south would be exiting only for the ambulance. What was being presented tonight was just a concept based on comments made at the last meeting. Ms. Liss stated that she still felt a physical barrier would need to be put in place for safety reasons.

George Eames, 430 Haddam Quarter Road. He stated the he understood that the commission does not get involved with cost of project but described this as contentious and potentially litigious issue. He came up with ten items that he read into the record as Exhibit B attached. The first three were related to section #13.05.05.01 notification requirements. The next seven were site specific. Based on location, non-conforming issues and incorrect notification issues, he recommended closing the hearing. F. DeFelice interrupted to ask if Mr. Eames used the word "dwelling" when referring to the regulations. Mr. Eames confirmed that yes, he had used the word dwelling.

Jim McLaughlin stated he agreed with Mr. Eames and felt putting all the services in one space with property constrictions would not work. He recommended the planning committee go back to the drawing board.

F. DeFelice advised the public that there is an informational meeting on the proposed project on September 14th at the High School.

R. Kleeman questioned how this part of the project was getting paid. He felt the hearing should not have been held and the town was wasting taxpayer money.

Rick Parmelee stated there was at one time an apartment building behind 51 Main Street with a septic system and noted that #37 Main Street also had a septic system. He asked if other commissions had input on the project before coming to this commission. G. Colegrove stated that Inland Wetlands reviewed and approved without revisions presented tonight and have received conceptual approval from Historic District Commission. He also stated that he personally would like to see the propane tank strapped underground. He felt that Mr. Eames remarks were founded. At a previous time, it was mentioned by the fire department to get access other than Main Street. There will come a time that the exit/entrance will not serve the facility with traffic. For over eight-five years the fire department has not missed a call and felt they should combine the ambulance corp with the fire department. In reference to generator in itself, will only run one hour a week and only during emergencies. He asked if a helicopter would have enough room to land on the property. Andy Meiman responded yes, and it has in the past. R. Parmelee stated the need to look at the long term safety of the community along with the financials.

D. Foley regulations require coverage be show on the drawings. He asked if anyone wanted to speak to the discrepancies between what Mr. Eames stated and what is on the drawing.

Attorney Ken Slater stated regulations, and zoning regulations, are supposed to be strictly read because they affect private property rights. The Chairman got to the heart of this issue when he asked if this is a dwelling; this is not a dwelling. If you look at the towns use table for a residential zone, thirty-two uses are listed as prohibited or permitted or allowed by special exception. #12 is dwellings, other uses in the zone are allowed; #9 churches, #15 family daycare homes, #21 hospitals, #32 municipal or public buildings. He referred to non-conforming issue #7 brought forward by Mr. Eames, Section #05-02-01 where is states "in addition to stipulations in Section 04., each dwelling erected shall have", goes on to set side yards and lot coverage. This is not a requirement to each of the other uses, it is a special exception. If an applicant wants to put a church in they would have to adhere to the side yards, but it makes no sense that a volunteer fire department could be able to build a fire department, which your regulations recognize is a need in the community. You need these types of buildings and allow them in the residential zone. The caveat is that the applicant has to demonstrate, in special exception regulations "in dividing the town into zones it is recognized there are certain uses which may be necessary to the town which may be detrimental to the neighbors if proper safeguards are not taken." This is the section that the applicant needs to address. The idea that you have to find a residential lot big enough to only take up 20% for a church and parking lot or a bank is not what the regulations say. You have special exception discretion and you can decide that a plan doesn't fit and have the safe guards you feel should be in place to protect it. He felt this has been demonstrated by the applicant and worthy of being approved. The specific threshold there applies to dwellings only and the rest is within the discretion of the commission.

D. Smith stated that he has been told by the staff this is not a residential development and lot coverage does not apply. F. DeFelice asked if the coverage was on the map. D. Smith responded no, that it is not a requirement. No maximum coverage for the use.

J. Pasquale asked Attorney Slater if he was suggesting 05.02.01 because it spells out a dwelling erected, that we should not follow these standards, yet in the first sentence of 05.02.01 it says "in addition to stipulations in Section 04". If you read Section 04 .01 it states that "no building or structure shall be

erected, reconstructed, structurally altered, enlarged, moved or maintained, nor hall any building, structure or land be used or be designed for any use other than is permitted in the district in which such building, structure or land is located, except in conformity with these regulations. If #05-02-01 states in addition to stipulations in Section 4, should the lot coverage apply.

Attorney Slater responded if Section 4 stated that this kind of use must have a minimum area, that would govern, but he did not think this was the case.

F. DeFelice spoke to #13-03-04 Site Plan Requirements. G. Colegrove stated it does not require a table to be there. D. Smith stated that a zoning compliance table is on the Plan, lot coverage is not required. G. Colegrove noted on the site plan itself do not require it, but customarily shows up. It was reviewed with the original submission and is not a requirement of the site plan.

D. Foley felt the question was not whether it should be on the drawing or not but if it complies with the twenty percent coverage. He noted the applicant's attorney stating this is not a requirement for the application, but suggested getting an opinion from the land use attorney.

J. Pasquale noted the commission has used this requirement in other applications where dwellings were not involved and held them to it and agreed with getting another opinion from the land use attorney.

The application time line was discussed. The application was currently at thirty-five days and could automatically extend the agreement. Consent was received from the applicant's attorney to keep the public hearing open.

MOTION BY DAVE FOLEY, SECONDED BY CHRIS FLANAGAN TO CONTINUE THE PUBLIC HEARING TO OCTOBER 5, 2016. ADAMS, DAVENPORT, DEFELICE, ERIKSEN, FOLEY, PASQUALE; AYE. FLANAGAN; OPPOSED. MOTION CARRIED.

8. <u>Payment of Bills</u>

MOTION BY DICK ERIKSEN, SECONDED BY DAVE FOLEY TO APPROVE THE FOLLOWING BILLS AS PRESENTED. ALL AYE

- Byrne & Byrne, 8/1/2016, Wheeler Hill Drive, $1,435.00
- Byrne & Byrne, 9/1/2016, Wheeler Hill Drive, $507.50
- Midstate Planning Consultants, July 2016 Billing, $2,065.00

9. <u>Minutes of Previous Meetings</u>

MOTION BY DICK ERIKSEN, SECONDED BY DAVE FOLEY TO APPROVE THE AUGUST 3, 2016 MEETING MINUTES AS PRESENTED. DAVENPORT, DEFELICE, ERIKSEN, FLANAGAN, FOLEY; AYE. ADAMS, PASQUALE; ABSTAIN.

10. <u>Zoning Enforcement Officers Report</u>

A complaint was received regarding property on Oak Terrace in regards to an existing accessory building without permit. G. Colegrove visited the site and a letter has been sent. On Tuesday he met with the property owner that resulted in conflicting comments. Two weeks' notice up next week. Will be meeting with complainant next week.

Wheeler Hill Drive: G. Colegrove confirmed that nine vehicles on the property that are registered, insured and on the towns tax rolls. He noted that one vehicle has been removed and two others are not registered. The 1997 agreement made with the resident was to stop enforcement (6) at the time and noted that he is getting close to having just the six on the property. He worked with the Assessors department and noted that there are a number of property owners that have more than six vehicles. Without field checking to find out what is customary and accessory he cannot prove a statistical situation. There are no standards in regulations. He will be meeting with Mr. Starr this week.

G. Colegrove also noted that notice of zoning violation was issued to 98 Oak Terrace on August 26, in reference to two buildings constructed within the 40-foot setback

Route 68 Industrial Park: G. Colegrove advised Mr. DiNatale that he needs to file a new site plan. He also asked Mr. DiNatale to ask his client to contact the town Building inspector. A site inspection has been done and is not meeting code. He advised the user that the buildings need to meet fire code. J. Pasquale stated he felt the board should do something about the situation because we know the situation exists. He felt the owner and user knows what needs to be done to be compliant and felt a deadline for compliance should be set instead of leaving it open ended. G. Colegrove stated that the site plan is boards issue. He will talk to Dick McManus on the fire code issue and will follow up with members.

C. Flanagan noted concern raised at last meeting regarding use of Korn School. G. Colegrove stated it was being used as a training facility by the State Police. The sue is being set forth by RSD#13. The use will cease in October. Planning and Zoning has no regulatory authority over it.

Camp Farnam: In reference to the complaint received, he has video that he will send out to commissioners in advance if they will be attending a Planning and Zoning meeting. He noted the question being the expansion of use. He stated the Fall Down event was the only use requested in the past. Spoke to Attorney Byrne about it, it was owned by the YMCA in the 1950 and is a non-conforming use. He stated he needs to spend more time researching and explained non-conforming use can continue but cannot expand. Currently renting out the facility and is bothering the neighbor. He felt all parties should come before the commission to explain before sending out a cease and desist without finding out exactly what is going on there.

11. <u>Town Planners Report</u>

None

12. <u>Miscellaneous</u>

F. DeFelice advised commission members that the Merriam parcel has been sold to an LLC.

F. DeFelice distributed correspondence to members for an historical property designation for review and comment; requires advisory report within so many days.

13. <u>Adjournment</u>

Meeting adjourned at 10:08

Respectfully submitted,
Beth Moncata

9/7/16

Non-Compliant Zoning Regulations Relating to Public Safety Complex Project

Copy

Municipal buildings or other "uses by the Town of Durham" are not permitted "by right" in a residential district, but permitted only by "special exception" granted by the Planning and Zoning Commission. Per the current zoning regulations the commission must evaluate the impact of the special exception uses **upon the neighbors as well as the surrounding area** and decide whether or not to grant a "special exception" for any one of a number of special permitted uses spelled out in the zoning regulations.

Along with the general requirements found in section 05 of the Planning & Zoning Regulations, all special exceptions have additional criteria that must be met; those additional criteria are found in section 13 of the P&Z Regulations.

I maintain that the proposed Public Safety application and facility itself is out of compliance with at least 10 different requirements set forth in sections 05 and 13 of the Town's zoning regulations.

The first three non-compliant issues are due to action or in-action by the commission itself, and relate to section 13.05.05.01 notification requirements:

Non-conforming issue #1): 13.05.05.01 requires sign(s) be posted on "the property in question". The call of the meeting references 3 separate "properties in question" (37, 41, 51 Main Street), yet only signage on 41 Main Street was present at the time of the public hearing and this continued hearing. This inconsistency in the call vs. the sign requirement results in an improperly noticed public hearing.

Non-conforming issue #2): 13.05.05.01 (1) states that the location of these signs shall be shown on the site development plan ***and approved*** by the Planning and Zoning Commission. When I question this shortcoming at the last hearing I was informed that *"there is a notation on the map with the existing sign [the Durham Firehouse sign] and the [public hearing] sign was placed inside that structure and [the Firehouse sign] is located on the plan" (from the 8/3 P&Z minutes).* Section 13.03.04 (3) requires site map notations pointing out "the existence of all proposed or existing outdoor signs". By claiming that putting the public hearing sign inside of, or in close proximity to a preexisting sign which is on the site plan actually satisfies 13.05.05.01 (1) requiring a public hearing sign being located on the site map is a total misinterpretation and misrepresentation of the notification requirement.

Non-conforming issue #3): While agreeing that the sign notification was misleading and unclear, P&Z moved to continue the public hearing until 9/7/16 *(MOTION BY DAVE FOLEY, SECONDED BY LISA DAVENPORT TO EXTEND THE PUBLIC HEARING BASED ON NOTICE NOT BEING ADEQUATELY NOTICED TO SEPTEMBER 7, 2016. DAVENPORT, DEFELICE, ERIKSEN, FLANAGAN, FOLEY, J. MELNIK, SPOONER; AYE).* According to 13.05.05.01 (6), if P&Z felt that the signage was improperly displayed, their only recourse is to close the hearing and require the applicant to fill out a new application

The next seven non-compliant issues are site specific:

Non-conforming issue #4): 13.05.04 General Standard (1): requires "the location, type, character and **size** of the use and of **any building or other structure in connection therewith** shall be in harmony with and conform to the appropriate and orderly development of the Town **and the neighborhood**....."

Per the Town's assessor information, the average **size** of the ground floor area of the residences in this neighborhood is 1185 s/f. (21, 31, 55, 63, 71, 73 Main Street). The additions to 37 Main Street double its existing footprint to 4058 s/f; while the additions to 51 Main more than doubles its existing footprint (to 2,150 s/f). The addition to 41 Main will bring that building's total size to 12,000 sf. Not one of these buildings alone, let alone as a group of three can claim to be **sized** in harmony with the neighborhood.

Non-conforming issue #5): 13.05.04 General Standards (7): requires the Commission to consider the number of similar special exceptions in the vicinity and their cumulative effects on the neighborhood.

By combining 37, 41 and 51 Main Street into commercial uses for the Town, the residential homes at 21 and 31 Main would be surrounded by commercial uses on both sides, and effectively cut off from the rest of the existing residential

district. The proximity of these commercial structures (at the minimum required 15' **residential** setback), led the property owners at 21 and 31 Main to voice their objection to this application at the last hearing. The cumulative effect of adding more commercial buildings to the Firehouse property would take on the appearance of a commercial strip mall in terms of traffic, parking, appearance and function. Please remember, commercial zoning regulations require that when a commercial district abuts a residential district, a green belt buffer zone at least 50 feet in depth is required.

Non-conforming issue #6): 13.05.04. General Standard (8): requires that the special exception use shall not constitute a hazard to public health and safety either on or off the subject property.

According to the 2008-2013 Facilities Work Product Report *"Two earlier study committees raised the possibility of a secondary access for responders because of difficulties getting to the firehouse during emergencies at the same time as exiting emergency vehicles. Locating a secondary access was too problematic, so the Committee early on abandoned this idea" (from page 10 of the report).* In addition to the traffic problems the Fire Department currently experiences, this application, if approved could add State Police, Town Ambulance and other first responders to the same location at the same time, adding greatly to this pre-existing bottleneck of traffic.

Non-conforming issue #7): Section 05.02.01-requires each "dwelling" erected in a residential zone shall be a minimum of 50' set-back from water courses and wetlands. This requirement does not include accessory buildings, but the carriage house at 51 Main Street cannot be considered an "accessory building" based on existing zoning definitions:

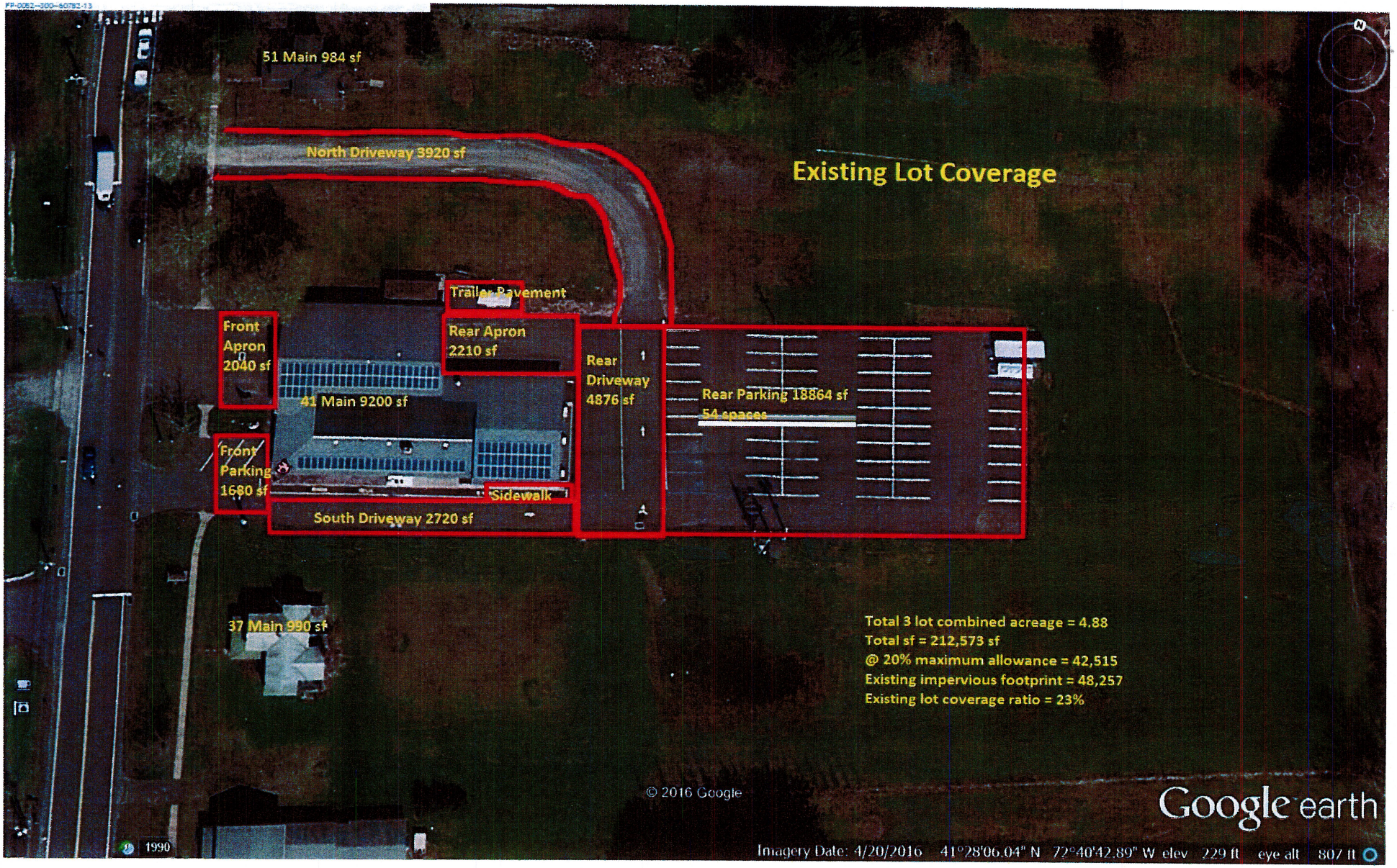
Per 02.01.02 "accessory" buildings are "subordinate" and "incidental" to the main building. By definition, a building that is larger than the main building is neither subordinate nor incidental. Section 02.02.01 further defines "subordinate" in reference to Accessary Apartments as meaning smaller in size and appearance. 51 Main Street is being reduced in size to 550 s/f, while the proposed adjacent carriage house will encompass 1600 s/f. Since a majority of this carriage house is being built inside the 50' wetlands setback, the addition to this property is in violation of Section 05.02.01

Non-conforming issue #8): Section 05.02.01 requires maximum lot coverage of 20% in MR zone and 12% in FR zones. The compliance of this requirement was actually questioned at the 7/20/16 application review: *"F. DeFelice asked what the total lot coverage would be when the three buildings were constructed. P. Jorgenson did not have details. G. Colegrove stated that he reviewed this and did not have the exact number but noted it was compliant" (from minutes of 7/20/16).*

Based on a review of the Town Assessor maps, assessor cards, the proposed site plan, along with actual property measurements, the proposed facility lot coverage when all three properties are combined (not including ***any*** additional parking) was computed to be 28% (calculations included). Even though more than 1/3rd of this property is in the FR zone (with tougher coverage criteria), the calculations were based on weighing the total lot area evenly at 20%. These geometric calculations were verified by a Quinnipiac University Mathematics Professor, and prove that this application must be denied as it is in violation of maximum lot coverage allowance of 20%.

Non-conforming issue #9 & 10): By being out of compliance with the maximum lot coverage ratio, this application therefore also is in violation of 13.03.03. (7) and 13.05.04. (4) Both of these sections require *"the lot on which the "use" is to be established is of sufficient size and dimension to permit conduct of the use....."*

Conclusion: Section 05 non-compliant issues, especially maximum lot size coverage ratios are absolute. P&Z does not have the ability to approve any application that is out of compliance with this requirement. Due to its "special exception" nature, zoning regulation 15.02, prohibits any "use variances" by the Zoning Board of Appeals; so denial is absolute and un-appealable. What makes the lot size issue even more frustrating from a taxpayer perspective is that the town has been reviewing this property for more than 8 years; spent $95,000 in engineering studies, wasted town building department staff hours (not to mention volunteer time) when ***we should have known*** all along that this lot never could handle any increased building coverage in the first place, as existing lot coverage ratio with the three properties combined is already at 23%.


Existing Lot Coverage
51 Main 984 sf
North Driveway 3920 sf
Trailer Pavement
Front Apron 2040 sf
Rear Apron 2210 sf
41 Main 9200 sf
Rear Driveway 4876 sf
Rear Parking 18864 sf
54 spaces
Front Parking 1680 sf
Sidewalk
South Driveway 2720 sf
37 Main 990 sf
Total 3 lot combined acreage = 4.88
Total sf = 212,573 sf
@ 20% maximum allowance = 42,515
Existing impervious footprint = 48,257
Existing lot coverage ratio = 23%
© 2016 Google
Google earth
1990
Imagery Date: 4/20/2016 41°28'06.04" N 72°40'42.89" W elev 229 ft eye alt 807 ft

02.12.04 Lot coverage: The ratio between the gross floor area of any building, plus parking areas, driveways, sidewalks, outdoor storage areas, and other impervoius surfaces; and the gross area of the lot

GROSS AREA OF LOT:	(in acres)	in S/F	in S/F
37 MAIN	1.47	64033	64033
41 MAIN	1.63	71003	71003
51 MAIN	1.78	77537	77537
TOTAL COMBINED LOT AREA:	4.88	**212573**	**212573**
Maximum Coverage Allowed:	(@ 20%)	**42515**	**42515**

GROSS FLOOR AREA:	Current S/F	Proposed S/F
37 MAIN	990	990
additions		3068
41 MAIN	9200	9200
additions		2800
51 MAIN	984	984
(subtractions)		-434
additions		1600
TOTAL BUILDING S/F:	**11174**	**18208**

IMPERVIOUS SURVACES	Area	Current S/F	Proposed S/F
rear parking lot	178 x 106	18864	18864
rear driveway	46 x 106	4876	4876
front parking	40 x 42	1680	1680
south driveway	136 x 20	2720	2720
north driveway	196 x 20	3920	3920
south sidewalk	4 x 60	240	240
apron in front fire bays	40 x 51	2040	2680
apron in rear fire bays	65 x 34	2210	3250
storage trailer paving	13 x 41	533	0
apron to carriage house bays	10 x 40	0	400
new road to 31 Main rear	120 x 20	0	2400
new road to 31 Main front	30 x 20	0	600
new sidewalk between 51 and carriage house	4 x 20	0	80
TOTAL IMPERVIOUS:		**37083**	**41710**

Actual Coverage Area:	Current S/F	Proposed S/F
COMBINED AREA BUILDING & IMPERVIOUS:	**48257**	**59918**
LOT COVERAGE RATIO:	**23%**	**28%**
overage amount:	**-5746**	**-17407**