

RECV'D: Office of the Town Clerk Feb. 20, 2015 9:25am
ZONING BOARD OF APPEALS
Durham Town Hall
Durham, CT 06422

Minutes of the February 12, 2015 Regular Meeting

Mr. LaFlamme opened the meeting.

Attendance:

Members		Alternates	
x	David Heer	x	Michael Geremia
x	David Slight	x	Mark Jungels
A	John Hogarth	A	Eric Francis
x	Chris DiPentima		Others
x	William LaFlamme*	A	Colegrove, Geoffrey

A=Absent
X=Present

Seating of Alternates

Mark Jungels was seated for John Hogarth.

Amendments to Agenda

A motion was made by Bill LaFlamme, seconded by Chris DePentima, to switch the order of the Public Hearing. Royalty Transportation will be the first Public Hearing. Also, the Wimler Property agenda item should state that the section of the Durham Zoning Regulations affected is 04.02.01. Motion passed.

Approval of Agenda

A motion was made by Bill LaFlamme, seconded by Chris DePentima to approve agenda as changed. Motion passed.

Payment of Bills

None.

Minutes of Previous Meeting(s)

A motion was made by Dave Slight, seconded by Mark Jungels, to approve the minutes of the previous meeting. Motion passed.

Public Session

None.

Public Hearing

A motion was made by Dave Slight, seconded by Mark Jungels, to close the regular meeting. Motion passed.

A motion was made by Dave Slight, seconded by Chris DePentima, to open the public hearing. Motion passed.

Royalty Transportation Service, LLC, request a waiver from the restriction from item #25 of section 07.01.03 of the Durham Zoning Regulations, 593 Wallingford Road

Mr. Micah Bruce from Royalty Transportation was present and addressed the commission. He is requesting to be able to have a used car license to get rid of vehicles that they pick up from the state and take to public auctions to have them sold and to also, have in a lot to sell, inside storage, fenced, no more than 2-3 used cars per month. Mr. LaFlamme clarified that Mr. Bruce is looking for a waiver from a special permit granted by the Planning and Zoning Commission to operate the business. Mr. LaFlamme stated that back on June 9, 2011 the ZBA approved the certificate for Royalty Transportation to operate. They then went to the P&Z commission on the 15th of June, 2011 and were given a special permit to operate and were granted the approval for use of storage unit for vehicle transportation service at 593 Wallingford Road - with the stipulation that there will be no vehicle repairs conducted on premises, other than their own vehicle maintenance, and no outside storage of vehicles allowed. The current request is to waive that allowing him to sell used vehicles. Mr. Bruce will also have to go before the state of CT DMV again to acquire a license for this but must obtain permission from the town of Durham first.

A member requested an update on the history of the business since the special permit was granted. How has the business migrated to this point? Mr. Bruce stated that the business follows the guidelines of the approved permit. Most vehicles are stored inside the rental unit. They work for the state police picking up cars that have been in an accident and store inside. Sometimes there is an abundance of vehicles and the customers do not come back and retrieve their vehicle. The state gives Mr. Bruce the right to get rid of the vehicle after a certain amount of days. Mr. Bruce stated that if he obtains a used car license he can take these cars straight to the auction and get them sold.

Mr. LaFlamme clarified for the audience that the Mr. Bruce's request is a waiver of the granted special permit and that item #25 states that it is an automobile and equipment service and public garage all without sales as a principal or accessory use. That was granted by the Planning and Zoning Commission without the ability to sell, that's what is being asked to be waived. Mr. LaFlamme asked where the vehicles would be stored. They will be inside the storage unit and the extra would go into the fenced in area or another unit that Mr. Bruce can rent on the property. A commission member stated that the minutes from June 9 2011 said that Mr. Bruce provided the following information: that none of the vehicles being transported will be brought to the site, only the transport vehicles will be on site, no outside parking will be necessary, other than the transport vehicles during the day. Inside the unit there will be a small office, limited small engine service, no vehicles will be worked on. There will be no sale of vehicles, only repairs limited to small engine service. The business has definitely transformed from when it was approved in 2011. Mr. LaFlamme pointed out it's also transformed from what was approved by Planning and Zoning and that is an allowed use in that particular light industrial area. A commission member stated that Mr. Bruce is now transporting vehicles, there are vehicles on the site, and now Mr. Bruce is looking to sell vehicles on the site. Mr. Bruce said that this is correct.

Mr. Dean McCoy, Middlefield Rd., Durham, addressed the commission. Mr. McCoy stated that Mr. Bruce's original approval, as Mr. McCoy understood it, was for a repairer's license contingent upon he could not repair vehicles, repair customer's vehicles but could repair his own, and no storage outside. Mr. McCoy continued to state that right after Mr. Bruce was granted his permit he went on State Police rotation towing. This is working directly with retail customers. Mr. Bruce is dealing with retail customers that have to come to his facility, pay for their cars, pay for the tow, get the tow out; none of this is what was approved. He was approved for wholesale tows, insurance salvage. Mr. McCoy believes he is violating his current approval, working for the State Police is working with retail customers, unless the state police requested a tow.

Durham is very specific in its regulations in saying no sales in item #25 and no sales in the light industrial zone. He would have to show a legal hardship in order to get a variance of that and Mr. McCoy does not see a legal hardship, he believes it's an economic hardship. Mr. McCoy also stated that every time he adds a unit to his business he must get approval from the state of CT.

Marianne Corona spoke to the commission. She stated that she is well aware of what is required to own such a business as she and her husband, as well as other garage owners in the area, has done so in town. She presented some pictures to the commission of the site. She could not even identify the site due to no signage. There was discussion of what is necessary to obtain a dealer's license. It was stated that the pictures represent how congested the area is with all the cars already present on the site.

Joe Pasquale, member of the Planning and Zoning Commission and the Agricultural Commission but he is speaking as a private citizen of the town of Durham. Mr. Pasquale spoke of how the ZBA makes its decisions and what kind of control there is after a variance is granted. He pointed out various issues that should be addressed when granting a variance.

Mr. LaFlamme stated that the commission is being asked to grant a use variance. Mr. LaFlamme's feeling is that this particular piece of property is not suitable for what is being requested, it's not a garage or an area suitable to accommodate vehicles. Mr. LaFlamme is hard pressed to find a hardship as well as hard pressed to overrule what the Planning and Zoning granted originally for automobile service and operating that garage without sales as principal or accessory use. It was questioned whether or not the property owner was present and if the property owner was in support of the request. Mr. Bruce stated that the owner had to sign the application.

Mr. LaFlamme re-read the approval from June 9, 2011. Mr. LaFlamme reiterated that the approval was for no outside parking, no sales of vehicles and repairs limited to small engine services and the transport vehicles they were using. After meeting with ZBA Mr. Bruce went to Planning and Zoning on June 15, 2011. Mr. LaFlamme discussed the Planning and Zoning commission's approval and the requirements of the approval.

A motion was made by Dave Slight, seconded by Mark Jungels, to close the public hearing. Motion passed.

A motion was made by Bill LaFlamme, seconded by David Heer, to approve the request of Royalty Transportation Service, LLC, for a waiver from the restriction from item #25 of section 07.01.03 of the *Durham Zoning Regulations*, at 593 Wallingford Road. The hardship claimed is due to the nature of the permitted business and the need to sell a vehicle and not have more than 5 vehicles stored on the property. These will be inside a garage or a fenced lot. Motion did not pass with all in opposition.

A motion was made by Dave Slight, seconded by Chris DePentima, to enter into the second public hearing. Motion passed.

Wimler Properties, LLC, request to allow existing residence built in 1850 to be located on its own lot. Proposed lot is 1.0 acre. 84 Stagecoach Road.

Mr. John Corona, Lang & Corona, Middlefield, was present to address the commission. The Wimler property is a very extensive piece that stretches between Rt. 77, Guilford Road, all the way over towards where Stagecoach Road is. A number of years ago the development rights on virtually all of the property were sold to the state of CT and that's really the driver and the basis for the application. Mr. Corona explained that the property in question is called 84 Stagecoach Road and it's the house built in 1850. There is a large open field there and the house stands to the center of the property all by itself. Right now the house is not habitable at this point, no tenant in a number of years and need of a massive overhaul. It is in very poor condition. The Wilmers are not able to keep up with the house any longer and would like to see someone purchase the

house and rehab it back to its original condition. Mr. Corona discussed the time line of the property and the lot and the development rights. Mr. Corona presented survey maps that show the property as well as the house and pointed out where a new septic is located. Mr. Corona stated that the DEEP has granted approval as well. The purpose of requesting the variance is to allow a one acre lot to be created because that is all they can get from the reach of the development rights easement. If granted the variance Mr. Corona will then go before the Planning and Zoning Commission for a one lot subdivision to create this lot. Without a variance Planning and Zoning would have to turn Mr. Corona down due to the 2 acre required minimum lot size and that cannot be provided. A member stated that there is a 17+ acre lot right now. Mr. Corona stated that all but 1 acre of the 17 acres can't be included in any building lot under the development restrictions. The house as it is positioned now complies with all of the code requirements except for the minimum lot size of 2 acres. The health code and septic system and yard area requirements are met. Mr. Corona discussed that the hardship is the accident of where the new septic is located as well as the operation of the development restriction limiting of the available area to one acre.

A motion was made by Dave Slight, seconded by Mark Jungels, to close the public hearing. Motion passed.

A motion was made by Bill LaFlamme, seconded by Dave Heer, to approve the variance for Wimler Properties, LLC their request to allow an existing residence built in 1850 to be located on its own lot; proposed lot is 1.0 acre at 84 Stagecoach Road from section 04.02.01 of the *Durham Zoning Regulations*. The hardship being the existing one acre lot does not conform to the current regulations and the location of the new septic system and the development rights of the other acreage. Motion passed.

Approval of 2015 Meeting Dates

A motion was made by Dave Slight, seconded by Chris DePentima, to approve the calendar of the 2015 meeting dates as presented. Motion passed.

Miscellaneous

Mr. Bruce wanted to thank the commission for their time and they understand the reason that his request could not be approved.

Adjournment

A motion was made by Dave Slight, seconded by Mark Jungels, to adjourn at 8:32 p.m. Motion passed.

Respectfully submitted,

Jennifer Keogh

Jennifer Keogh
Administrative Coordinator
Town of Durham