

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF JANUARY 16, 2008, MEETING

Present

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternate: Cathy Devaux, Mike Geremia, Mark Laudano

Absent

Members: Frank DeFelice, Dian O'Neal

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Cathy Devaux was seated on the Commission in Dian O'Neal's place. Mike Geremia was seated on the Commission in Frank DeFelice's place. Mark Laudano was seated on the Commission in Dave Foley's place (and later unseated upon Dave Foley's arrival).

Because the number of attendees of the regular meeting and the 8:00 p.m. Silver Eagle Development public hearing exceeded the capacity of the two downstairs library meeting rooms, the fire marshal required that the Commission take action to immediately reduce attendance to acceptable limits. **Therefore, the public hearing of Silver Eagle Development was continued/postponed to a special meeting date: Wednesday, January 23, 2008, at 8:00 p.m. at the Coginchaug Regional High School auditorium.**

Motion by Richard Eriksen, seconded by Mike Geremia, to continue the public hearing of Silver Eagle Development to Coginchaug Regional High School at 8:00 p.m. on January 23, 2008 (auditorium). Motion carried unanimously.

It was noted that the Commission had attempted to secure the high school auditorium for the January 16 public hearing; however, because of a concert, the auditorium was unavailable. Based on the maximum number of extensions already having been granted on the Silver Eagle application, the final hearing must close by January 25.

Also because of attendance exceeding maximum capacity, the special workshop meeting of the Commission to discuss adaptable reuses of Main Street structures that was planned for 7:00 p.m. on January 16 was postponed to the next regular meeting of the Commission: **Wednesday, February 6, 2008, at 7:00 p.m. at the library.**

1. Approval of Agenda

Motion by Ralph Chase, seconded by Richard Eriksen, to approve the agenda of January 16, 2008, as amended to reflect continuation/postponement of the Silver Eagle public hearing to January 23, 2008. Motion carried unanimously.

2. Public Session

Cindy Tyrstick advised that Dolphin Day Care has installed a garage/shed on their site in the area of auxiliary parking. Geoffrey Colegrove will investigate the recently approved modified site plans; it was not his recollection that this shed was on that plan. He will send the property owners a letter if it is not on the plan that was approved; they can then return to the Commission for an amendment to the site plan request or they can remove the structure.

Dave Foley was seated at 7:38 p.m.; Mark Laudano was unseated.

Cindy Tyrstick also stated that a snowmobile trailer has been parked in the overflow parking area for several weeks. Recreational vehicles are taken in and out of the shed periodically, all visible from her home.

John Szewczyk, Selectman, addressed the Commission. In the course of conducting research, he discovered that there are provisions for a town enacting a scenic ordinance much as the state can do. Referencing the forthcoming Silver Eagle application, he stated that this was a "totally separate matter." He provided language (Section 7-149a) to the Commission on how scenic designation of roadways could be pursued on a local level. He added that a number of municipalities enact similar protection in their communities. He indicated that this could affect a local road such as Haddam Quarter Road. John Szewczyk also stated that he has brought this up to the Board of Selectmen; no action has yet been taken. The Commission recommended that the Board of Selectmen draft possible language; the Planning and Zoning Commission would then provide input under an 8-24 review.

Rick Parmelee addressed the Commission concerning the overflow of attendees earlier in the meeting that prompted the fire marshal to take action for the safety and welfare of residents; ultimately, the public hearing was continued/postponed to the following week. He stated that he was pleased to see the fire marshal take this action. He has been in attendance at both town hall meetings and meetings of the Board of Education that have exceeded posted limits. However, he added that one of the comments made early in the evening (before postponement was decided), wherein it was suggested that attendees might be asked to leave (to reduce attendance to an acceptable threshold), was “un-American; unless they were illegal immigrants, no citizen of the United States can be asked to leave a public meeting.” He stated that he believed the intentions of the Commission were “nothing but honorable,” but nonetheless asked that the Commission be respectful of the townspeople’s rights.

George Eames and Richard Eriksen responded that the action taken was appropriate—continuing the hearing to a larger venue in one week—and that the actions of the fire marshal were necessary and unavoidable.

Bryan Esparo, 36 Bailey Road, addressed the Commission. He stated, “just when the bell has rung and the residents of Bailey Road go back to their corners,” something happens that he characterized as a “sucker punch.” He reported that in what appears to be direct retaliation, his neighbor, Pat DiNatale, has erected a 20- to 25-foot tall wall of dirt about 250 feet long directly along their respective property lines. Over the course of about four days, two men using bulldozers and excavators worked to create the berm/mountain.

He further noted that he would estimate between 10 and 15 articulating John Deere dumptrucks were used to haul in tree stumps and piles of brush off Mauro Road to extend the 250-foot line that made up the berm before the dumptruck loads of dirt were dumped to create the berm.

He stated that he had referenced the regulations with regard to a fence (i.e., “good-looking” side must face the neighbor), but did not see this addressed other than through temporary stockpiling during construction, which he didn’t think this was. He asked what the intentions would be for this, stating that it devalues his property if it remains in place. He also didn’t know if there would be plantings or hydroseeding (he stated that he’d be willing to pay for planting of trees on the top and hydroseeding on his side). He summarized that he believed it to be a deliberate devaluation of his property.

Questions were raised regarding permits necessary to haul in this much material (versus carting dirt off a site) as well as the burial of stumps. Geoffrey Colegrove indicated that a permit is typically needed to bring in more than ten cubic yards of material. The Department of Environment Protection oversees stumps/burial, not local regulations.

Geoffrey Colegrove will investigate this situation and advise.

Susan Good, Haddam Quarter Road, asked the Commission for the best way to provide communications (physically mailed letters, e-mailed letters, etc.).

Geoffrey Colegrove indicated that correspondence should be received at the public hearing; therefore, correspondence could be brought to the Town Hall for placement in the Planning and Zoning Commission mailbox or delivered to the chairman at the start of an official Planning and Zoning Meeting. He added that correspondence should not be sent to individual members of the Commission (but, rather, to the Commission as a whole). Material received by the Commission is subsequently read into the record.

Jan Melnik stated that, as recording secretary, she had been contacted by the town clerk regarding people wishing to e-mail their correspondence. She willingly provided her e-mail address and stated that she would accept correspondence for the Commission and bring to the next applicable meeting of the Commission for reading into the record. As recording secretary, this is an acceptable practice for receiving electronic correspondence that then becomes part of the official record.

3. Nick Onofrio, Request for a Home Occupation Permit for a Landscaping Business,
145R Old Farms Road

Nick Onofrio addressed the Commission and provided copies of return receipt requests from letters of notice sent to adjacent neighbors. It was subsequently clarified that the notices did not indicate the purpose of the meeting, just that there was an agenda item on the calendar for January 16 before the Planning and Zoning Commission. Nick Onofrio indicated that he had not been informed of the need to mention the purpose of the meeting in the notification letters.

He described his plans to purchase the property at 145R Old Farms Road (the property owner signed the home occupation permit application). There is a barn at the back of the property which he would intend to use for storage of several trucks, a mower, a trailer, and other equipment for the landscaping business. Nothing would be stored outside and nothing would be visible from the neighbor's house or the road. It is a small business with just himself plus one part-time employee.

Kathy Kirschner, 147R Old Farms Road, addressed the Commission. She stated that the letter received did not indicate what the special permit was for. She added that the subject property shares a driveway with her property—that both owners co-own the driveway. She is concerned about the equipment being moved on that driveway as well as the frequency of use. She indicated that she would have liked for the applicant to have had a discussion with her.

Geoffrey Colegrove indicated that letters should again be sent to neighbors via certified mail indicating specifically what the plans are for the special permit and business. He suggested a copy of the actual application also be included with the letters.

Nick Onofrio stated that his realtor indicated that each property owner owns 50% of the driveway up to the middle of the driveway (as opposed to being co-owned in its entirety). The paved area is 25 feet wide; the actual driveway area across both lots is 50 feet wide. The property map shows the property line being drawn directly down the middle.

Kathy Kirschner replied that this was not an accurate representation.

Geoffrey Colegrove asked that a larger map be brought to the next meeting with this driveway division clarified. He added that a 25-foot wide paved section is more than adequate for two vehicles to pass; some town roads are as narrow as 18 and 20 feet in width.

Tom Russell suggested that deed restrictions be closely examined; some developers indicate certain restrictions on commercial enterprise. Geoffrey Colegrove stated that the Planning and Zoning Commission does not enforce deed restrictions or private covenants, but that the prospective buyer should be informed.

This application will be on the agenda of the February 6, 2008, meeting.

Motion by Ralph Chase, seconded by Gene Riotte, to recess the regular meeting for the public hearings at 8:10 p.m. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: Bruna Verna
Application: Request for Zoning Text Amendment to Section 07.04.04.(18) of the Durham Zoning Regulations to Allow Dog Day Care and Grooming Facilities in the Industrial Zone

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternate: Cathy Devaux, Mike Geremia, Mark Laudano

George Eames, Chairman, read the notice for the public hearing. Cathy Devaux was seated on the Commission in Dian O'Neal's place. Mike Geremia was seated on the Commission in Frank DeFelice's place. Dave Foley recused himself from this application; Mark Laudano was seated in his place.

Attorney Vincent McManus, representing the applicant, addressed the Commission. He stated Bruna Verna's desire to rent space in an existing industrial park in the Design Development District. While day care facilities appear on the list of permitted uses for

this zone, dog day care facilities do not. His applicant is first seeking to amend the use table to permit dog day care and grooming businesses in the Design Development District. He cited a growing demand for such services, particularly for couples where both members work and have pets. Owners drop their pets off in the morning and retrieve them at the end of their business day instead of leaving a pet caged up alone all day at home.

Richard Eriksen asked if dog day care was a euphemism for a dog kennel. Attorney McManus indicated it was not. There is no intention at all for this to be a kennel with boarding. It is strictly a day care/dog-sitting operation. Such stipulation could be attached to the use: no overnight boarding.

Richard Eriksen stated that there are setbacks involved with kennels and sanitation standards that must be adhered to. He suggested the same should apply to dog day care.

Attorney McManus stated that this use is regulated both locally and statewide through the Department of Agriculture. The site plan reflects regulations and conformance at the state level. He said that for this business, animals will spend the overwhelming bulk of their day inside, with the average length of stay 9-10 hours (compared to a kennel that is 24/7). Calculations have been done regarding water use, picking up of debris and proper disposal, and good management practices.

Richard Eriksen stated that there is a great deal of history with the Old Mountain Road residential area bordering this particular site and the conflict between the farm-residential zone and the Design Development District. Attorney McManus pointed out that there are many animals in the farm-residential zone. However, this is not a farm. Attorney McManus added that the Commission can impose restrictions on an application-by-application basis; specifics can be addressed through the special permit process.

Geoffrey Colegrove stated that while there are currently none present, the use is allowed in the light industrial zone. Issues including wastewater are addressed by the health code. Hours of operation can be specified with an application (i.e., 6 a.m. to 8 p.m.) with no allowance for overnight or boarding uses.

Marg Dahlmeyer addressed the Commission, stating that she was not opposed to the application; rather, she wanted to ensure that all regulations were taken into account. She also wanted to be certain that the Commission would not be allowing such practices to mushroom throughout town (in farm-residential zones).

George Eames explained that if the use tables were amended, application for such a business would be by special permit only and in specific zones.

Marg Dahlmeyer suggested that provision be made in the language for how dogs would be handled in an emergency (i.e., if traffic, weather, etc. prevented a pet owner from retrieving their pet at the end of the day).

Helen Larkin stated her support for the application. She asked what threshold there was for someone watching a friend or neighbor's pets in their home and then turning the practice into a doggie day care business. She suggested that some parameters are necessary; in their own kennel operation on Route 79, they have had some issues with dogs barking.

Bruna Verna stated she would work out issues with pet owners—she doesn't want to have dogs overnight. She would like to partner with local kennels for such backup service. Also, selection of the unit she would like to use is the one located furthest from any residence; she is trying to be very sensitive to the neighbors.

Roger Kleeman asked the number of clients that the proposed doggie day care would handle; George Eames replied that the current public hearing/application is to amend the use table to allow the use in the Design Development District. The second hearing/application would speak to specifics.

John Gathers, a tenant in the building where the proposed business would be located, stated that he didn't see any difference between the day operation and a kennel and thought the same kennel regulations should apply. He expressed concern about room for the animals outside as well as noise along with the need for appropriate setbacks.

Sandi Kovac, 89R Mountain Road, stated that she did not have an issue with the proposed center—other than it should go “anyplace but where it abuts places that people live in.” She said the town can't control the current noise without a way to effectively monitor it. She mentioned a similar facility in Wallingford that is in an industrial area where any barking is not a problem as there are not residents nearby. Brunna Verna replied that she had visited a number of places and not found a problem with barking dogs as they are engaged in playtime, programs, training, grooming, etc.

Dave Dingwell, 89R Mountain Road, stated that his property is about 200 yards from her proposed business. He mentioned wetlands in the area and stated that he has two dogs that would be barking all day long when they hear the dogs of this business barking. He stated that it is not suitable in the zone.

Brenda Eddy asked for clarification that grooming is a part of the application; it is.

Rory Wilson, the owner of the subject property, stated that he had the same skepticism as that being mentioned when he was initially approached by the applicant. However, after speaking with her at length, he was satisfied that all issues related to noise, disposal of waste, no boarding of pets overnight, etc., had been addressed. He felt very comfortable with the application. He noted that he would not be in support of it if he thought it would impact his surrounding tenants. He also described the noise as being no different than what currently exists from machine shops, running grinders, unloading of equipment, excavators, and “screaming kids” at the day care facility. He stated that his property does

not about the farm-residential zone. The residence in question (Kovach-Dingwell) is in the commercial zone. Within his lease, he can put in restrictions to ensure conformity and prevent problems for other tenants.

Sandi Kovac stated that the outside portion of the operation would be within 150 feet from her property (a kennel stipulates more than 150 feet away).

Geoffrey Colegrove indicated that doggie day care is a different use from a kennel and that there is no currently a setback provision; if it were located in the light industrial district, there are no setback issues.

Sandi Kovac stated that while it is being presented that there will be no boarding, she has seen changes with other properties—"they come in, make promises, but things don't turn out the way it was expected."

Rick Parmelee addressed the Commission. He said the article in the newspaper about the proposed business sounded "very interesting." He didn't think it would be a problem in the community, but had faith that the Commission would address the issues raised tonight and establish appropriate guidelines.

Richard Eriksen stated that the use is allowed in both the heavy and light industrial zones; he saw no reason to extend beyond this to add another zone. Ralph Chase concurred.

Jan Melnik read into the record a letter from Kim Garvis, town clerk, regarding the timing of the application submitted at town hall by Bruna Verna. She clarified that the applicant had made every effort to do the right thing in working through the application process at town hall. However, on several occasions, there was no one in the Building Department. While Kim Garvis accepted paperwork on the applicant's behalf, it was immediately placed in the Building Department's mailbox and Ms. Verna was informed that the town clerk was not the appropriate contact; she would need to work with the Building Department and Midstate Regional Planning Agency.

George Eames expressed appreciation and thanks to Kim Garvis for clarifying how the application paperwork was handled. He indicated that the Commission was embarrassed about the mishandling, but that it was also out of the hands of the Commission to control the process at the Building Department.

Motion by Richard Eriksen, seconded by Ralph Chase, to close the public hearing of the Playground Inc., request for zoning text amendment to Section 07.04.04(18) of the Durham Zoning Regulations to allow dog day care and grooming. Motion carried unanimously.

Motion by Ralph Chase, seconded by Tom Russell, to reconvene the regular meeting at 8:49 p.m. Motion carried unanimously.

4. The Playground Inc., Request for a Zoning Text Amendment to Section 07.04.04(18) of the Durham Zoning Regulations to allow Dog Day Care and Grooming Facilities in the Design Development District

Motion by Richard Eriksen, seconded by Gene Riotte, to approve the Playground Inc., request for zoning text amendment to Section 07.04.04(18) of the Durham Zoning Regulations to allow dog day care and grooming. Motion denied, 8-1, with all in opposition with the exception of Cathy Devaux (in favor).

Motion by Ralph Chase, seconded by Gene Riotte, to recess the regular meeting for the hearing of Playground Inc., request for special permit for dog day care and grooming. Motion carried unanimously.

PUBLIC HEARING

2. Applicant: Bruna Verna
Application: Request for Special Permit for a Dog Day Care and Grooming Facility at 45 Ozick Drive, Unit 21

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternate: Cathy Devaux, Mike Geremia, Mark Laudano

George Eames, Chairman, read the notice for the public hearing. Cathy Devaux was seated on the Commission in Dian O'Neal's place. Mike Geremia was seated on the Commission in Frank DeFelice's place. Dave Foley recused himself from this application; Mark Laudano was seated in his place.

Because the first application for a zoning text amendment was turned down, this application became moot.

Motion by Gene Riotte, seconded by Ralph Chase, to close the public hearing of special permit, Playground Inc., dog day care and grooming, 45 Ozick Drive, Unit 21. Motion carried unanimously.

Motion by Gene Riotte, seconded by Ralph Chase, to reconvene the regular meeting at 8:59 p.m. Motion carried unanimously.

5. The Playground, Inc., Request for a Special Permit for a Dog Day Care and Grooming Facility at 45 Ozick Drive, Unit 21

Motion by Gene Riotte, seconded by Ralph Chase, to approve the Playground Inc., special permit, dog day care and grooming, 45 Ozick Drive, Unit 21 [subsequent action noted because zoning text amendment from previous hearing to allow dog day care/grooming in design development district was not approved]. Motion unanimously denied.

6. Tad and Jennifer Swierczynski, Request for a Proposed 2-lot Subdivision, Hellgate Road

Pat Benjamin presented the application for the 11-acre property on the south side of Hellgate Road. The existing house will be on 8.51 acres, including outbuildings. The new lot will be 2.19 acres in size. The plan has been approved by Bill Milardo as well as the Inland Wetlands Commission.

Pat Benjamin explained that a kennel exists on the property and regulations are such that they are to prevent a commercial kennel from being in an area too close to other residences. However, the regulations are not intended to keep family members from building on their property. The applicant's son and daughter-in-law plan to build on this property. There will be a notice on the land records stating that anyone buying this property in the future recognizes the existence of a commercial kennel on the adjacent property (which was approved by the Zoning Board of Appeals).

Richard Eriksen stated that he wanted to ensure there would not be some sort of precedent set with this action. Geoffrey Colegrove stated that every application before the Zoning Board of Appeals is evaluated based on the specifics of the application.

Motion by Ralph Chase, seconded by Tom Russell, to approve the two-lot subdivision request of Tad and Jennifer Swierczynski, Hellgate Road. Motion carried, 8-1, with all in favor with the exception of Richard Eriksen (in opposition).

7. Payment of Bills

Motion by Ralph Chase, seconded by Gene Riotte, to approve payment of the following bills:

- Attorney Thomas Byrne -- \$950.00 (warranty deed for Elihu Road)
- *Middletown Press* -- \$73.41 (new charges)
- Midstate Regional Planning Agency -- \$5,273.45 (November expenses)
- Midstate Regional Planning Agency -- \$8,262.31 (December expenses)
- Jan Melnik, Absolute Advantage -- \$698.47 (minutes of 12/19 meeting)
- Jan Melnik, Absolute Advantage -- \$838.19 (minutes of 1/2 meeting)

Motion carried unanimously.

8. Approval of Minutes

Motion by Gene Riotte, seconded by Jim Kowolenko, to approve the minutes of the January 2, 2008, meeting as presented. Motion carried, 7-2, with all in favor with the exception of Mike Geremia and Dave Foley (in abstention).

Gene Riotte complimented Jan Melnik on the comprehensive and cogent nature of the minutes she had prepared of the lengthy meeting.

9. Town Planner's Report

Geoffrey Colegrove stated that he had talked with Mr. Nosal about the crushing of earth materials on Ozick Drive. The equipment was moved from the site the next day.

Jim Kowolenko stated that there are two “mountains of dirt” on the site; Geoffrey Colegrove will investigate.

Geoffrey Colegrove stated that January 25 is the expiration date for public hearings on the Silver Eagle Development application; therefore, Wednesday, January 23, will be the final hearing, which must be closed that night. He added that the traffic engineer will be providing a report at the meeting of January 23. It will also be posted to the website in its most recent form/revision. Brian Curtis, town engineer, will also attend the hearing on the 23.

The Inland Wetlands Commission will provide a report from their meeting on the second Monday in February; this will be in time for the second meeting of the Planning and Zoning Commission in February.

Ralph Chase asked how late the Dolphin Days sign and building lighting could be on. George Eames indicated that there were no restrictions in the approval. This is something the Commission will want to address going forward—as well as changing the sign regulations. Frank DeFelice provided sign-lighting recommendations at the previous meeting.

Gene Riotte asked about zoning enforcement with regard to John Jackson's operation on Main Street; Geoffrey Colegrove will follow up on the cease-and-desist order.

For the record, Mark Laudano noted that he has listened to the tapes of the December 19th Silver Eagle hearing.

At the hearing on January 23, Jan Melnik will have a list of all Commission members and dates missed to verify that tapes have been listened to.

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Motion by Dave Foley, seconded by Gene Riotte, to adjourn the meeting at 9:18 p.m.
Motion carried unanimously.

Respectfully submitted,

Jan Melnik
Jan. 22, 2008