

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF MARCH 19, 2008, MEETING

Present

Members: Ralph Chase, Frank DeFelice, Richard Eriksen, Dave Foley, Jim Kowolenko,
Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Cathy Devaux, Mike Geremia, Mark Laudano

Absent

Members: George Eames, Dian O'Neal

The meeting was called to order by Richard Eriksen, Vice Chairman, in the role of acting Chairman, at 7:30 p.m. Mike Geremia was seated on the Commission in George Eames' place. Cathy Devaux was seated on the Commission in Dian O'Neal's place. Mark Laudano was present, but unseated.

1. Approval of Agenda

Motion by Dave Foley, seconded by Gene Riotte, to approve the agenda of March 19, 2008, as presented. Motion carried unanimously.

2. Public Session

Trish Dynia addressed the Commission, asking about the status of the Commission's review of possible zoning and use issues along Main Street, now that the Silver Eagle application had been handled. She also queried what the Commission might be doing about Main Street uses, given the recent expression of interest in the Merriam property. She suggested that the Commission might wish to revisit the whole subject.

Richard Eriksen stated that there had been some discussion at the previous meeting with possible language being considered by the Commission relative to potential use of some buildings for professional office purposes.

3. Zoning Enforcement Officer's Report

Geoffrey Colegrove stated that with regard to the use of the former Parsons' building, the town sanitarian should be involved if use (not currently permitted) for public events is planned; the site cannot handle crowds. Richard Eriksen suggested that the sanitarian send a letter to the property owner indicating that facilities are not adequate for public event purposes.

4. CT Horse Cremation, Request for a Proposed Zoning Text Amendment to Section 07.04.04 (18) of the Zoning Regulations to Allow Large Animal Crematory in the Industrial Zone

Richard Eriksen announced prior to any opening of the scheduled public hearing on this agenda item, that, in his opinion, there was a problem with the notice for this meeting; industrial zone is mentioned instead of Design Development District (the latter of which is technically a part of the industrial zone). A letter from one of the Mountain Road neighbors to the Design Development District, Sandi Kovac, had been received pointing out this discrepancy. For two consecutive meetings of the Planning and Zoning Commission, this inaccuracy appeared in the agenda, thus creating a potential conflict. Even though it is not required that a public hearing sign be posted, Richard Eriksen stated that, in his opinion, one should be. He added that he would like to obtain an opinion from the Commission's counsel regarding the noticing of the hearing, in particular, because of ongoing litigation. Ralph Chase concurred, noting that because new language is being considered, he thought the Commission should be particularly careful about following protocols.

Geoffrey Colegrove indicated that the application does clearly state the identity and location of the property owner, Rory Wilson, Ozick Drive.

Cathy Devaux stated that the regulations clearly show the Design Development District listed as a part of the Industrial Zone.

Motion by Ralph Chase, seconded by Frank DeFelice, that in view of the fact that the Commission is considering new language/new regulation and because of improper wording of the agenda for two consecutive meetings in two locations regarding the horse crematorium application, the public hearing will not be held (March 19, 2008) and will be rescheduled without prejudice and with proper legal notice, with input of Attorney Thomas Byrne. Motion carried unanimously.

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Geoffrey Colegrove stated that the Commission should decide when to reschedule the hearing and renote everything to ensure consistency.

Richard Eriksen apologized to the applicants and the public who had turned out for the hearing, but reiterated the Commission's desire to ensure everything is being done correctly.

This public hearing, originally scheduled for March 19, 2008, will be rescheduled for April 2, 2008, if the Commission's counsel, Attorney Thomas Byrne, concurs.

5. John Steele, Rushford Center, Informal Discussion of Possible Use of Lake Grove School Property, Wallingford Road

John Steele of the Rushford Center addressed the Commission regarding proposed use of two of the buildings on the Lake Grove School property. He introduced Jeff Walter, the president of the Rushford Center. Geoffrey Colegrove was approached for a determination as to applicability of use of the Lake Grove School facilities for the Rushford Center's purposes. Rushford Center is attempting to negotiate a lease arrangement for several buildings with the present owners of the Lake Grove property.

John Steele stated that based upon review of the original permit granted in 1965 and then amended in 2000 as, generally a school for children with special needs, the permitted use would apply to the service Rushford offers. They are hoping to locate 12 youth (ages 12 to 17) in a residential program accommodated at the property, using two existing structures.

Ralph Chase asked for a description of programs/locations also managed by Rushford. The two primary locations are in Middletown—the former Town Farms Inn site, which is a residential and outpatient treatment program for adults and has another area there for an after-school program for teens with drug and psychiatric disorders. The program currently proposed for Durham is presently located in Portland; there is another program in Portland that accommodates residential program adults. There are programs in Glastonbury and Meriden as well.

Gene Riotte asked how students are identified for the program and if they all have Individualized Education Plans (they do). Department of Children & Families (DCF) classifications are used to select youth with specialized needs requiring special education. It was explained that the students all have special needs with differences in their diagnoses; however, these are not youth with developmental disorders. Frequently they are special needs students with emotional disorders and/or substance abuse disorders.

To Richard Eriksen's query as to whether the youth are referred by juvenile authorities, the response was that all students are typically referred through DCF; however, parents can request voluntary services. Some of the youth may be adjudicated and had some court interactions.

Tom Russell asked about the staff-to-client ratio; it ends up being about a 1-to-3 ratio (12 students and 2 therapists, teachers, program manager, case manager).

The Rushford Center will plan to use two buildings, plus have use of the gym and outdoor recreational space. The program has existed for five years in Portland with a good record; there are strict rules and significant levels of supervision. However, it is a voluntary program. Typically, when a student is "AWOL," it is a student who has opted not to return to the school from break (as opposed to running away in the neighborhood). In the past year, there were about six cases of students AWOL: four out of six were back to the campus in less than 30 minutes.

Richard Eriksen stated that there was a previous alert system in place with the Lake Grove School in the event of a runaway situation. Jeff Walter stated that an emergency call tree could be put in place to notify neighbors, adding that a school for 12 students is quite different than one for 100. He added that the school has very little impact on public services in town and is a good corporate citizen.

To Ralph Chase's query regarding planned growth for the school, Jeff Walter explained that it is not anticipated that the program will grow beyond 12 students.

Gene Riotte asked what the turnover of students was and their typical length of stay; length of stay is from three to six months, with an average stay being four to six months. Criteria for acceptance includes voluntary status, ages 12-17, need for special education, and a diagnosis requiring specialized treatment for behavioral and/or emotional disorders; all students must be ambulatory and not require hospital care. The program is not a medical one (though there is a nurse). The school does not use seclusion or restraints and would not accept any students requiring such behavioral intervention. Nor would they accept any students with serious suicidality, any history of fire-setting, or any history of violence. The primary students served are those who have gotten into trouble because of the environments in which they live; that is why the entirely state-funded program is residential. The school is regulated through three state licenses (Department of Children and Families, Department of Public Health, and the State Department of Education; it is also accredited by the Joint Commission on Accreditation of Healthcare Organizations).

Frank DeFelice asked that records be provided relating to the number of incidents in the recent years; Jeff Walter stated that up to two years of records could be provided. He indicated that it is when an incident occurs that town resources can be burdened.

With regard to the rest of the property, the current owner is maintaining the entire property; there is no information as to how the remaining facilities will be used. The owner will maintain the campus (plowing, mowing, etc.).

The applicants indicated that they need to provide a letter to the state indicating that their intended use of the Lake Grove facility complies with the zoning regulations (and that the land is appropriately zoned).

John Steele stated that he has been involved with programs similar to this Rushford Center program for many years—and that since its inception, Rushford “runs a much better ship than what occurred at Lake Grove in the past.” Interactions with the police were nonexistent in Portland.

Richard Eriksen suggested that the applicants meet with representatives of public safety, the fire chief, resident trooper and perhaps the First Selectman, Laura Francis.

Ralph Chase stated that since this was a land use commission, he was interested in knowing what restrictions might be imposed upon the balance of the Lake Grove property with the presence of the Rushford program, adding that the land owner has a right to use the rest of the property for what he desired, provided it is compliant with the regulations.

Geoffrey Colegrove will ensure that all members of the Commission receive copies of the original permit. He added that the proposed use would qualify under the existing permit. Continuation of the approved use would make a lot of sense, given the constraints of the property.

The applicants explained the deadlines they were facing with having to relocate from Portland.

Richard Eriksen recommended the Commission consider this as if it were an 8-24 review. Ralph Chase suggested that continuation of the former use be predicated based on a review by the Public Safety Commission. Frank DeFelice, chairman of the Public Safety Commission, suggested that, instead, input from the fire chief and resident state trooper be sought.

There was discussion about requiring the applicant to update the Commission annually with student profile information; this practice was abandoned in the past, though, when the nature of Lake Grove’s operations changed. It was agreed that if there were to be any expansion of the use, the applicants would need to return to the Commission (this would also be required by the state licensing agencies).

Motion by Ralph Chase, seconded by Tom Russell, to advise that a letter be granted that states the proposed use of Lake Grove School by Rushford Center for a residential school for 12 students between the ages of 12-17 is within the previously approved 2000 permit, subject to reviews by the fire chief, resident state trooper, and the first selectman. Motion carried, 8-1, with all in favor with the exception of Mike Geremia (in abstention).

6. Woodland Manor, Amended Previously Approved Special Permit and to Delete the Condition Requiring the Town to Maintain a Reserved Fund, Briarwood Lane, Public Hearing Scheduled for April 2nd Meeting

Geoffrey Colegrove advised that a letter from the town's previous counsel sets forth the procedure for addressing this matter. The money will ultimately be returned to the association. The public hearing will be held April 2.

7. Proposed Zoning Text Amendment to Section 11, "Signs and Outdoor Advertising Structures, Subsection 11.01.01.03. to include "internally illuminated signs" as a prohibited use, Public Hearing Scheduled for April 2nd meeting

The public hearing will be held April 2.

8. Payment of Bill

Motion by Ralph Chase, seconded by Mike Geremia, to approve payment of the following bill:

- Jan Melnik, Absolute Advantage -- \$298.56 (minutes of 3/5/08 meeting)

Motion carried unanimously.

9. Approval of Minutes

Motion by Gene Riotte, seconded by Dave Foley, to approve the minutes of the March 5, 2008, meeting as presented. Motion carried, 7-2, with all in favor with the exception of Jim Kowolenko and Ralph Chase (in abstention).

10. Town Planner's Report

Geoffrey Colegrove stated he would confer with the Commission's counsel to determine if the horse crematorium application could move forward with the public hearing on April 2.

11. Miscellaneous

Frank DeFelice recommended that the Commission again schedule a workshop to discuss Main Street uses. Geoffrey Colegrove distributed language defining professional offices, office, retail business, and retail. The Commission will meet in workshop at 7:00 p.m. on the regular meeting date of April 2, 2008.

Dave Foley asked if there would be a way to advise the public that sending *ex parte* communications (be it regular mail or e-mail) is not helping—rather, all communications should be directed to the Chairman and read into the record officially through the Commission. He stated that they (the Commission) is being sued for, among other

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reasons, receipt of letters outside the formal Commission setting. This is something individual members of the Commission have no power to control. He reiterated the importance of correspondence being received officially by the Chairman during a public hearing and being made part of the formal record. He asked that this request be made officially in the minutes of this meeting with the entire objective being to observe protocol and not open the town to legal liability.

Ralph Chase concurred, stating that all issues for the Commission should go through the Chairman with the secretary making it part of the record by reading correspondence aloud. He also noted an item that concerns him regarding the Silver Eagle project; Dr. Michael Good, who spearheaded a group of experts and organized them to make presentations before the Commission, is being personally sued by the applicant and forced to spend more than \$1,000 to hire a lawyer of his own to protect himself. He was deeply upset that a citizen of town can't express an opinion publicly without risk of a lawsuit and views this action as a scare tactic designed to prevent someone from opening his or her mouth.

Motion by Dave Foley, seconded by Ralph Chase, to adjourn the meeting at 8:52 p.m.
Motion carried unanimously.

Respectfully submitted,

Jan Melnik
3/25/2008