

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF MARCH 5, 2008, MEETING

Present

Members: Frank DeFelice, Dave Foley, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Cathy Devaux, Mike Geremia, Mark Laudano

Absent

Members: Ralph Chase, George Eames, Richard Eriksen, Jim Kowolenko, Dian O'Neal

The meeting was called to order by Gene Riotte, Secretary/Treasurer, in the role of acting Chairman, at 7:30 p.m. Mike Geremia was seated on the Commission in Frank DeFelice's place. Mark Laudano was seated on the Commission in Jim Kowolenko's place. Cathy Devaux was seated on the Commission in Ralph Chase's place.

1. Approval of Agenda

Motion by Dave Foley, seconded by Tom Russell, to approve the agenda of March 5, 2008, as presented. Motion carried unanimously.

2. Public Session

Diana Cruise, Mountain Road, addressed the Commission, speaking about the spotlight at Murphy Pools; she stated that it comes on at 4:00 p.m. and goes off at 11 p.m. Geoffrey Colegrove will investigate with the new operator of the business.

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Diana Cruise also commented on the lights that are on one of the Ozick buildings (garage doors not yet installed); there is a cease-and-desist order that was previously issued about the lights. Geoffrey Colegrove will follow up on this matter.

Joseph Pasquale addressed the commission, asking about the Merriam Manufacturing site that appears later on the agenda. He asked if—because of abandonment—the property falls back from its nonconforming use to Main Street/farm-residential for zoning.

Geoffrey Colegrove explained that there is still an existing, nonconforming building on the property.

Joseph Pasquale explained his understanding that if a site is not used for 12 months, it no longer is considered under nonconforming status. Geoffrey Colegrove advised that there are court decisions to the contrary related to willful abandonment. In this case, the remaining building in the back is still nonconforming and has a right to exist.

Gene Riotte stated that the remaining building had been used for manufacturing purposes for a short time after the fire.

Joseph Pasquale also stated that because Jan Exman does not own the property in question, he felt it premature that there be discussions about any change of use. This could have the effect of sending the wrong message to any prospective buyer—in other words, that the Commission might appear to endorse a change of use. He urged caution in discussing the property because Jan Exman is not the owner and because, in his opinion, there is no clear definition of the zone that it falls into.

Geoffrey Colegrove clarified that the property has never been anything except farm-residential and Main Street residential. People are encouraged to come before the Commission for informal discussion that is in absolutely no way binding (the statutes are very clear on that). Potential applicants are encouraged to engage in informal discussions with the Commission—but the Commission does not decide or render any opinion during those informal discussions.

Joseph Pasquale stated that he was not opposed to anything that might be proposed.

Frank DeFelice was seated on the Commission at 7:38 p.m. Mike Geremia was reseated in George Eames' place.

3. Jan Exman, Informal Discussion of Possible Uses for Merriam Manufacturing Site,
281 Main Street

Jan Exman stated that he was at the very initial phase of looking at the Merriam site and determining issues related to site development. Jan Exman asked what possible uses might be permitted by the Commission on the site. Geoffrey Colegrove explained that the nonconforming uses allowed on the site (one of about 17 structures on Main Street with

the opportunity to pursue a special permit for specific uses, office, etc.) resided with the actual structures. All but one of the buildings were destroyed by fire about ten years ago. The remaining building (a flat-roofed masonry structure, about 6,000 square feet in size) would be the only structure on the site allowed to pursue special permitting for use under the special zone.

While he stated that he had no preconceived ideas, Jan Exman indicated that he would like to obtain an understanding of the current situation—what the possibilities were for going forward, given the existing rules and regulations, and discuss where there might be some flexibility about the site relative to zoning.

There was some discussion as to whether there was one lot or two. While clearly nonconforming—the uses existed prior to the adoption of the Zoning Regulations in 1955—Mike Geremia stated that from the maps of Main Street he had, it was clear that there were actually two contiguous parcels—the front parcel is about one acre in size and the back parcel, containing the remaining building, is a little over two acres.

Jan Exman indicated that a manufacturing use had been operating in the one remaining building up until sometime this past February.

Geoffrey Colegrove advised that there are liens on the property (as a result of failure on the owner's part to act in accordance with the Department of Environmental Protection's requirements).

Geoffrey Colegrove also clarified that the nonconformity relates to structures only (not the land) and once destroyed by fire, those previous buildings are not entitled to be rebuilt for manufacturing (or other nonconforming uses). Only the one remaining building could continue in its nonconforming status; it cannot be expanded.

To Jan Exman's question about there being any move by the Commission to create zoning for parcels in town with similar characteristics, Gene Riotte stated that the Commission had been meeting recently to discuss Main Street uses and that it was the sense of the Commission that the residential uses within the residential zone should remain that way.

Geoffrey Colegrove stated that the uses allowed in the farm-residential zone include single- and multiple-family dwellings (by permit), camps, boarding schools, day care, churches, community center buildings and garages, golf courses, group day care homes, home occupations (by permit), hospitals, offices as accessory uses, post office, bed and breakfast, school, college, etc.

Jan Exman inquired if 'lighter commercial' uses could be considered, i.e., professional offices such as exist in Kirk Hagert's building at the corner of Maiden Lane and Main Street or along the area of restored colonial homes at the south end of Main Street in Middletown.

Gene Riotte stated that the Commission 'hadn't thought these appropriate uses of Main Street at this time.' Dave Foley elaborated that this, however, is still under discussion, noting recent workshops devoted to the very topic of use of the special buildings along Main Street.

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

Jeff Blaschke and Dominic Gambardella addressed the Commission. They described their plans to offer a service for cremating horses and other large animals. They would propose to use a fully self-contained unit at Ozick Drive (one of Rory Wilson's units). There are currently no alternatives in Connecticut for burial of horses and other large animals after they either die or are euthanized (other than direct ground burial); the proliferation of such animals can have negative implications for ground water, particularly given that Connecticut has more horses per capita than any other state and the largest sheer volume of horses among all the New England states.

Letters endorsing the proposed business were provided from Larry McHugh, President of the Middlesex Chamber of Commerce, the University of Connecticut's College of Agriculture and Natural Resources, and Susan Amarello, the Supervising Air Pollution Control Engineer with the State of Connecticut's Department of Environmental Protection.

The business was described as having a state-of-the-art crematory specifically designed with a secondary burn chamber to accommodate large animals (no dismemberment required). The systems are the exact ones permitted in "the toughest counties in California" and exceed standards established by the Department of Environmental Protection.

The business will provide all transport entirely to and from the facility (covered, air-conditioned via generator during hot weather); no customers will be allowed to come to/from the business. It is expected that, at most, two cars per day will be going into and out of the business park.

It is proposed that the business will be located at 45R Ozick Drive; the applicants are seeking to amend the use table to allow this particular use.

It was stated that the zone is actually the Design Development District; industrial zone was inadvertently placed on the agenda; however, the application correctly states the Design Development District.

In describing the crematory process, a key must be used to operate it; after keying, the unit is completely computer-operated with a data recording to ensure efficient operations

and so that it does not put out emissions. The system is powered by propane and can accommodate large animals up to 2,500 pounds in size. The unit itself is entirely self-contained with a locked, sealed cylinder out of which fluids cannot leak.

The business will be extremely discrete—no signage or evidence, no advertising on the transport trucks. No activities will transpire until all doors are closed (and they will be kept closed at all times except for when a vehicle transporting a covered animal enters the building). The business will also have a full-sized cooler for temporary storage if there is already one animal on the premises. One of the owners explained that he owns a horse farm in Killingworth and has experienced the loss of a horse; he didn't want to simply bury it in the ground, but the only options for a crematorium were in New Jersey, New Hampshire, and Cape Cod. There is no other option (aside from in-ground burial) in Connecticut. Because of the emotional loss as well as concern for the environment, the owners believe such a service is needed. Connecticut has more horses per capita than any state in the United States. Quoting statistics, approximately half a million pounds of dead horses go into the ground every year. In Connecticut last year, there were 70,000 horses registered; about 1,000 die each year.

To Cathy Devaux's query, the owners explained that the business concentration will be primarily on serving the state of Connecticut, but it's possible that if the request is for an adjacent town outside the state and it's within reason, they would consider it. The hope is to make the business financially feasible (to bury a horse, the costs can easily exceed \$500 to \$700 for the backhoe work alone).

Frank DeFelice asked about the presence of odors or fumes; the unit is absolutely clean burning, no smoke, and no odor.

Because no regional referral was necessary, the public hearing can be held on March 19.

5. Payment of Bills

Motion by Dave Foley, seconded by Mike Geremia, to approve payment of the following bills:

- Jan Melnik, Absolute Advantage -- \$481.11 (minutes of 2/20/08 meeting)
- Midstate Regional Planning Agency -- \$6,623.10 (January expenses)

Motion carried unanimously.

6. Approval of Minutes

Motion by Mike Geremia, seconded by Tom Russell, to approve the minutes of the February 20, 2008, meeting as presented. Motion carried, 6-1, with all in favor with the exception of Dave Foley (in abstention).

7. Town Planner's Report

Geoffrey Colegrove stated that an inquiry had been received about the possible use of the buildings at Lake Grove by an agency of the State of Connecticut. Representatives will be invited to the next meeting of the Commission. The property is zoned farm-residential and had a special permit dating back to the 1960s (Stonegate School prior to Lake Grove).

Dave Foley asked that Geoffrey Colegrove provide a copy of the special permit as well as minutes relating to actions by the Commission over the past ten years or so related to this property for Commissioners by the next meeting. Frank DeFelice added a request that these be mailed to Commissioners so that there would be ample review time before the next meeting.

The Commission then discussed possible definitions for professional uses along Main Street, in particular, the previous discussion as it related to retail sales. Professional offices are generally considered to be office facilities for such recognized professionals as dentists, architects, engineers, teachers, etc.—in other words, professions through training or experience and typically with licensure. Doctors and dentists had been eliminated from consideration because of traffic issues. Other office uses might be accountants and/or other services wherein professional licenses are not necessarily required.

Geoffrey Colegrove distributed several definitions of retail, including:

- 1) A commercial enterprise, a company that is engaged in on-site stocking and sales of commodities in small or large quantities to the ultimate consumer and
- 2) The sale of goods or articles individually or in small quantities directly to the consumer.

There was considerable discussion about how this was interpreted; it was clearly never the intention of the Commission to allow a commercial business operation in the farm-residential zone; rather, the intent was that there was to be no visible effect on the neighborhood, no external evidence of a business, and no change in traffic patterns. It was the feeling of some that it is not so much the term retail that is problematic; rather, it is the activity levels such that the neighborhood is disturbed.

A cease-and-desist letter was sent to the Formans of Sawmill Road about activities related to steel product deliveries and fabrication taking place at the property as part of a home business permit; a permit was approved for an office use only.

Language for the sign regulations was discussed. A regional review is not required as we already do have regulations; these just change the characteristics of signs.

Frank DeFelice stated that he had researched and discovered a number of towns have

different ordinances covering signage; several towns do not allow white or off-white backgrounds. The problem the Commission is trying to address are internally illuminated signs (wishing to prohibit them). A public hearing will be held on March 19.

As for the sign at Dolphin Days, although the regulations at the time did not specifically prohibit internally illuminated signs, the applicant was to come before the Commission with the proposed sign plans prior to installing them. However, the sign in place—despite its unattractive appearance—is not prohibited.

In terms of the use of the auxiliary space that was to be intended for overflow parking perhaps half a dozen times a year (there is now a garage of some sort as well as a snowmobile trailer in the parking area), Geoffrey Colegrove stated that a permit was secured prior to the construction of the building. When the applicant went into the building department, there was no knowledge that there were to be no structures on the auxiliary parking area. Dave Foley stated that as long as setbacks are adhered to, he didn't have a problem with the building; rather, the parking of a trailer was a problem (this could mushroom into more trailers).

Geoffrey Colegrove did state that the building is within 100 feet of the wetlands. He will inform the Inland Wetlands Commission.

Motion by Frank DeFelice, seconded by Dave Foley, to issue a cease-and-desist order on Dolphin Days for the parking of the trailer in auxiliary parking space. Motion carried, 6-1, with all in favor with the exception of Mike Geremia (in abstention).

Geoffrey Colegrove stated that the current owners of Woodland Manor (a condominium property dating back to 1988) were seeking resolution of a reserve account that had been established after the first two dwellings were built—to provide for construction of a new septic in the event of a failure (reserves were put in place for all of the houses).

There is evidently no requirement that the reserve fund be maintained and it is preferred that the town “not be in the bonds business.” The current president of the homeowner's association has conferred with the First Selectman's office and it is ultimately up to the selectmen to determine distribution of funds. Geoffrey Colegrove referenced similar projects in other towns.

A copy of the original permit and legal opinion on disposition will be presented to the Commission at the next meeting.

8. Miscellaneous

Frank DeFelice disseminated bills currently before the assembly, one relating to violation of boundary rules and nonconforming timeframes, the other speaking to starter homes/affordable housing on undeveloped land.

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Motion by Mike Geremia, seconded by Frank DeFelice, to adjourn the meeting at 9:02 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

3/12/2008