

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF SEPTEMBER 17, 2008, MEETING

Present

Members: Ralph Chase, Cathy Devaux, George Eames,
Richard Eriksen, Dave Foley, Jim Kowolenko, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove
Alternate: Mike Geremia

Absent

Member: Frank DeFelice
Alternate: Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Mike Geremia was seated on the Commission in Frank DeFelice's place.

Motion by Ralph Chase, seconded by Gene Riotte, to approve the agenda of the September 17, 2008, meeting as presented. Motion carried unanimously.

1. Public Session

Diana Cruise addressed the Commission regarding continued inappropriate parking at Greenland Realty. There are not supposed to be any vehicles other than employee cars, but there is still a trailer at the site. There is also continued hauling of material from the site without dust controls. Geoffrey Colegrove will pursue this matter.

Diana Cruise also advised that there is still a light problem with the fixtures over the doors at 30 Ozick Drive; they are not the downlights that were promised. This will become more of a problem as the trees shed their leaves. Geoffrey Colegrove will review site plan.

RECEIVED: 9-29-08

Kim Garvis, Town Clerk

OFFICE OF THE TOWN CLERK, DURHAM, CONNECTICUT

2. Judith House, Proposed Antique Shop and Office, 95 Main Street

Doug Williamson, an architect and planner from Guilford, addressed the Commission on behalf of his sister, Judith House. He indicated that they are attempting to provide for a use for the Durham Grange Hall that will preserve the building. Judith House is retired from the telephone company and seeks to locate both offices and a limited retail antique shop in the building. Drawings were presented to the Commission.

The building is currently under deposit to them for a subsequent cash sale with a contingency for the Planning and Zoning Commission's approval of their proposed plans. Doug Williamson stated that they are familiar with the sensitive nature of the parcel, proximity to the town green, and the historic nature of homes in the area. He is the chairman of Guilford's green committee, so has particular empathy. He described the architectural elements of the building and the plans to make major structural and cosmetic renovations, including repair to a structural failure at the rear right corner of the building. He briefly described other potential uses—community theatre, restaurant, etc.—but all face the same obstacles of very limited septic and minimal parking. Even as a residence, the septic constraints are limiting. With 20-foot high ceilings, a possible second floor is being considered. The thought of combining antique sales with office space mitigates against the possible concern of vacant office space in Durham already and would help to attract tenants. Doug Williamson explained that he and Judith House both have some experience in the antiques business.

At this point, Geoffrey Colegrove and George Eames pointed out that the property is not zoned commercial and, therefore, would not support a retail sales (antiques) use. Doug Williamson indicated that the real estate agent had presented the property as being suitable for this use with the idea that the Commission is 'willing to entertain proposals for a use that would provide for some type of use for the building' (thus enabling restoration). While office space could be pursued as an adaptive use, retail sales/antiques would not be permitted in the zone.

Geoffrey Colegrove explained that two public hearing processes had occurred in the recent year or so, both for applications involving retail sales. The Commission rejected both applications, but did broaden office use for some buildings along Main Street (including the Grange Hall); the language was expanded so as *not* to exclude dental or medical practices. Retail sales, however, were specifically denied in both applications.

Judith House stated that considerable effort and thought had gone into developing this application. She cited her very strong interest in preserving buildings, enhancing the community, and being empathetic to the concerns of the townspeople. She believed the proposed plan would serve to restore a beautiful building, adding she'd never do 'something negative to a community or landscape.' She indicated that her family had been grange members growing up in Stonington and this accounted for some of the appeal about this particular property.

Doug Williamson stated that he would withdraw the application and would provide a letter to this effect. George Eames indicated that the Commission would be pleased to review an application for an office use for this property that did not include retail sales.

Motion by Gene Riotte, seconded by Ralph Chase, to recess the regular meeting at 8:02 p.m. for the public hearing. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: Planning & Zoning Commission
Proposed Zoning
Text Amendment: To Add New Sections 02.15.02 and 04.07 to Prohibit
“Outdoor Wood-burning Furnaces” in All Zones

Present

Members: Ralph Chase, Cathy Devaux, George Eames,
Richard Eriksen, Dave Foley, Jim Kowolenko, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove
Alternate: Mike Geremia

George Eames, Chairman, opened the continuation of the public hearing and read the legal notices. Mike Geremia was seated on the Commission in Frank DeFelice’s place.

Jan Melnik read into the record a letter from Helen and Tim Larkin dated August 11, 2008. They ordered a Central Boiler Company system for their business, having spent \$18,000 last year on propane to heat their kennels. They are not in support of the proposed prohibition, believing this places a severe burden on farms and kennels trying to heat barns, kennels, and greenhouses. They suggested that Public Act 05-227 is more than sufficient—with specific setbacks and strict stack requirements already in place. They recommended that the town of Durham simply add a permitting and enforcement process.

Geoffrey Colegrove stated that both Midstate Regional Planning Agency and the Southcentral Regional Commission found no negative impacts to the proposed language.

Geoffrey Colegrove distributed mapping of properties that could support units with a 225-foot separating distance to all property lines. A second analysis extended this distance to 450 feet. He stated there are two applications pending review; there are likely any number of systems already in place throughout town that were not properly permitted.

There was generally agreement that there should be state regulations with specific requirements and licensing to meet codes.

Richard Eriksen expressed sympathy for farmers, but noted concern with what qualifies as a farm. In particular, there is concern with properties under an acre or even half an acre in size and the ensuing problems if many were to install these furnaces ('London in the 1500s').

Jim Kowolenko stated that a lot depends on how the equipment itself 'behaves.' This is not the purview of the Planning and Zoning Commission; rather, the Commission is concerned with health, safety, and welfare. Guarantees are needed for new pieces of equipment, but the Commission cannot design the systems.

Ralph Chase stated that he is sympathetic as well to the needs of the agricultural community facing serious problems with trying to heat barn spaces and heat large volumes of water. Currently, there is no viable criteria by state statute that requires that the best equipment be used. There need to be stringent requirements that can stand up and be enforced—plus be applicable only to agricultural uses (with all other uses prohibited).

Doug Vynalek, 368 Blue Hill Road, Durham, addressed the Commission, expressing dismay that the Commission sounded as though it had already made up its mind. He stated that it appeared anyone trying to possibly save a little money in the winter by burning alternative fuel is 'criminal.' He stated that from the literature he's read, the Environmental Protection Agency has evaluated some of the units and created guidelines; he was unclear why the Commission was unwilling to consider this as a safeguard. He respectfully asked that the Commission consider allowing this alternative not only for agricultural purposes, but for individual homes.

Geoffrey Colegrove stated that the only use being considered to come under a ban is the outdoor wood-burning furnace; units can still be installed inside of homes or next to houses. When Haddam enacted their ban on these outdoor wood-burning stoves, the idea was that when the state does provide for regulations and standards, then their local regulations will be modified to allow them.

Doug Vynalek stated that because one person might purchase a system at the low end or someone might not properly operate a stove should not serve as the grounds for disallowing them altogether. He added that if there is a problem, the DEP should be contacted and involved. He also noted that it seems curious that it's okay to burn wood inside a house, but not outdoors. He suggested that standards be developed by the state—and that OWFs not be banned forever, only until the state comes up with an appropriate solution to provide for safe healthy standards for the community.

Brendan Raye, 145 Old Farms Road, stated that when he lived in Middlefield, he operated a Central Boilers outdoor wood stove. He stated that what often happens is

when people burn wet wood, it creates steam that looks like a lot of smoke but that the burning of wood is really just like what would happen in someone's fireplace, woodstove, or chiminaria. Many people like to burn wood and it's an excellent alternative to foreign oil, but not everyone can or will burn wood; there is tremendous work required to cut and heat with wood. He characterized wood-cutting and heating as a "lifestyle."

Rick Parmelee addressed the Commission, expressing appreciation for the opportunity to speak. He stated that when he built his home in 1980, the rationale at that time was to install all-electric heating. He has supplemented with a wood-burning stove in the basement, but hasn't used it for a number of years. Wood is a renewable resource and he does not want to see alternatives limited. Wood can be part of the solution to the energy crisis. He added his support for commercial and agricultural interests (including the Greenbackers), stating that they should be allowed to use outdoor wood-burning furnaces.

Geoffrey Colegrove stated that there are several units in Durham, but this could be the tip of the iceberg. A lot of people don't get building or zoning permits as they are supposed to. Use is also complicated to assess—some use them only in the winter for heat. But others use them for hot-water heating year-round and some use them to heat their pools. Smoke in the winter is perhaps less disruptive to a neighborhood than in the summer when windows are open and people are outdoors.

Many towns are beginning to enact regulations from the standpoint of this being a temporary measure until the state 'catches up' and puts in place regulations, then enabling the town to remove bans or make modifications.

Jan Melnik read into the record a letter from Attorney Philip Gitlen, a partner with Whiteman Osterman & Hanna, LLP in Albany, New York, counsel for Central Boiler, Inc., North America's premier manufacturer quality outdoor wood furnaces. The letter expressed opposition to the proposed ban and discussed that the average home will spend about \$4,500 this year (1000 gallons of heating oil each season based on \$4.50 gallon).

Key additional reasons for the opposition:

- 1) the proposed ban will make homeowners in Durham more dependent on foreign energy sources
- 2) the proposed ban is inequitable and only targets outdoor sources
- 3) current state regulations adequately address potential problems
- 4) the proposed regulation addresses the wrong problem
- 5) new OWF models meet federal guidelines
- 6) OWFs are more effective and safer than indoor wood stoves

Attorney Gitlen stated that neighborhood complaints can be addressed by adopting best burn practices and enforcing standards.

Ralph Chase asked the disposition of current outdoor wood furnaces that are nonconforming. Geoffrey Colegrove stated that unless they violate DEP regulations, they remain. Regulations cannot be passed that are retroactive.

Cathy Devaux asked how it makes sense that OWFs could be banned, but woodstoves in houses that pour smoke out are not regulated. Geoffrey Colegrove noted that woodstoves in houses generally are not operated in the summer.

Motion by Richard Eriksen, seconded by Gene Riotte, to close the public hearing of the proposed zoning text amendments to add new Sections 02.15.02 and 04.07 to prohibit all outdoor wood-burning furnaces in all zones. Motion carried unanimously.

Motion by Dave Foley, seconded by Tom Russell, to reconvene the regular meeting at 8:48 p.m. Motion carried unanimously.

3. CT Horse Cremation, Request for a Special Permit for a Large Animal Crematory, 41A Commerce Circle

Geoffrey Colegrove advised that petitions had been filed by interveners. In part, as per the Connecticut Environmental Policy Act of 1971, if the Commission were to act affirmatively, it must be because no negative environmental impact is determined (i.e., pollution of water, impairing public trust, etc.). The Commission would need to make this finding. This becomes a moot point if the application is denied.

Attorney Tom Byrne is going through the record and preparing a brief. One of the claims being made is that there was not proper notice on file at town hall.

Geoffrey Colegrove indicated that there was corroborating evidence that notice had been given, validation of faxes sent as well as delivered by hand, etc. The notice was definitely in the office at the appropriate time; whether or not it could be found is not at issue. He pointed out that if the Commission were to approve the application and then subsequent court action reverses the decision (i.e., a successful appeal then disallows the use in the zone), the applicant would then be required to cease operations, remove the operation, etc. (they would effectively be out of business). Attorney Tom Byrne has advised that the Commission can proceed in the decision-making process.

George Eames noted that a letter had been received from Senator Tom Gaffey; however, as the public hearings had closed, the letter could not be read into the record or made a part of it. Receipt was simply acknowledged.

To Richard Eriksen's query, Geoffrey Colegrove indicated that this evening's meeting was the last night that the Commission could ponder the application without an extension from the applicant.

He added that because it is not a site plan approval, there is *not* an automatic approval if the Commission does not vote within the timeframe allotted.

Geoffrey Colegrove had distributed to the Commission a consolidation of all the salient points from minutes of the previous meetings at which there were hearings and/or discussion of this application. The Commission reviewed point-by-point the proposed conditions originally submitted on two different occasions by the applicant's attorney, John Corona, as well as the key points from the minutes.

To the issue of business expansion, Dave Foley stated that it should be explicit that the operation (if approved) would be limited to one unit only; any decision to expand the business would require a return before the Commission for a change in plan and scope of operation, thus requiring a new special permit process to commence.

The Commission then reviewed each of the points provided by Jim Kowolenko in his extensive analysis and development of proposed criteria for consideration.

Hours of operation were then discussed. The applicant has represented a desire to operate basically anytime they choose in a 24-hour period. Dave Foley stated that he was not at all comfortable with giving the applicant carte blanche and granting them the ability to 'fire up' the unit at 3 a.m. He believed hours of operation should be limited. The Commission discussed the fact that the unit takes time to heat up as well as cool down. Ultimately, the Commission seemed to agree with a 12-hour window of time, from 7 a.m. to 7 p.m., Monday through Saturday with no Sunday hours. Holiday hours were not discussed.

The Commission also reviewed the clause regarding suspension of business operations related to atmospheric conditions. After considerable discussion, it was agreed for purposes of discussion that the standards of the Department of Environmental Protection would be referenced and prevail in determining when it was safe to operate and/or necessary to cease operations.

In terms of equipment testing, the Commission felt that the system should be tested sooner than just 'the first 90 days of operation.' It was agreed that the first testing should be within 30 days of the first burn and annually thereafter.

Gene Riotte stated that the certified testing (with three runs, referenced on page 5) should be included as minimum standards of operation. Jim Kowolenko also addressed standards in his proposed language.

The Commission determined that an extension from the applicant would be desirable to allow time to develop the detailed conditions of approval. The applicant was in agreement.

Motion by Ralph Chase, seconded by Richard Eriksen, to accept an extension request from the applicant, Connecticut Horse Cremation, to the next regularly scheduled meeting of the Planning and Zoning Commission, October 1, 2008, for a decision on the application. Motion carried unanimously.

4. Durham Auto Center, Request for Modification to Site Plan, 428 Main Street

At the applicant's request, this item was tabled to a future meeting.

5. Proposed Zoning Text Amendments to Add New Sections 02.15.02 and 04.07 to Prohibit "Outdoor Wood-Burning Furnaces" in All Zones

The Commission was in general agreement that it does not want to restrict agricultural use of wood-burning furnaces.

Geoffrey Colegrove stated that he would research the classification of farms (under the 490 provision) and possible exemptions for greenhouses and kennels. Size of these structures was discussed as a possible criteria.

The Commission talked about using 225 feet as the setback distance.

6. Payment of Bills

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

- Attorney Thomas Byrne -- \$1,225.00 (CSK Realty)
- Attorney Thomas Byrne -- \$2,775.00 (T. Cushing appeal)
- Attorney Thomas Byrne -- \$2,850.00 (Tilcon lawsuit)
- Attorney Thomas Byrne -- \$2,175.00 (Silver Eagle/Price Chopper application)
- Absolute Advantage -- \$558.41 (minutes Aug. 6, 2008, meeting)
- *Middletown Press* -- \$445.58 (new charges)

Motion carried unanimously.

7. Approval of Meeting Minutes

Motion by Ralph Chase, seconded by Mike Geremia, to approve the minutes of the August 6, 2008, meeting as submitted. Motion carried, 7-2, with all in favor with the exception of Dave Foley (in abstention) and Tom Russell (in opposition).

8. Town Planner's Report

Geoffrey Colegrove reported on the sideyard violation at 99 Howd Road (Jon Davis). A garage was constructed within ten feet of the property line on this older lot; surveyor pinning shows that it is anywhere from five to seven feet from the property line. Unfortunately, despite the issue having surfaced prior to construction, building activities went ahead. A cease-and desist order will be issued. This matter will probably end up going before the Zoning Board of Appeals.

Geoffrey Colegrove also reported on the situation with Mr. Jackson operating a home-based business but not residing there. At Attorney Tom Byrne's directive, there needs to be verification that Mr. Jackson is not a resident; then an injunction will be sought.

Geoffrey Colegrove stated that a notice of zoning violation was issued to a resident on Agerola Road because of a large stone structure (patio/wall) within five feet of the road. The regulations will need to be revisited.

9. Miscellaneous

Jan Melnik read into the record a letter from Selectman Jim McLaughlin dated August 26, 2008, regarding what he characterized as the inappropriate action of Attorney Thomas Byrne, counsel to the Planning and Zoning Commission. This was with regard to the nomination by the Democratic Town Committee of Campbell Barrett to fill the Democratic alternate's vacancy on the Commission. First Selectman Laura Francis stated that under advice of Attorney Byrne, she did not support this nomination on the basis of Mr. Barrett's previous activities as a private citizen relative to the Silver Eagle/Price Chopper application and his inability to come to the Commission with an open mind. Jim McLaughlin reported that he had contacted Attorney Byrne, who concurred that he had provided First Selectman Francis with this advice. Jim McLaughlin expressed displeasure with the situation appearing political and noted that it was not Attorney Byrne's position to dictate who should serve on any commission. His position is funded by town money, not partisan, political, or special interest funds.

A letter was also received from Attorney Richard Carella, related to the Arrigoni appeal, with a request to be copied under the Freedom of Information Act on any continuing activities by Tilcon. All relevant documents have been forwarded to Attorney Byrne.

Motion by Ralph Chase, seconded by Richard Eriksen, to adjourn the meeting at 10:39 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
9/25/2008