

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF APRIL 20, 2005, MEETING

Present

Members: Al Bradanini, George Eames, Richard Eriksen,

Jim Kowolenko, Dian O'Neal, Jackie Snow

Town Planner: Geoffrey Colegrove

Alternate: Ralph Chase

Absent

Members: Brian Ameche, Dave Foley, Jan Melnik

Alternates: Frank DeFelice, Gene Riotte

The meeting was called to order by George Eames, Chairman, at 7:30 p.m.

Ralph Chase was seated on the Commission in Jan Melnik's place.

1. Approval of Agenda

Motion by Al Bradanini, seconded by Jackie Snow, to approve the agenda of the April 20, 2005, meeting as presented. Motion carried unanimously.

2. Public Session

Fred Mellilo, Greenland Realty, addressed the Commission and presented a revised site plan. It reflects the addition of a garage door on the building.

Geoffrey Colegrove asked for an explanation of the other items changed on the site plan, including Fred Mellilo's reference to a modification in the berm at the previous meeting.

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Fred Mellilo stated that the berm has not been changed. The berm is planned to be the same as on the original site plan. The only items being presented for change are the addition of the garage door and an earth excavation/removal permit.

George Eames asked for further clarification about the berm. Fred Mellilo stated that he does eventually plan to change the berm and will appear before the Commission at a future point when his attorney is in attendance. George Eames stated that one of the issues that the Commission wants to resolve as quickly as possible is the construction of the berm. The site plan was originally approved on this issue and the berm, if reconstructed, will help to eliminate some of the problems in the neighborhood. Fred Mellilo stated that this was up to the Commission—to stipulate the height and width of the berm in accordance with the Commission's wishes. George Eames noted that the Commission does not design site plans.

Richard Eriksen reiterated that the Commission does not engineer site plans. Instead, it would be more appropriate for Fred Mellilo to review the plans with Geoffrey Colegrove. He added that the matter does not seem to be appropriate for a topic under public session. Instead, if a permit or application is being pursued, it should be on the actual agenda.

Geoffrey Colegrove stated that, in the interest of the good weather, there is an approved site plan with a berm and he asked if there was any reason that construction of the berm could not be started. Fred Mellilo stated that he wanted to increase the height by two feet and asked if he could do this under the original approved site plan. The Commission agreed that this could be done (increase the berm, but not *decrease* it). George Eames stated that he would need to review this with Geoffrey Colegrove.

An application would need to be submitted for the earth removal permit. It cannot be handled under public session because of the need for a hearing, public notice, and posting of a sign. Ultimately, he is seeking permission for removal of 2,000 cubic yards of material. However, the application was submitted after the agenda was published. The berm cannot be constructed until the stone is removed. It was noted that up to 999 cubic yards of material could be removed without a permit. However, again, a public hearing must be scheduled and properly noticed.

Geoffrey Colegrove indicated that some of this discussion could properly be handled under the zoning enforcement provisions. The hours of operation (for any gravel operation) would be from 7:30 a.m. until 5:00 p.m. A formal application will be filed for the next meeting.

Geoffrey Colegrove asked the amount of material on the site in one particular pile (1,200 cubic yards) that is blocking construction of the berm that will be used on the site. Only a small amount (30 cubic yards) can be used on the site. Geoffrey Colegrove stated that the Commission's counsel has indicated that as long as material being brought onto the site relates to completion of the site plan, that can be accomplished. Progress on the berm is

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essential at this point and can be accomplished under the town planner's/zoning enforcement officer's jurisdiction.

A Mountain Road resident asked about the hours during which stone removal could be performed; it was clarified that it would be between the hours of 7:30 a.m. and 5:00 p.m.

Diana Cruise asked about the measures for dust control being enforced; it has been a problem for the past week. George Eames noted that this is a provision/ requirement of the current plan (spraying water for dust control) and would need to be performed.

3. Arrigoni Enterprises, LLC, Request for a Zone Change, DDD to HID,
Mountain Road

Attorney Richard Carella addressed the Commission on behalf of the applicant, Arrigoni Enterprises. He introduced Thomas Arrigoni and Pat Benjamin from Bascom/Benjamin. The applicant owns just over 11 acres on Mountain Road in a Design Development District. Pat Benjamin reviewed the site features. The parcel is at the end of Ozick Drive and Mountain Road.

Attorney Carella stated that Thomas Arrigoni would like to construct a design development project on the site and construct several buildings consistent with the zone. To undertake this work, site work is required, including excavation, earth removal, and stone crushing and processing. Some material will be used on the site and some will need to be removed because of the grades. While earth excavation is allowed in the Design Development District as a permitted use, it is by special exception. However, crushing and processing is not allowed in the Design Development District. This accounts for the reason to change the zone to a heavy industrial zone in order to allow for development of the site in accordance with the Design Development District provisions. The property does abut the HID zone (Tilcon site). A public hearing will be scheduled for May 4, 2005.

4. Approval of Minutes

Motion by Al Bradanini, seconded by Jackie Snow, to approve the minutes of the April 6, 2005, meeting as presented. Motion carried, 6-1, with all in favor with the exception of George Eames (in abstention).

5. Town Planner's Report

Geoffrey Colegrove distributed several legal notices regarding activities of the Zoning Board of Appeals, including site inspections. He also distributed a copy of the Economic Development Plan of the town of Guilford. This was developed by an external consultant.

Geoffrey Colegrove stated that he had visited the Seiff site on 177R Cream Pot Road. He advised the property owner that the silt fence needed to be enhanced according to the

specifications provided (i.e., needs to be toed in). An additional silt fence row needs to be installed; this was agreed by the applicant.

The tack shop on Cherry Lane was sent a letter advising that the owners had 10 days to cease the retail use at the site.

With regard to zoning enforcement, Greenland Realty was instructed to remove all stored vehicles and equipment from the area filled within 100 feet of the wetlands; they have 60 days to remove the fill in the wetland and, within that same 60-day period, to remove all gravel from the non-wetland area.

Richard Eriksen stated that the Inland Wetlands Commission is going to require restoration of the wetlands area, including removal of the parking area. He did not know the next step—whether the property owner would be seeking extended coverage from the Zoning Board of Appeals or not. Geoffrey Colegrove stated that the Planning and Zoning Commission cannot grant site plan approval for something that does not comply with the regulations; therefore, the coverage would be exceeded.

To Dian O’Neal’s query, Richard Eriksen stated that Greenland Realty had installed gravel into the wetlands, performed “landscaping” in the wetlands, and placed trucks and equipment in that area. The Inland Wetlands Commission issued a cease-and-desist order as well as a requirement to restore the area.

6. Payment of Bills

Motion by Al Bradanini, seconded by Jackie Snow, to approve payment of the following bills:

- Midstate Regional Planning Agency — \$4,504.14
- Midstate Regional Planning Agency — \$3,751.06

Motion carried unanimously.

Motion by Al Bradanini, seconded by Jackie Snow, to recess the regular meeting for the public hearings. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: Hans Pedersen
Owner: Durham Fair Association
Location: 68 Main Street
Application: Request for a Special Permit for a Day Care Center

Members: Al Bradanini, George Eames, Richard Eriksen,
Jim Kowolenko, Dian O’Neal, Jackie Snow

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Town Planner: Geoffrey Colegrove

Alternate: Ralph Chase

Chairman George Eames read the call for the continued Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Ralph Chase was seated on the Commission in Jan Melnik's place.

George Eames then recused himself from this public hearing and Richard Eriksen, as Vice Chairman, assumed the chair.

Attorney John Corona addressed the Commission on behalf of the applicant. He described the structure, owned by the Durham Fair Association. There is an existing parking area for the business. The number of children for the center will be capped at 20 with three employees anticipated. The hours of operation will be from about 8:30 a.m. to 5:30 p.m. daily. The operation will follow the school schedule (June through September, closed; Durham Fair weekend, closed). No sign is anticipated for the site. A fence will be installed for safety. A small play area will be created. The building will remain as is, but with improvements as part of the leased upgrade of the property. No operations will occur on weekends. Children will be dropped off in the morning and picked up in the afternoon. Perhaps half-day kindergarten students will arrive mid-day. Some children will be dropped off by the normal bus route passing the site in the afternoon.

Pat Benjamin described the parcel, it is 2.14 acres in size. The parking lot can accommodate 10 cars. A fence will be installed and arborvitae will also be planted. The existing chain link fence at the back of the property will be extended to the corner of the existing house and around the property lines.

Attorney Corona indicated that Bill Milardo has evaluated the septic system and found it to be satisfactory. The applicant is in the process of procuring a license from the State of Connecticut for the operation; this entails water testing. The applicant has no difficulty with any approval being contingent upon the health code being satisfied as part of the licensure.

Richard Kellish addressed the Commission. He asked the zone for the property (it is Main Street/Residential). He asked if this application is approved, would the same approval be given for his properties at 227 and 227A Main Street? He has a polluted well and would be very interested in pursuing a business use for the house. He added that it is the second time the Fair Association has pursued a business use. He asked why the Fair Association has the right to run a business from the house when no one else on Main Street can (except for an approved home occupation).

Attorney Corona stated that this is a use allowed by special permit in the zone; it is not something new. There is a right to apply for this use in this zone.

Richard Kellish reiterated his concern that this opens “a hornet’s nest.” He believes there are many homeowners on Main Street who would like to pursue the same thing.

Trish Dynia, 91 Main Street, addressed the Commission. She asked what types of activities are allowed by special exception in this zone. Attorney Corona stated that they are all listed in the use chart in the current regulations. She also asked for a description of the location of fences. She reminded the applicants that an application must be provided to the Historic District Commission. Hans Pedersen explained that a picket fence similar to that in front of George Eames’ home will be installed at the front.

George Eames, Town House Road, addressed the Commission. He noted that he has no objection to the application whatsoever. He believes that this use will be preferable to that previously undertaken by the Fair Association. His concerns relate to the proposed buffering and fencing, with which he is in agreement. The plantings will be behind the fence, Hans Pedersen explained.

Wendy Manemeit expressed support for this operation, noting that it is her brother who is pursuing this. She added that her own son attended the day care operation formerly operated across the street from this site.

Norm Hicks, Little Lane, addressed the Commission in support of the application. He noted that he is a member of the Fair Association. The house is somewhat in a state of disrepair. He is confident that Hans and Kelly Pedersen will upgrade and improve the house. He added that this business will be a positive addition to the Main Street of Durham. As a member of the District #13 Board of Education, he is acutely aware of the need for before- and after-school enrichment and childcare programs. He also stated that Hans and Kelly are “good neighbors”—they live adjacent to him. He supported the application fully.

Trish Dynia also expressed support for appropriate mixed uses on Main Street.

Geoffrey Colegrove stated that the Grange Hall is in the same zone as the subject property. He briefly reviewed the list of activities allowed by special exception: accessory apartments, amusement enterprises, apartment houses, day or boarding camps, charitable or religious institutions, child daycare center, churches, community center buildings, dwellings for elderly and physically handicapped, fraternal, social, and civic organizations, clubhouse or hall, golf courses, group day care home, hospital sanatoria, nursing homes, offices (13 structures with permitted office uses on Main Street), post offices, rooming houses, boarding houses, bed and breakfast, schools, colleges, dormitories, public schools, municipal uses, and two-family houses.

Richard Eriksen asked that a stipulation be made that the day care business will not operate on weekends; the Pedersens were in full agreement with this.

Motion by Jim Kowolenko, seconded by Jackie Snow, to close the public hearing on the request for a special permit for a day care center at 68 Main Street. Applicant: Hans Pedersen, owner: Durham Fair Association. Motion carried unanimously.

PUBLIC HEARING

2. Applicant: M&M Ventures, LLC
Owner: M&M Ventures, LLC
Location: Route #17 and Parsons Lane
Application: Request for a Special Permit for Automobile Sales and Service

Members: Al Bradanini, George Eames, Richard Eriksen,
Jim Kowolenko, Dian O'Neal, Jackie Snow

Town Planner: Geoffrey Colegrove

Alternate: Ralph Chase

Chairman George Eames resumed the chair and read the call for the continued Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Ralph Chase was seated on the Commission in Jan Melnik's place.

Attorney John Corona addressed the Commission on behalf of the applicants and introduced the full complement of the Corona family. The present proprietors are Michael Corona, Mark Tigner, and Marshall Corona. The applicants are proposing to build an automotive repair facility on what is commonly known as the Behrens property on Route 17. Pat Benjamin also addressed the Commission and reviewed the features of the site. The existing garage on the site will be removed; the house will remain (currently has tenants). He also described the trees on the site.

A 6,000-square-foot building is proposed with a future addition of 21'x60' (for a total of 7,200 square feet). Access will be to/from Parsons Lane, 24 feet in width. Parking spaces were reviewed: 13 at the back of the building, 8 on the southern side, and 12 in the front designated for car sales. The property has a grade that will require cuts and fills to level it off. He also discussed drainage serving the site. A new well will service the new building; the existing well will continue to serve the existing house.

Azaleas will be planted along the southern border of the property along with 9-10 foot maples. Signage was also presented. Building lighting will include three wallpacks in the front and three in the back. There will also be two light poles with complete downlighting. There are two streetlights along the property boundaries. Therefore, the

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lighting for the buildings will not add significantly to the lighting already present on the street. The property is in the commercial zone.

The site coverage will be at 10.6% (25% is allowed); total site coverage allowed is 60%, the applicants will be at 34%. The septic system is sized for up to 10 employees. Bill Milardo satisfactorily reviewed the application with the stipulation that the reserve leaching area be filled with select sand at the time that the primary leaching system is installed.

The town engineer, Brian Curtis, has also reviewed the plans. Everything is acceptable to the applicant and will be incorporated in the plans with the exception of the recommendation of a landscape buffer for the house; the property owner will be renting the house—if a tenant does not want to live on the property, they do not have to rent it. There are no line of sight issues for the property. Wood bollards will be installed as indicated on the site plan instead of a wooden or metal guard rail.

Richard Eriksen queried the planned signage for the property. Pat Benjamin stated that the regulations provide for 1.5 square feet per linear frontage on one road only; that is proposed for the on-building signs. The signs will not be illuminated.

George Eames clarified that no new light will leave the site; Pat Benjamin affirmed this statement. Attorney Corona reminded the Commission that Route 17 is illuminated in that area, but no new light will be added.

Dian O'Neal expressed, for the record, her disappointment with this application which provides for a used car strip aka "Detroit" for the gateway into a quaint village. Attorney Corona stated his belief that this will be an attractive facility; considerable time, attention, and resources have been put into the design of an appropriate structure.

Al Bradanini queried the placement and height of the two 13-foot light poles; given the higher elevation, the lights will be about 25 feet high. Pat Benjamin stated that the lens throws the light to the building. Pat Benjamin also stated that the trees on site will be preserved.

Cory Pedersen, Parsons Lane, addressed the Commission; he is the northwest neighbor of the site. He expressed concern with the action of the Commission a year ago to change the designation of Parsons Lane to a private road and, now, the addition of another business in the area (one in his back yard, one in his front yard). This is now a high-access use for the road and is of great concern. The lighting seems to be well-planned. He asked that some plantings be installed on the northwest corner to restore some of his original "darkness" (Ken Marino's business and sites further down on Main Street are now very visible; previously there was good tree cover). He suggested half a dozen pine trees on the northwest corner would solve this problem. He asked the hours of business operation.

Attorney Corona stated that the business would like to meet whatever the public demand is. There is no intention to be there on Sunday nights. They typically will not operate the business nights or on Sundays. It is not a 24x7 operation, such as Dairy Mart. The current business hours are 7 until 6:30 with the goal of operating 8 to 5:30. Saturday hours may be the same. Typical hours of operation will be shown on the site plan, 7:30 a.m. until 6 p.m. six days per week. If a change is desired, the Commission can be approached.

Attorney Corona pointed out that this is a commercial zone abutting an industrial zone. The residential use is incidental in that area—basically a non-conforming use in an industrial-commercial area. Providing some trees at the northwest corner of the site would certainly be possible, but buffering of the type one would find in a residential neighborhood is simply not feasible. Attorney Corona noted that some trees were removed to allow for testing and septic installation.

Ron Mataeus addressed the Commission; he resides across the street from the subject property. The dumpster hours were of concern, in particular, early in the morning or in the evening. He noted concern with azalea plantings—one snowstorm and they will be gone. He would like a more substantial buffer between the commercial zone and the residential zone. In terms of lighting and security, he is not convinced of a correlation between lights and security. He would like to see lighting minimized with all sodium lighting eliminated (outdated). He would prefer halide and complete cut-off fixtures be used. He also queried the placement of the used cars for sales at the front of the property; with large lettering in the windows, they essentially become signage. He would prefer to see used cars at the back of the property and parking for customers at the front. He clarified that there is no street lighting at the front of the property, his front yard is completely dark.

Ron Mataeus asked for the process used in separating oils/chemicals in the floor drains of the lube-change operation. He has a well at his property and is concerned with water quality. He also asked that lettering on signage on the buildings be as small as possible.

Attorney Corona stated that the property is zoned commercial and adjacent to Route 17, a major highway. He noted that any merchandiser would not place merchandise at the back of a property and expect it to sell. Pat Benjamin stated that the lighting does have a correlation with security. The vehicles in his business were broken into prior to being moved to a location directly under lights on Route 17. In terms of impervious surfaces at the site, the Department of Transportation has been contacted and the town engineer has conducted a review. All water goes into the drainage system of the DOT. Metal halide lights can be substituted for sodium at the Commission's request. No mechanicals are proposed for the roof. Lettering on the front of the building conforms to the square footage for the zone. There are no floor drains that discharge into any drainage system. All fluids and oils are collected for removal. Recycled oil will be used (some will be burned in an oil burner). The canopy is located at the back of the building and open at the north and west sides of the building for entry into the quick-lube area.

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Cory Pedersen addressed the Commission, continuing with the questions he framed earlier. He asked for the reason for entry into the site from Parsons Lane. Attorney Corona stated that while there is physical access and adequate frontage along Route 17, the logistics, from the state's point of view, dictated that they explore a safer and more desirable access from Parsons Lane. He pointed out that this is not a road maintained by the town.

Attorney Corona stated that the roadway already provides access to Parsons Manufacturing (not currently in use) as well as the former Houston site in addition to the houses (Pages, Pedersens) and Whitehouse Construction. It is a little more than a driveway. While this project will increase traffic on the road, it is for a distance of just 150 feet and the traffic will not pass anyone else on the site.

Attorney Corona stated that Mr. Braehme, the property owner of the balance of the former Parsons site, had discussed with him creating a maintenance agreement for the entire length of Parsons Lane. M&M Ventures is willing to assume exclusive responsibility for total maintenance of that section of Parsons Lane that runs to the corner of their property. This is currently being negotiated.

Cory Pedersen asked the question, "at what point does it become a town road?" Geoffrey Colegrove indicated that the change to a private road was to enable breaking off a piece of land (not possible with a private driveway). However, in the commercial zones, multiple buildings can be added to a site, governed only by site coverage, and traffic could increase.

Richard Eriksen stated that a private road maintenance agreement should be structured for this site and addressed by interested parties. Attorney Corona said that a comprehensive driveway agreement was not possible because several parties to any such agreement (adjacent landowners) were not in accord. M&M Ventures will certainly maintain and plow their portion of the road; use of the road and maintenance is under negotiation with Mr. Braehme.

Ron Mataeus suggested that it would be wise to contact the state traffic commissioner regarding the site. There is going to be a substantial amount of traffic connected with the quick-lube operation. He recommended that this would be the prudent course of action. It is difficult now for people to move onto Route 17 in either direction. He asked why a special permit was required for this property.

Geoffrey Colegrove indicated that a special permit is required for all permitted uses in the commercial zone.

Ron Mataeus asked for consideration of a change in the lights to metal halide, full cut-off fixtures, more substantial landscaping, and a reversal of the customer parking and sales operation to the back of the property with small lettering on the cars for sale.

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A resident in attendance suggested that cars be required to turn right only when exiting the site from a safety standpoint.

Another resident asked about the ownership for the road; who would be liable in the event a child was hit? A road with mixed usage and traffic is difficult when it comes to determining responsibility for the road.

Ron Mataeus reiterated the concern with congestion to that part of the town.

Richard Eriksen asked for clarification of lighting; Attorney Corona stated that the applicant had no problem with switching to metal halide. Pat Benjamin stated that with regard to the State Traffic Commission, an application is only triggered when there is a building 100,000 square feet in size with a parking lot in excess of 100 cars. The District #1 Special Services representative, Dan Pompeii, has been contacted and advised that multiple curbcuts are not desired; they want the existing road used. Drainage calculations were reviewed. The DOT will be reviewing this application; Geoffrey Colegrove indicated that the DOT is completely separate from the STC.

Ron Mataeus stated that the State Traffic Commission can review a project of any size; he suggested that this step be taken.

Richard Eriksen stated that dumpster pickup is regulated by a town ordinance (in terms of time of day). This was invoked with the application for the Carolyn Adams project on Main Street.

Motion by Richard Eriksen, seconded by Dian O'Neal, to continue the public hearing on the request for a special permit for automobile sales and service, Route #17 and Parsons Lane. Applicant/Owner: M&M Ventures, LLC. Motion carried unanimously.

Motion by Al Bradanini, seconded by Jackie Snow, to reconvene the regular meeting at 9:45 p.m. Motion carried unanimously.

7. Hans Pedersen, Request for a Special Permit for a Day Care Facility,
68 Main Street

Motion by Jim Kowolenko, seconded by Dian O'Neal, to approve the request for a special permit for a day care center at 68 Main Street. Applicant: Hans Pedersen; owner: Durham Fair Association, Inc., with all changes to the application as discussed at the public hearing (attached to the motion *vis a vis* minutes, pp. 5-7). Motion carried, 6-1, with all in favor with the exception of George Eames (in abstention).

Motion by Al Bradanini, seconded by Dian O'Neal, to adjourn the meeting at 9:50 p.m. Motion carried unanimously.

Respectfully submitted,

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Jan Melnik
4/27/2005