

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF APRIL 4, 2007, MEETING

Present

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

Town Planner: Geoffrey Colegrove

Alternates: Brian Ameche, Mike Geremia, Mark Laudano

Absent

Members: Frank DeFelice, George Eames, Dian O'Neal

The meeting was called to order by Richard Eriksen, Vice Chairman, at 7:30 p.m. Jan Melnik introduced Mike Laudano, the newest alternate on the Commission (taking Frank DeFelice's position, who recently moved up to full Commissioner); Mark Laudano was seated on the Commission in Dian O'Neal's place. Mike Geremia was seated on the Commission in George Eames' place.

1. Approval of Agenda

Motion by Dave Foley, seconded by Gene Riotte, to approve the agenda of the April 4, 2007, meeting as presented. Motion carried unanimously.

2. Public Session

Sandi Friers, 23 Brittany Drive, addressed the Commission, seeking follow up to the questions she had raised at the March 7 meeting of the Commission. Geoffrey Colegrove advised that following communications with the first selectman and local law enforcement, it was learned that even though technically ATVs should not be operated on the town right-of-ways (and also not on town roads), the courts will not pursue or

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prosecute if a matter is brought forward where an ATV is operating on just the town right-of-ways. The only remedy would apparently be through adoption of a town ordinance. This would need to be pursued by interested parties with the Board of Selectmen and state trooper.

To Sandi Friers' query regarding activity in wetlands, Geoffrey Colegrove indicated that while this hasn't been thoroughly investigated, from his site visit there appears to be little damage to the wetlands.

Richard Eriksen asked if the wetlands being driven on by ATVs was in the town's open space property; Sandi Friers indicated it is on the individuals' own property. Richard Eriksen stated that she might wish to go before the Inland Wetlands Commission with this concern.

3. Brian Esparo, Update of Property, 36 Bailey Road

Tom Russell reported on the recent site walk of Brian Esparo's property. He stated that the garage was being cleaned out, along with the yard, and that excavation is proceeding with the building. The only observable violations were two vehicles on the site (not registered) and one sander.

Brian Esparo stated that as soon as the weather warms, he will be completing repair work on the truck; the jaguar will be the only unregistered vehicle (residents are allowed one road-worthy but unregistered vehicle per property). He will also move the sander off this property. In terms of timing of construction, things are proceeding quickly and he will more than meet the outside deadline of July 4, 2007, for erection of the building.

4. Michael and Linda Catania, Request for a Home Occupation Permit for an Office for a Construction Company, 25R Brittany Drive

Michael Catania addressed the Commission. Copies of certified letters sent to abutting property owners were presented. The application is for a home office (a desk in the master bedroom), which is well under the 25% maximum allowed for a home office. On the site are a grader, roller, and a backhoe.

Geoffrey Colegrove stated that both the grader and roller are commercial-sized vehicles (not the type someone would typically use in yardwork).

Michael Catania explained that the equipment is generally at customer sites from April to December. He stated that contrary to what was presented, he does not run the equipment up and down Brittany Drive. He has used the grader periodically on his own driveway. He is not hauling the equipment in and out on a regular basis. He characterized his business as small with no employees.

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Brian Ameche was seated on the Commission in Frank DeFelice's place at 7:45 p.m.

Richard Eriksen explained that the Commission is required to investigate complaints and that there is a neighbor who has complained about the equipment being stored on the premises. It can be considered to have a devaluing effect on the neighborhood. He stated that equipment is only permitted if it is being used to do work at the homeowner's property. Geoffrey Colegrove indicated that the property is fully established with lawn, driveway paved, etc.

Michael Catania stated he does use the backhoe on his property. The grader and roller are usually stored on his property for just 2 ½ to 3 months each year. They were in and out of the property twice in 2006 and he expects the same level of activity in 2007.

To Dave Foley's query of whether or not Michael Catania stores his equipment at his home when not on a job site, the reply was in the affirmative.

The regulations do provide for someone to bring home a work-related vehicle (one only, usually a pickup or some other type of service truck). The storage of construction equipment on the site is not allowed unless it is fully contained within a structure.

Michael Catania stated that the equipment will fit in a garage/barn on the site; Richard Eriksen stated this would be acceptable ("out of sight, out of mind"). The home occupation permit is for an office, not to operate a construction company from a home. It is a farm-residential area.

There is no signage for the business proposed, there will be no employees, and there will be no increase in traffic to the house.

To Sandi Friers' question as to whether or not Michael Catania would be permitted to keep a full-sized bulldozer on the property, the response was that as long as there is absolutely no external evidence (i.e., fully contained within a structure), then there would be compliance with the regulations.

Rory Wilson, 27 Brittany Drive, addressed the Commission. He stated that he had no objection to the home office, but that he does object to the storage of large equipment outside.

Sandi Friers asked if there were hours of operations imposed (i.e., when such equipment could be operated); she stated that some of this equipment was being used before 8:00 a.m. on Saturdays. Richard Eriksen stated that the only recourse is through the noise ordinance (Board of Selectmen).

Richard Saks, 12 Brittany Drive, addressed the Commission. He stated that he does not have a problem with Michael Catania's current practices or application for a home occupation permit.

Another neighbor, John Robinson, also stated he had no problem either with the business. He stated that the equipment isn't visible during the seasons when foliage is full and that one has to "turn their head at a 90-degree angle" to see the equipment anyway.

Sally Nicastre, 37 Brittany Drive, stated that she bought her home in 1995; it is a residential area and a visible construction business detracts from the value of properties and the area.

Trish Dynia, Main Street, asked about the hours of operation, noting that she has seen the Commission set hours for different activities. Richard Eriksen explained that this is a component of a special permit application, which a home occupation does not fall under.

Brian Ameche asked for clarification of a comment mentioned by a neighbor earlier—was work being done on a contractual basis for the neighbors? Michael Catania stated that this was not the case, that he might help out neighbors with removing snow. Michael Catania also reiterated that he is not running equipment up and down the road, as has been characterized by a neighbor; he suggested that there was a possible harassment issue.

The Commission discussed approving the home occupation request with the proviso that construction equipment be stored under cover within a permitted structure.

Dave Foley noted that the regulations already stipulate that there is to be no external evidence of a home occupation.

Motion by Ralph Chase, seconded by Michael Geremia, to approve the application for a home occupation request of Michael and Linda Catania, office for construction company with the proviso that the construction equipment be under cover within a permitted structure. Motion carried, 8-1, with all in favor with the exception of Dave Foley (in abstention).

Motion by Ralph Chase, seconded by Tom Russell, to recess the regular meeting at 8:00 p.m. for the public hearing. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: William and Dottie Smith
Application: Proposed Zoning Text Amendment to Section 05.01.01.01.
#23, Office (principal use), "including retail establishments

specializing in antiques and general gifts and including a workshop/studio for custom floral arrangements.”

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

Town Planner: Geoffrey Colegrove

Alternates: Brian Ameche, Mike Geremia, Mark Laudano

Jan Melnik read the public hearing call. Geoffrey Colegrove distributed a listing of all parcels in the Main Street residential district with non-residential structures to which this language would apply (the list was based on this distinction being made in 1975). He converted all data to current assessor’s information relative to ownership and updated actual street numbers in conformance with the current numbering system.

There are 18 properties on the list that would be eligible to take advantage of this change, if approved. As a practical matter, there are probably only seven to eight of these structures which could potentially pursue this provision (i.e., Strong School, the Town Hall, and the public library would not be candidates).

Geoffrey Colegrove also stated that one of the properties identified in 1975, 55 Main Street, was at that time a funeral home; it then became a day care and it is now a residence with an approved home occupation for a woodworking studio; therefore, it would not be eligible.

There is some question as to how the Adams property at 281 Main Street would be handled; 2-3 buildings were burned to the ground nearly ten years ago. There is one building remaining.

William Smith addressed the Commission. He stated that he and his wife, Dottie, live at 147 Cream Pot Road. For ten years, they were the original operators of Favorite Things in Durham. After selling the business, they ran a similar business on Block Island for six years. They subsequently returned to the mainland and have been running a similar business in Essex for the past four years (which they currently own and operate). They restored an historic building, garnering much praise from local authorities, townspeople, and the town historian as to how they have maintained the building and retained its historic character. They propose to do the same thing with the Grange Hall if this language is adopted and their subsequent permit application is approved.

Dottie Smith creates custom floral arrangements—something she has done for more than 20 years (beginning, initially, with retail sales through the Durham Fair). They also sell gifts and will include antiques among their merchandise. They believe this business to be a good fit for the town of Durham and would authentically restore the Grange Hall’s appearance.

Their business hours would be limited and flexible to a certain extent to accommodate as many people's interests as possible. William Smith stated that in the 25 years he has lived in Durham, he has observed changes, many along Main Street and not all, in his opinion, for the better. He believes that the key to retaining a viable Main Street is to consider commercial interests—such as those who have invested in the antique homes along Main Street in Middletown. Their proposal would accomplish a similar purpose. He suggested that it would be to the benefit of the town to preserve some of the older structures along Main Street (the Grange Hall, being one) and that he and his wife are willing to make this investment if given the opportunity.

Ralph Chase concurred with the idea of restoring historical buildings and noted that, from an historical perspective, Durham was made up of cottage industry (shoes, pewter, tin boxes); this would not be a dramatic change. His primary concerns were with parking and the traffic jams from the post office (“the most horrendous thing he’s ever seen in his life”), directly across the street.

Because this change would affect all of the 18 buildings in the zone, most Commission members agreed that any proposal contemplated should be quite narrow. This language change is only the first step. Then, any interested property would proceed with an individual application for a special permit.

Ralph Chase noted that the Commission has an ideal opportunity to address a problem here, one that has been passed on previously. He asserts that moving forward would enable preservation of the building and prevent it from falling to the ground.

Richard Eriksen reminded that accepting this language (or some variation of it) is, again, only the first step, making it legally possible to pursue such a business. Then it would be a matter of determining if it were physically possible (for any of the 18 sites that might pursue it, from the standpoint of parking, septic, and any other concerns). The Grange Hall site, of course, has many physical constraints.

Richard Eriksen suggested making language as restrictive and site-specific as possible (i.e., what defines an antique? How old? etc.). When considering the 18 structures on the list, you *think* certain uses/buildings will always remain the same—i.e., one would imagine that the listed churches will always be churches. But the Town Hall and the Grange Hall were, at one time, churches.

Brian Ameche stated his opinion that the question before the Commission is extremely important in that it deals in a fundamental way with the town and its limited tax base. He asserted that it is the most significant planning issue the town will face in the years ahead and that it is not an insignificant question. The question does not simply relate to whether or not retail use should be permitted in one building—it is whether the Commission should allow for retail and other uses in historic buildings along Main Street in order to change the nature of tax revenues. He further stated that this entire issue needed to be considered from the standpoint of the Main Street residential/historic district being the

town's most important residential neighborhood—and the impact of permitting retail sales in that neighborhood.

Richard Eriksen stated that everyone should be mindful that even if all the structures in the zone in question on Main Street were to pursue retail sales under the contemplated language change, Durham's taxes would not be significantly mitigated. These types of uses do not generate much in the way of taxes to the town.

Dave Foley concurred with Brian Ameche's remarks. However, he stated that there were only about three buildings on the list that are currently residential—therefore the Commission is not really talking about changing residential uses to retail. Some of the uses, in fact, are already more intensive than retail. He has particular concerns about the former Merriam Manufacturing (Adams property) site; if it were to "come back," the use could be a lot more intensive than retail. In terms of the Grange Hall, he stated that he could not envision it ever being suitable for residential purposes—the future proposed use (if the proposed language is adopted) is the only use that he could envision. While he "questioned the sanity" of the people proposing to improve the property, he thinks that retail use could fit in that property. As an engineer, he doesn't see how they will do it—but there'd be no possibility of that pursuit without a regulation change. It's a difficult site, but without a change, he believes the building will simply fall down. That, however, is a discussion for another night under a separate application.

Gene Riotte stated that as a Main Street resident himself, he believes the most important factor to consider is the *character* of buildings and properties and their *appearance* as opposed to the actual *uses*. He stated that he would not have a problem with a business going in that would improve the character of Main Street.

Walter Cihocki, owner of the Grange Hall, stated that having invested \$30K in the roof on the Grange Hall, it's not "going to fall down for a long time." He is in the process of upgrading the septic system and is proceeding with an H020 (active load-bearing) construction, versus traditional residential construction; this enables cars to pass over it and for the space to be used for supplemental parking. He stated that in its present configuration, nine cars could be parked along the back property line, still preserving the easement over the property to the Dynias' home (adjacent to the Grange Hall).

Bill Witkowski spoke in favor of the proposed language change. As a former owner of the Pythian Building (Durham Academy), he indicated that building was falling down prior to the improvements made under the language that enables certain professional uses. The proposed change would enable similar improvements to the Grange Hall.

Trish Dynia, 91 Main Street, also spoke in favor of the proposal. Her property is immediately adjacent and, as Walter Cihocki indicated, she has an easement for her driveway across the rear parking area of the Grange Hall. Plans to restore the building tastefully would be a "wonderful thing."

Gary Sheldon, Maple Avenue, addressed the Commission, concurring that the proposed plans are a great idea. This type of commercial use provides an opportunity to revitalize some of the older buildings. He'd suggest prudence, encouraging the language to be as narrow as necessary to allow what is proposed. He questioned how some of the properties on the special list of eligible sites might proceed with their present undeveloped land—could new structures be erected to take advantage of the language change?

Geoffrey Colegrove stated that the intention in 1975 was that any provisions in the language would apply only to existing structures. It becomes an interesting discussion when considering what happens if a building were to burn down (i.e., Merriam Manufacturing). That issue will be pursued with the Commission's counsel, Attorney Tom Byrne.

Barbara Olsen, Daisy Lane, addressed the Commission, speaking in favor of the proposed language change and in support of the Smiths' plans to convert the Grange Hall to an antique/gift business. She stated that customers would have no problem finding parking and making provisions to get to the business; she cited the numerous cross-walks along Main Street as being conducive to foot traffic.

Diana McCain, Skeet Club Road, addressed the Commission. She asked if it would be possible for the Planning and Zoning Commission to address this matter through a special permit for just the Grange Hall.

Richard Eriksen stated that the Commission must avoid the appearance of spot zoning. However, the language can be crafted to be as site-specific as possible so that it can be narrowly applied.

Gail Thody, 176 Main Street, voiced approval for the plans. She encouraged anyone who would want to preserve historic buildings in Durham that are in character with the Main Street historic district.

Norm Jason, also a Main Street resident and member of the Historic District Commission, spoke in favor of the proposal. He commended the Smiths for contemplating improvements to the Grange Hall. He did have concerns about the post office parking situation—and if there is parking immediately opposite the post office in the new septic area, this could create a nightmare scenario with cars backing out.

Dottie Smith addressed the Commission. She stated that most of the business would occur on Saturday afternoons and Sundays—primarily when the post office is closed. During the week, any business is generally after work: 4:30 to 6 p.m. or so, partially in the time after the post office is closed. She didn't believe there would be a big problem with interfering with post office traffic.

Other things she thought the Commission might consider: There is a big difference between independently run “mom-and-pop” shops and big box stores; in retail, businesses are sized based on retail sales.

Alana Simlick, 21 Marina Place, spoke in favor of the proposed zone change with the hope that the Grange Hall can be saved through this plan.

Tom Russell suggested that the language ensure that any plans retain the existing footprint of the original building. Richard Eriksen noted that a nonconforming use can't increase in intensity.

Dave Foley indicated that the concern is not so much with buildings as it is with uses: For instance, depending on how the interpretation goes, someone could possibly come in and put a Rite-Aid Pharmacy on the Adams' site.

Brian Ameche noted that that is the very essence of the dilemma in contemplating retail sales along Main Street's historic district. He stated that he didn't believe the Commission could predict how creative and effective applicants might be in pursuing retail in one of the historic homes on Main Street (likening the current proposal and its possible outcome to the “camel's nose in the tent”). He said that if the Commission goes forward with the proposal, it is with the understanding and expectation that retail use will come to Main Street in other buildings and that the Commission may not be able to manage it.

Dave Foley stated that it might be a good idea to include a “reverse grandfather” clause: If the existing building ceases to be, then the use goes away.

Geoffrey Colegrove noted that these were all good points not considered at the time the original zone was adopted in 1975. He stated that if the Commission were to consider the biggest opportunity for one of the structures “to go retail” on Main Street, it would be the Durham Manufacturing site. Not that the business is going anywhere, but if the business *were* to no longer exist in that location, something similar to what has transpired in East Hampton (with old mill buildings being turned into antique villages) could occur under the proposed language provision. Would such a use be considered more or less conforming than manufacturing in the zone?

Richard Eriksen reiterated that buildings are not forever; therefore, the question is, is the provision site-specific or building-specific?

Ralph Chase suggested it could possibly be tied to defining historical preservation of a building, thus allow certain business/retail uses to occur in conjunction with that preservation.

Brian Ameche stated that there are more than 100 historic buildings on Main Street—nearly anyone could possibly come in and state that they wanted to open a flower shop or

a coffee shop. He didn't believe such a framework would be feasible. The challenge is to create a box such that a use won't occur on Main Street unless the Commission wants it to.

Tom Russell reminded that the regulation would only apply to the 18 properties listed, developed in 1975. Geoffrey Colegrove added that further language could reduce those applicable by stating that if a structure is going to be used for retail, it must preserve the original historic character of the building.

Gary Sheldon addressed the Commission again, this time speaking in his role as a member of the Economic Development Commission. He stated that this is the kind of thing the EDC is discussing; however, they are hesitant to make any kind of major change. He noted that what was proposed was not necessarily a bad thing, but that it does require careful consideration. Speaking as a citizen, he suggested the Planning and Zoning Commission "do the minimum that it can legally do—limiting any change as much as possible and defining as small an area as possible." He stated that the whole purpose of the original regulation was to provide for special exceptions for buildings that were already in a particular use—thus making the language building-specific as opposed to property-specific. He then suggested the Commission consider what would happen if an ongoing business (advanced under the provisions of the new language) became a core business in town and then burned down—would or would they not be allowed to rebuild and continue?

Commission members thought that this scenario could be addressed the same way in which the Commission is currently reviewing a change in the regulations—at the time that facts are known. Geoffrey Colegrove also stated that there is statutory language to cover for such things—a window of time in which to reconstruct.

Geography might be an interesting factor to overlay—instead of elaborate guidelines, the Commission could consider making this applicable for "properties south of Maple Avenue" or "properties adjacent to the Town Green," Dave Foley suggested. Brian Ameche added that the Commission has never installed the Village District concept that was once discussed. Perhaps this could be revisited.

Attorney Tom Byrne will be asked for a legal opinion.

To Gary Sheldon's concern about "properties adjacent to the Town Green," it was noted that the language would still only apply to the original buildings from the 1975 list.

Geoffrey Colegrove recapped the issues being considered that will require investigation:

- 1) expansion of footprint (allowed or not)
- 2) whether or not new buildings would be allowed on properties (i.e., Adams)
- 3) whether language should be tied to preserving architectural character

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- 4) what happens if a business is destroyed (fire)—could or could not the structure be rebuilt and use continue or conform to current regulations, being rebuilt with the original appearance and so forth
- 5) if geography can be applied, which buildings could seek approval for the type of retail uses being proposed in the new language
- 6) traffic generation should be considered with respect to types of uses

Richard Eriksen suggested that any language regarding retail be very specific and not a catch-all that could allow anything.

Brian Ameche asked that a map of all the sites be prepared for the next meeting.

Motion by Dave Foley, seconded by Ralph Chase, to continue the public hearing of proposed zoning text amendment to Section 05.101.01.01. #23, office (principal use), “including retail establishments specializing in antiques and general gifts and including a workshop/studio for custom floral arrangements,” applicants: William and Dottie Smith. Motion carried unanimously.

Motion by Ralph Chase, seconded by Tom Russell, to reconvene the regular meeting at 9:11 p.m. Motion carried unanimously.

5. Nicholas Laudano, Request for a Special Permit for an Earth Excavation and Removal Permit to Create a Pond, 179 Parmelee Hill Road, Public Hearing Scheduled for April 18th.

The public hearing will be held on April 18th.

6. Stone Bridge Crossing, LLC, Request for a Special Permit for Active Adult Housing, Johnson Lane, Public Hearing Scheduled for April 18th

A site walk will be held on Saturday, April 7th, at 9 a.m.

The public hearing will be held on April 18th.

7. Payment of Bill

Motion by Ralph Chase, seconded by Dave Foley, to approve payment of the following bill:

- Jan Melnik, Absolute Advantage — \$350.11 (minutes of March 21, 2007)

Motion carried unanimously.

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8. Approval of Meeting Minutes

Motion by Mike Geremia, seconded by Tom Russell, to approve the minutes of March 7, 2007, and March 21, 2007 meetings of the Planning and Zoning Commission as presented. Motion carried, 7-2, with all in favor with the exception of Mark Laudano and Gene Riotte (in abstention).

9. Miscellaneous

Brian Ameche discussed the request of Theresa Mesick to convey a strip of property to the town in lieu of a conservation/open space easement (adjacent to skating pond parking lot on Route 68). This is in an effort to try to resolve a liability issue. Brian Ameche stated that the Conservation Commission had initiated this idea.

Motion by Brian Ameche, seconded by Ralph Chase, to recommend to the Board of Selectmen under 8-24 review acceptance of a 5,000 square-foot conveyance from the Mesick property to the town (immediately east of the parking lot for the skating pond on Route 68), in lieu of open space/conservation easement. Motion carried unanimously.

Geoffrey Colegrove stated that the triaxle and flatbed truck previously housed at a residential site on Haddam Quarter Road are now gone.

Motion by Mike Geremia, seconded by Ralph Chase, to adjourn the meeting at 9:21 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

4/9/2007