

# TOWN OF DURHAM

## Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

\*\* Revised 3/3/2007 \*\*

## MINUTES OF FEBRUARY 21, 2007, MEETING

### Present

Members: Ralph Chase, George Eames, Jim Kowolenko, Gene Riotte, Tom Russell  
Town Planner: Geoffrey Colegrove  
Alternate: Mike Geremia

### Absent

Members: Frank DeFelice, Richard Eriksen, Dave Foley, Dian O'Neal  
Alternate: Brian Ameche

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

### 1. Approval of Agenda

Motion by Ralph Chase, seconded by Tom Russell, to approve the agenda of the February 21, 2007, meeting as amended to reflect the deletion of Greenland Realty and the addition of Mollie Nolan, home occupation application. Motion carried unanimously.

### 2. Public Session

No business.

### 3. Zoning Enforcement Officer's Report

Geoffrey Colegrove stated that he had made several nighttime visits to Murphy Pools; nothing has been done. The glare of the bulbs is still visible to Mountain Road. There is light trespass. This matter will be turned over to Attorney Thomas Byrne.

Geoffrey Colegrove also stated that he had visited the Esparo property on Bailey Road. The property has improved somewhat. The next step will be conducting a detailed site visit with Mr. Esparo to review each of the issues. Most of the equipment in question is fairly obscured from the common access road (but still visible from adjacent properties). A letter was received from Jim Petroski, 48 Bailey Road, regarding the situation; there is still construction-related activity occurring on the property. Mr. Esparo has not ceased activity since the last notice of violation.

Brian Esparo addressed the Commission. He noted that there are components for a steel building on the property that he has not yet built. The compressor was borrowed from a friend; he hit ledge when trying to create the footing boxes. That had to be jack-hammered. Two sanders in the back of the property have nothing to do with his construction business (they are listed on eBay); he bought them at an auction as an investment. He expects one to be sold within the week. A green truck in the driveway belongs to a friend; he is doing maintenance on that truck and it will then leave the property upon completion of work. A black Blazer on the property also belongs to a friend who was away traveling; the Blazer will soon be gone. A "pile of white insulation" visible on the site is the kit for the 40x80 foot barn. An excavator will be coming onto the site shortly to finish the footings and then allow construction of the barn.

Brian Esparo stated that, since his "day in court, which he lost," he has never intended not to comply with the restrictions. He purchased a property on 208 Middletown Avenue (Verona Pizza in Northford), where some of his equipment is now being housed. He also purchased a home on Old Blue Hills Road; some of his equipment is there (the property is being remodeled and renovated). A Cheshire construction truck was on his property from about October as a back-up vehicle to his GMC, which was not working reliably. The GMC has since been repaired.

In terms of running the construction company from his house, he asserted that he does not do this. He has an employee who comes onto the property daily to care for the animals. Machinery on the property includes a tractor, numerous golf carts, go-carts, motorcycles, quads, boat, etc.; it is all crammed in the garage and will go into the barn. He also has a personal trailer on the property for his motorcycle; he trailers the Harley and snowmobiles when traveling. There is nothing going on at his property relative to the construction business. There is a roller on the property for his personal use in installing a lawn.

He summoned a state trooper to his house this past weekend. The state trooper advised him that Jim Petroski had informed the trooper that the Planning and Zoning Commission had "deputized" him to take pictures. He stated that he "feels like he lives next door to the paparazzi" and expressed his annoyance with the situation. He stated that he is being photographed in his driveway on a frequent basis. He finds it personally invasive of his privacy. He stated that he is not interested in "fighting city hall." He put up a home surveillance camera pointed at his neighbor (but did not connect it). He would like the

photographing to stop; instead, he asked that phone calls occur when there is a question or problem.

Geoffrey Colegrove arranged to go to Mr. Esparo's property on March 2 at 9:00 a.m. to walk the site and review some of the issues that will hopefully be resolved by that time.

4. Mollie Nolan, 67 Coe Road, Home Occupation Application - Bookkeeping

Mollie Nolan addressed the Commission. She is planning to use a portion of the study for a home-based, computerized bookkeeping business. She presented a site plan for the Commission's review. She plans to have a sign on the property that conforms to the regulations. She will use remote records transfer; her clients will not come to the house. There could be an occasional pick-up or drop-off; there is space in the driveway to accommodate a few additional cars. The business will be fully self-contained. Letters were sent to seven neighbors; four were returned, all in support of the plans.

Motion by Ralph Chase, seconded by Mike Geremia, to approve the home occupation for a computer-based bookkeeping service, applicant: Mollie Nolan, 67 Coe Road. Motion carried unanimously.

5. Catherine Berten-Gutch, Request for Release of Bond, Haddam Quarter Road

Geoffrey Colegrove stated that the town has accepted the road. A bond was being held to provide for the planting of street trees. This was done last fall. An additional bond was being held for erosion and sedimentation control purposes. Brian Curtis, town engineer, recommended that 10-15% be held back for the trees (in case some don't make it through the winter). The tree bond was \$8,490, plus interest. About \$1,200 is recommended to be held. The balance can be released.

Motion by Ralph Chase, seconded by Mike Geremia, to release all but \$1,200 of the Berten-Gutch performance bond, Berten Heights subdivision; the \$1,200 is to cover the cost of replacing street trees if some die. Motion carried unanimously.

6. Jennifer Hapanowicz, Informal Discussion of Possible Softball Training Facility, 45R Ozick Drive

Jennifer Hapanowicz addressed the Commission. She is considering developing a softball training facility within one of the industrial areas in town. She has been a coach for approximately 14 years. The business would be operated by appointment only. She would have two or three batting cages—all within a self-contained facility. She stated that she previously helped manage the "Cow Palace" facility for similar purposes on the Durham Fairgrounds with Stan Waz.

Gene Riotte was seated on the Commission at 7:55 p.m.

Geoffrey Colegrove stated that there are a number of uses in the design development district that really don't fall into specific categories; that was why she was invited to speak before the Commission informally. There is a version of a health club in one of the warehouses presently. There are similar facilities in the Middlefield Industrial Park and in Haddam. This property she is considering is owned by Rory Wilson.

Ralph Chase asked the nature of the business—individual or team training. Jennifer Hapanowicz stated that a team of up to ten could possibly be present at one time. Everything will be by appointment. It's not open like a health club. Their specialty is training. The business plan is focused on just softball at the present time.

To George Eames' query regarding type of floor surface, Jennifer Hapanowicz stated that fake turf (indoor/outdoor carpet) has been used in the past. She is seeking to find out what is allowed. There is currently a cement floor. Ceilings are about 16 feet in height.

To Mike Geremia's query regarding hours of operations, the applicant stated that this is a full-time business and could be up to seven days a week; it is primarily an evening business, all conducted inside. There is no need for shower facilities.

Sandy Kovac asked about this matter going to public hearing. She abuts the property at 89R Mountain Road and has concerns about a nighttime business with regard to lighting. There is also concern about noise on evenings. Jennifer Hapanowicz stated that the business usually wraps up by 9 or 9:30 in the evening.

Jennifer Hapanowicz further described the business: all business takes place indoors. The majority of the training is pitching. Offices have been co-located immediately adjacent to her business in the past without any complaint. The business is not invasive. Kids are not out in the parking lot. Everything is done indoors.

Geoffrey Colegrove stated that separate zoning permits are not issued for uses that go into these buildings. There is a lot of changeover among occupants. The Commission would spend an inordinate number of hours if it reviewed every occupancy/use for these buildings. After the certificate of occupancy is issued for a building, there is little further involvement relative to change of uses on an individual basis.

Geoffrey Colegrove has discussed signage with Rory Wilson, the property owner. Because there will be more than ten tenants, he is entitled to a sign about 60 square feet in size. Individual business placards could be installed on that structure. Geoffrey Colegrove added that this proposed use is very similar to the gymnastic studio business across from Murphy Pools. George Eames concurred and said that this is a use consistent with what is in the area, even though it is not industrial or commercial. It is more recreational/commercial.

Jennifer Hapanowicz stated that normal retail units will not accommodate this type of use because of the need for greater ceiling height.

## PUBLIC HEARING

1. Applicant: Durham Planning and Zoning Commission  
Application: Proposed Zoning Text Amendments, Section 13.03.  
"Site Plan Review," Subsection 13.03.04 "Site Plan Requirements"

Members: Ralph Chase, George Eames, Jim Kowolenko, Gene Riotte, Tom Russell  
Town Planner: Geoffrey Colegrove  
Alternate: Mike Geremia

Chairman George Eames read the call for the Public Hearing from the Legal Notice. Attendance was taken and all members present were seated on the Commission. Mike Geremia was seated on the Commission in Dian O'Neal's place.

Geoffrey Colegrove stated that the proposal reflects deletion in the section of the regulation that deals with the requirement that an applicant obtain previous approval from the Connecticut Department of Transportation for any activity that requires such approval. The proposal was cross-referred to adjacent land-use agencies and approval was received from all (no impact or conflicts).

Ralph Chase asked if this proposal deals with just commercial uses or also residential uses. Geoffrey Colegrove stated that it only affects uses requiring site plans. There are some residential properties that do require site plans, for instance, the recent active adult community on Route 79. That is a special permit in a residential zone; therefore, the issues in this proposal would need to be addressed. However, an individual seeking a building permit for a single-family house would not need to comply with this as it is not a site plan review or special permit. In the residential table, those items listed with "P" or "S" must comply with this requirement. All the uses in commercial and industrial zones are by special permit.

There was no comment during the public portion of the hearing. Geoffrey Colegrove brought up a point mentioned earlier. If someone were to indicate hours of operation and there is a subsequent occupancy change in the building, would the new applicant need to come back before the Commission for another public hearing? His belief was that once a special permit is issued, the types of uses in the use table are considered as approved for the site itself. It could be handled as a site plan amendment. There would need to be a return to the Commission for a complete change of use.

Ralph Chase stated that new occupants would need to apply to amend the hours *if a change were being sought*.

7. Rory Wilson, Distinctive Building, LLC, Request for Modification to Site Plan, 45R Ozick Drive

The applicant was not in attendance. Geoffrey Colegrove stated that the Commission should keep a close eye on this as it is a site plan amendment. It will be tabled to the next meeting. There is a 65-day limit; if the Commission were not to act on this, it would become approved automatically.

Tom Russell asked if Brian Curtis, town engineer, had reviewed the Commission's concerns. Geoffrey Colegrove stated that it had been referred, but that Brian Curtis had not yet gotten back to the Commission with his findings.

8. Fred Klaus, CT Area Classic Thunderbird Club, Request for a 1-Day Special Permit for an Antique Auto Show and Flea Market to be held on July 22<sup>nd</sup>, Pickett Lane, Public Hearing Scheduled for March 7, 2007

The public hearing will be held on March 7, 2007.

9. Proposed Zoning Text Amendments, Section 13.03. "Site Plan Review," Subsection 13.03.04. "Site Plan Requirements"

Motion by Jim Kowolenko, seconded by Ralph Chase, to approve the proposed zoning text amendments, Section 13.03, "Site Plan Review," Subsection 13.03.04, "Site Plan Requirements." Motion carried unanimously.

10. Payment of Bill

George Eames is holding off on approving the bill for the *Middletown Press* because tearsheets are missing; he is asking the bookkeeper to provide additional information.

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

- Midstate Regional Planning Agency — \$5,896.74 (January expenses)

Motion carried unanimously.

11. Miscellaneous

George Eames read into the record a letter from Attorney Thomas Byrne with regard to the two Arrigoni sites on Mountain Road. The decisions were both in favor of the Planning and Zoning Commission. The Commission's decisions were sustained and both appeals were dismissed. A petition to appeal can be filed by the applicant to the Superior Court by March 7, 2007.

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George Eames and Geoffrey Colegrove went before the Board of Finance the previous evening. The legal portion of the budget is over for the year; as of December 2006, the account was overspent by \$9,500. Geoffrey Colegrove will provide the Board of Finance with the number of pending cases along with an estimate of anticipated costs. The fiscal year ends in June.

Geoffrey Colegrove said that there were five appeals pending when the first meeting with the Board of Finance was held. Two are now closed. The remaining cases are Rabbi Fazley (the attorney for the plaintiff has asked to be dismissed from the case), Greenland Realty (paperwork has been filed, but no trial date yet), and Dolphin Daycare. There could be an additional expenditure of \$5K-\$6K. George Eames indicated that the Board of Finance does understand the work of the Commission and how these costs are not avoidable (the Commission must defend its decisions).

Geoffrey Colegrove stated that the 8-24 review for Turkey Hill was removed from the agenda. This will be held until such time as the road has progressed further. In terms of certificate of occupancy for homes in the area and the possibility of school buses picking up children from an unaccepted (future) town road, Geoffrey Colegrove stated that there is a statute that allows the Board of Selectmen to designate an unaccepted town road as a road that meets the requirements of the subdivision regulations and grants permission without liability for the district to go onto those roads for school purposes.

The Commission discussed several upcoming conferences. Geoffrey Colegrove stated that the Wesleyan program is excellent (day-long, put on by the Connecticut Bar Association). The Connecticut Federation of Planning and Zoning Commissions holds their annual dinner at the Aqua Turf. Commissioners are free to attend any of these events.

Motion by Ralph Chase, seconded by Mike Geremia, to adjourn the meeting at 8:40 p.m.  
Motion carried unanimously.

Respectfully submitted,

Jan Melnik  
2/28/2007