

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF JUNE 1, 2005, MEETING

Present

Members: George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Dian O'Neal, Jackie Snow
Town Planner: Geoffrey Colegrove
Alternates: Ralph Chase, Gene Riotte

Absent

Members: Brian Ameche, Al Bradanini, Jan Melnik
Alternate: Frank DeFelice

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 Richard Eriksen, seconded by Jackie Snow, to approve the agenda of the June 1, 2005, meeting as amended to reflect that for item 13, the address should be Stagecoach Road (not James Road), a new item 13A will be added (discussion of Crooked Hill Road), and item number 10 (Liberty Bank) must be tabled because the applicant has been unable to obtain the signature of the owner. Motion carried unanimously.

2. Public Session

Tom Russell addressed the Commission regarding the bond for the Mesick property on Shunpike Road. He asked for an inspection to be scheduled to allow for a bond release on the old pit. The site reclamation has been completed (trees planted, topsoil added, and grass). Geoffrey Colegrove indicated that he had reviewed this with Brian Curtis. Brian Curtis will conduct a site inspection and provide the Commission with a recommendation. The bond had originally been held for the topsoil and the vegetative cover.

June 1, 2005

Page 2

Gene Riotte was seated on the Commission at 7:34 p.m. in Al Bradanini's place.

3. Greenland Realty, LLC, Request for a Special Permit to Remove 2,000
cubic yards of traprock to allow for the construction of a berm, 10 Mountain
Road

Attorney Joan Molloy addressed the Commission on behalf of the applicant. She reviewed the history of the past few months, noting that this application had been made a month ago. However, because the site was not in compliance with the site plan, the request was not approved and the Commission had requested a status report in one month. She was before the Commission at the two-week point because of the gravity of the situation. While she stated that she would like to report that the site is entirely in compliance with the site plan, it is not. Progress is being made. Work is continuing on the berm. Trees have been delivered for installation on the berm (the portion which has not yet been completed). The large fuel tanks have been removed from the site.

Attorney Molloy is hopeful that the applicant will be in substantial compliance by the date of the site walk scheduled for June 11. She stated that when the site walk was originally scheduled, she had anticipated that the Commission would then be able to vote at its June 15th meeting; however, the Commission will not be meeting again until July 6. She asked if the Commission is satisfied at the time of the site walk, could the release/removal of the material at that point in time be authorized (as opposed to waiting until July 6). Her schedule (another hearing in another town) will preclude her from attending the July 6 meeting.

George Eames stated that the first step will be to hold the site walk June 11 and view progress and compliance with the site plan. There is adequate time for the application to be decided by the Commission at the July 6 meeting.

Diana Cruise of 49R Mountain Road addressed the Commission. She stated that on May 26 and May 27, from 7:30 a.m. until noon, stone was continually being hauled from the site. Four dumpsters were brought back onto the site today. Repairs are being done in the garage, including welding (a welding machine was delivered on Sunday). Activity has been every day as if no cease-and-desist order were in place. She referenced the minutes of August 6, 2003, wherein it was stated that "no repairs of any kind will be performed in the garage. It is not a mechanical repair shop." Trucks continue to be brought onto the site and go out in the morning (business continuing as usual).

Geoffrey Colegrove stated that he has been on the site during the afternoon and observed several trucks on the site and welding is taking place in the garage.

George Eames stated that Geoffrey Colegrove is preparing documentation in order for the Commission's counsel, Tom Byrne, to take the matter to court. It is a long, drawn-out process. Richard Eriksen asked the fine imposed for violation of a cease-and-desist order (\$100 a day) and suggested that this amount begin to accrue dating to the point of the receipt of the cease-and-desist order.

Jackie Snow asked what is allowed in terms of removal of stone. Up to 1,000 cubic yards of material can be removed. She stated she had talked to a truck driver and learned that 25 cubic yards of material can be hauled in a dump truck; therefore, 80 separate loads would be hauled to equal the 1,000 cubic yards.

June 1, 2005

Page 3

Richard Eriksen noted his dissatisfaction with the whole situation—expressing empathy for the neighbors' frustration as well. He stated that there must be enforcement of the cease-and-desist order and a way to stop Fred Melillo from the ongoing actions and continued disrespect to elected officials and the entire town. He continues to break laws. He was only authorized to continue building the berm. *No* business is to be taking place at the site except the construction of the berm.

Jim Kowolenko asked how the case would move forward. Geoffrey Colegrove indicated that the matter would go forward in just a few weeks; however, it could easily be 12 months from now before there is legal resolution. If the court finds in the Commission's favor, Fred Melillo will be required to pay fines; if that court order is violated, then he would be in contempt of court and could be jailed.

George Eames read into the record a letter from Attorney Thomas Byrne dated May 23 regarding his steps to institute appropriate action in court regarding the cease-and-desist orders of March 30, 2005, and May 9, 2005, to Fred Melillo, Greenland Realty. A request was made for a number of items to create the file.

4. Housewright Development Inc., Request for a Special Permit to Construct
a 9,600 square foot building to include professional services, offices,
plumbing, heating, and electrical establishments, warehouse, etc., Lot #4,
Ozick Drive

Geoffrey Colegrove stated that the application was approved by the Inland Wetlands Commission. The plans have been forwarded to the town engineer, Brian Curtis, for review; he has several comments. The Planning and Zoning Commission will need to schedule a public hearing on the application, ideally for July 6.

5. J&T Route 68 Property Management, Request for a Special Permit to Construct
Rental Storage Units, Lot #9, Ozick Drive

Geoffrey Colegrove indicated that the Inland Wetlands Commission will be holding a site walk of this property on June 13. Brian Curtis has completed his review of this application. Although no activity is proposed in the wetlands, the site is very sensitive because of overall proximity to the wetlands. A public hearing will be held on July 6.

Motion by Ralph Chase, seconded by Jackie Snow, to recess the regular meeting at 8:00 p.m. for the Public Hearings. Motion carried unanimously.

PUBLIC HEARING

1. Applicant/Owner: Bryan Esparo
Location: 36 Bailey Road
Application: Request for a Home Occupation Permit for an Office for
Construction Business

June 1, 2005

Page 4

Members: George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Dian O'Neal, Jackie Snow
Town Planner: Geoffrey Colegrove
Alternates: Ralph Chase, Gene Riotte

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. Ralph Chase was seated on the Commission in Jan Melnik's place. Gene Riotte was seated on the Commission in Al Bradanini's place.

Bryan Esparo addressed the Commission, reflecting on his appearance before the Commission at the last meeting. He stated that he wanted the home office permit so as to transfer his business registration from Cheshire to Durham and be able to receive mail at his home for his business. A site walk was held May 31. Materials stockpiled at the site are for construction projects, including a barn, at his home and would fill about one pickup truck. Men coming to his home are performing construction work on his property.

George Eames stated that the site walk was held on May 31. He noted for the record that no sign for the public hearing was posted at the entrance of the driveway to the property, as required by the regulations. Therefore, the hearing was not properly noticed.

Richard Eriksen stated that because the sign had not been posted, the hearing must be continued in order to allow the public to be properly noticed. Testimony can be accepted by those present, but the hearing will be continued to July 6. Those neighbors in attendance would be allowed the opportunity to speak on the record, in the event they are unable to be present on July 6.

Pat DiNatale, 94 Bailey Road, addressed the Commission and stated his opposition to the application. He cited that there is a difference between a home office and one to run a construction company. He suggested a home office would be something like a computer business and not what he views as an industrial use (trucks coming in and out). There is a cease-and-desist order because of employees coming in and out of the site as well as construction traffic.

Bryan Esparo stated that he had told neighbors several months ago that the snow plowing business would no longer be run from his home. He did move into the house in the middle of January; he moved his home, business, and relocated his children to the local schools. He stated that it took several months to get his special-needs son settled in.

During that time and because snow plowing is his busiest season (where he makes the majority of his business), it was difficult to alter his business in the middle of relocation. Arrangements have been made with seven of his nine condominium properties to keep his snow plow vehicles on site (and, therefore, employees will not arrive at his house at 3:00 a.m.). It was an unfortunate situation and he responded that this would never happen again. He is willing to accept this as a condition of the home occupation permit. He has given his word and he'll give it in writing. There is traffic from several people at the site (his nanny's fiancé dropping her off to/from his house and one full-time employee at his property handling outside landscaping work). A pickup truck was used to bring material onto the site for building projects at his home.

June 1, 2005

Page 5

His business is primarily general contracting and can be conducted from a home office (telephone, internet, ordering materials). He would like to have a Durham business license. His home is not a construction site.

Jim Piotronski addressed the Commission; he is Bryan's other neighbor on Bailey Road. He expressed some concerns about the home occupation permit. He acknowledged that they date back to a "rocky start" of being awakened at 4:00 a.m. by men working on trucks, trying to get them started, and running them for half an hour. This happened on multiple occasions. He's glad to hear that the trucks will no longer be at the site. However, he questioned the backup plan for trucks at condos—if a contract changes with a condo, where will the trucks go. A home occupation permit, according to the regulations, would appear to be for small-time businesses, not ones in which trucks are involved. He cited specific dates of employee vehicles being housed at the site throughout the day with trucks departing the site in the morning and returning at the end of the afternoon and then employee vehicles leaving. Construction companies are usually operated from industrial zones, not farm-residential districts.

Geoffrey Colegrove clarified that the home occupation permit is for an office only. Richard Eriksen stated that the Commission can only consider and rule on an application request going forward.

Karen Conway addressed the Commission; she lives at the corner of Pleasant Terrace and Etzel. She asked Richard Eriksen to clarify his statements about the approval process for an application. Richard Eriksen indicated that the Commission has the ability to approve any or all components of an application.

David Pakech addressed the Commission; he resides at 26 Etzel. He stated his opinion that a home occupation permit is more appropriate for a professional office. He and neighbors selected this neighborhood to live in for peace and not have a construction business operate in that neighborhood. His concern is that if the permit (or loophole) is permitted, there is no way the Commission can adequately police the activities. He is worried about precedent being set. He also noted concerns about additional traffic and the number of children in the neighborhood. He also asked about background checks of people coming into the neighborhood (i.e., employees of the business).

George Eames stated that background checks are not part of the Commission's purview. He detailed the responsibilities of the Commission in considering all applications and how applications are considered.

Karen Conway noted for the Commission's edification that the neighborhood took steps last year to become a "neighborhood watch" neighborhood.

Geoffrey Colegrove indicated that the employees represented thus far by Bryan Esparo (nanny and landscaper) fall outside the purview of the application; they have nothing to do with the home occupation. There are no employees related to the application.

Joyce Santopietro, 4 Pleasant Terrace, addressed the Commission and stated that the neighbors are looking to the Planning and Zoning Commission to enforce the residential zone. The house on the street was purchased because there were no businesses in the area. She said many neighbors were concerned with what has transpired at the Mountain Road site where there is a cease-and-

June 1, 2005

Page 6

desist order that the Commission has indicated is difficult to enforce and frustrating. There are fears on the part of the neighbors that this home occupation could escalate if approved.

To the hypothetical question raised by neighbors as to “what happens if the business escalates and there is a problem,” Richard Eriksen indicated that the Commission cannot predetermine that someone is going to cause a problem. It would not be fair to judge applications on the basis of whether someone is going to not follow the regulations. Recourse is available through the courts (both the town and neighbors, if they wished to pursue action).

Geoffrey Colegrove indicated that if a home occupation extends outside of its approval, there are legal means by which to pursue compliance and seek a judgment. Those in violation are required to pay the fees.

Bryan Esparo asked if he is now going to be in a position of having to document every activity that takes place at his property. George Eames indicated that if it is personal equipment, and not construction equipment, there is no problem.

Pat DiNatale stated his belief that the neighbors are being “spoon-fed” a very elaborate ruse. He described the 12-stall barn plus two bays for antique cars—asking if 12 horses isn’t a commercial horse operation. He also noted that Mr. Esparo had mentioned possibly pulling trucks into the barn for repairs.

Bryan Esparo stated that Pat DiNatale had said in an earlier conversation that he (Pat) uses his barn for changing his vehicle’s oil. However, Pat DiNatale stated that he doesn’t have nine trucks and does not run a business from his house. To get a Durham address, a P.O. box number can be secured.

Dan Veronick, 30 Etzel Drive, spoke. He stated that he was one of the first people to move onto Etzel Drive. He is concerned with the zoning change that would allow a construction business. George Eames stated that there is no zoning change at all; regulations currently allow for a home occupation permit. He is concerned with an increase of construction traffic that is not usual to the area. He asked if a home occupation permit is approved, is it within the jurisdiction of the Commission to place stipulations on the approval (it is). He asked that the Commission consider the concerns of the neighborhood and place stipulations on any approval.

Ellen Piotronski addressed the Commission, stating that she and her husband moved into their home in July of 2004 and until January, things were very, very quiet. The only reason that they began paying attention to ‘comings and goings’ is because of the significant increase in vehicular traffic in the area, in particular, with the snow plows. More recently, traffic has decreased. She stated that snow plows are still on the site.

Todd Wolfe from Pleasant Terrace addressed the Commission. Any increase in traffic in a small neighborhood has a large impact. He asked that the Commission protect the residential character of the neighborhood.

George Eames indicated that during the site walk, some 3-4 trucks were observed. Pat DiNatale asked if the Commission had been told by the applicant that the snow plow trucks would be removed; this was affirmative. He noted that there are covenants (deed restrictions) on Bailey

June 1, 2005

Page 7

Road. Each lot has one vote and the association must approve any new outbuildings, constructions, etc.

To get these approvals, a basic site plan is required. He and Jim Piotronski just received a site plan for Mr. Esparo's property that designates a truck-parking area along with a barn and some other things that are planned. He has no problem with Mr. Esparo's plans except for the truck-parking area. If the trucks are no longer going to be on site, why have a truck-parking area.

Bryan Esparo stated that all the trucks belong to him, not a business. He is currently looking for a secondary site to house his trucks. To George Eames' query regarding removal of the four trucks currently at the site, Bryan Esparo stated that he is actively seeking a place and had put in a bid on a property so that they could be removed. They will be removed as soon as he finds a place to put them.

Jim Piotronski stated that it is the pattern that has been observed—the same four or five cars coming in the morning, trucks leaving for the day, then returning with those same four or five cars leaving at night that raises the concern of a 9-to-5 business.

While someone is allowed to have registered vehicles on their own property, George Eames stated that Bryan Esparo admitted that these trucks are for his construction-snow plowing business. The concern is these trucks are being used for business purposes and being stored at his site.

Ralph Chase stated that the Commission should be discussing the activities related to the permit (home occupation). The activities transpiring now are existing with or without a permit—and may be in violation of the zoning regulations or covenants for that piece of property.

The sign for the public hearing must be posted for at least ten days prior to the public hearing. It should be placed in front of the actual property and contain the language (and lettering size) stipulated in the regulations.

Motion by Richard Eriksen, seconded by Dave Foley, to continue the public hearing to July 6 on the request for a home occupation permit for an office for a construction business, 36 Bailey Road. Applicant/owner: Bryan Esparo. Motion carried unanimously.

PUBLIC HEARING

2. Applicant/Owner: Peter Grippo
Location: 349 Main Street
Application: Request to modify a previously approved Special Permit to accommodate Grippo's Mobil Service Center, Subway and Dunkin Donuts

Members: George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Dian O'Neal, Jackie Snow

Town Planner: Geoffrey Colegrove

Alternates: Ralph Chase, Gene Riotte

June 1, 2005

Page 8

Chairman George Eames resumed the chair and read the call for the 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. Gene Riotte was seated on the Commission in Al Bradanini's place.

Geoffrey Colegrove indicated that a letter was received from the town engineer, Brian Curtis, who had been asked to review the application from the standpoint of parking requirements as well as to have a traffic engineer examine the plans. He was not successful in obtaining a traffic engineer's comments. However, the parking spaces as proposed exceed the requirements of the regulations. In addition, further accommodations have been made to increase the parking available.

Carmen Grippo addressed the Commission and explained that an additional seven spaces have been added, bringing the count up to 36 spaces. If more spaces were needed, the propane operation could be relocated to allow even more. Signage was discussed; Geoffrey Colegrove stated a maximum of 30 square feet is permitted. The Commission debated how the calculations are made for free-standing versus building signage, logos, gas prices, etc. A logo is a sign, but the question is where it is counted. Dave Foley read from the regulations, which includes window signage as part of the count; however, virtually every business in town would be in violation because of that if it were enforced.

Geoffrey Colegrove recommended that free-standing signage only be used—to a maximum of 42 square feet if it is a certain number of feet from the road. If it is nearer to the curb, only a 30-square-foot sign is permitted. Carmen Grippo indicated that Mobil also has requirements.

There was no public comment on the application.

Geoffrey Colegrove stated that he had spoken with Bill Milardo, town sanitarian, who is reviewing the flow requirements for both Subway and Dunkin Donuts. He has not yet had a chance to review them and make a conclusion as to the adequacy of the septic system.

The health matter (water/septic) is a requirement of the regulations. The parking issue is what prompted the review by the Commission. Brian Curtis and Pat Benjamin have reviewed the whole issue and there appears more than enough parking on site to accommodate the proposed uses. Leaving off the propane operation until usage is determined was a good recommendation. There is no reason that Mr. Grippo cannot continue with the excavation activities. Geoffrey Colegrove recommended that a condition of any approval stipulate that the propane tank will not be installed until approved by the Commission.

Hopefully at the July 6 meeting the signage plans can be presented and the town sanitarian will have completed his review.

Motion by Richard Eriksen, seconded by Gene Riotte, to continue the public hearing to July 6 for a request to modify a previously approved Special Permit to accommodate Grippo's Mobil Services Center, Subway and Dunkin Donuts, 349 Main Street, to allow for all unresolved issues to be resolved. Motion carried unanimously.

June 1, 2005

Page 9

Motion by Dave Foley, seconded by Gene Riotte, to reconvene the regular meeting. Motion carried unanimously.

6. Bryan Esparo, Request for a Home Occupation Permit for an Office for Construction Business, 36 Bailey Road

The public hearing was continued to July 6.

7. Peter Grippo, Request to Modify a Previously Approved Special Permit to accommodate Grippo's Mobil Service Center, Subway, and Dunkin Donuts, 349 Main Street

The public hearing was continued to July 6.

8. Christopher Ezzo, Request for Home Occupation Internet Business, 8R Stagecoach Road, Durham

Christopher Ezzo addressed the Commission, stating that he is seeking approval from the Commission to operate a home occupation for an internet business. He will have a web site and an office area in his house. He will be providing all deliveries via a drop-ship service (no inventory at the house), no trucks in/out of the property, and no signage planned for the business.

Geoffrey Colegrove indicated that there is a requirement of the home occupation permit to notify all abutting neighbors (within 100 feet of the property line) by certified mail. This must be done at least 10 days before the next meeting date (July 6).

George Eames apologized to the applicant for him not receiving the appropriate information at town hall regarding the requirements of the home occupation permit application. Information should also be provided to all Commission members in their packets regarding home occupation applications so that they can be reviewed in advance.

9. Northern Heights Subdivision (town of Guilford) Adjoining Crooked Hill Road

George Eames stated that there has been correspondence about this project. He was notified by the Fire Chief, Steve Levy, that he had heard that the town of Durham will be first responder for all emergencies at the project; however, the fire department has not yet been apprised of this. A letter from Chief Levy was read into the record noting his concerns; the first selectwoman, Maryann Boord, was copied on this letter.

A letter was sent by Geoffrey Colegrove to the project engineer detailing the requirements of the Planning and Zoning Commission. Prior to any activity related to Crooked Hill Road in Durham, the following are needed: (1) 8-24 review of the proposed road improvements by the Planning and Zoning Commission; (2) review of proposed road improvements by the Durham Inland Wetlands Commission; (3) agreement with the Durham Board of Selectmen regarding the road improvements; (4) consideration of a donation of the open space within town limits to the Town of Durham.

June 1, 2005

Page 10

Richard Eriksen noted concern that discussions appear to be continuing between the town of Guilford and Durham's selectmen; however, the ancillary commissions in town (Planning and Zoning, Inland Wetlands, emergency services) are not being notified.

Geoffrey Colegrove indicated that there had been previous requests regarding notification of the appropriate commissions/agencies in town. This is not an insignificant project; 30+ homes will have an impact on the community. The emergency services coordination issue has been on the table for at least six weeks; however, there has been little follow through from Guilford on this, apparently.

Richard Eriksen stated that the Board of Selectmen should not be unilaterally negotiating and approving this project. There are many agencies/commissions that should be involved. The Board of Selectmen cannot authorize emergency services.

George Eames indicated that Chief Levy's message to the Board of Selectmen stated his recommendation to hold off on any approval until the emergency services had been fully reviewed. David Herr, with the volunteer fire department in Durham, was in attendance. Dave Foley recommended that the fire department obtain a copy of the subdivision plans. Geoffrey Colegrove will attempt to obtain plans.

Dave Foley stated that all of the involved/interested commissions in Durham should advise the engineer/developer/town of Guilford that there are certain requirements that must be met. Dian O'Neal concurred, stating that individual letters should be sent.

Geoffrey Colegrove noted that a letter has already been sent to the First Selectwoman's office. He will follow up with a request for five sets of plans to be sent to the town hall for those commissions/people in Durham to be able to access.

10. Payment of Bills

Motion by Ralph Chase, seconded by Jackie Snow, to approve payment of the following bill:

- Midstate Regional Planning Agency — \$5,772.41 (April expenses)

Motion carried unanimously.

11. Approval of Minutes

Motion by Ralph Chase, seconded by Dave Foley, to approve the minutes of the May 18, 2005, meeting as presented. Motion carried, 7-1, with all in favor with the exception of Jim Kowolenko (in abstention).

12. Town Planner's Report

Geoffrey Colegrove indicated he had discussed the road situation at Bertin Heights Road off Carriage Drive. No matter where the driveway is moved, light is going to shine on the lot opposite the entrance. George Eames pointed out that this was a provision of the original approval. However, Dave Foley noted that it is something that simply cannot be practically done.

June 1, 2005

Page 11

Geoffrey Colegrove suggested trees could be planted on the property; this would represent the only solution.

With regard to the bond, Brian Curtis recommended that \$8,490 plus \$3,000 be retained. The bond will cover completion of the street trees, road sign, and erosion and sedimentation control. This should be retained until vegetation is firmly established in all areas.

Motion by Richard Eriksen, seconded by Gene Riotte, to maintain the bond for Berten Heights Road at \$11,490.00. Motion carried unanimously.

13. Miscellaneous

Ed Grimes advised that the new posts are up for the sign at Durham Village. Richard Eriksen suggested that the deadline be extended for erection of the sign since progress is being made.

To George Eames' query regarding bonds being held by the town of Durham, Geoffrey Colegrove stated that he had met with Ellen Mauro. The system crashed in July of 2003. She is currently developing a list to reflect the bonds/issuers. These are the short-term bonds.

All the funds are in one account; the question is how much belongs to whom. Richard Eriksen suggested a notice could be placed in the newspaper asking that people with receipts for having posted a bond present them to the town for reconciliation/payment; after a certain period of time, unclaimed funds could roll into the general fund. The Board of Selectmen would have to approve and handle this.

George Eames indicated that a copy of the agenda of a May 10 meeting of the Siting Council had been received concerning modifications to the tower at Old Blue Hills Road in Durham. The modifications were approved.

Gene Riotte apologized for his absence from three previous meetings; school-related business necessitated this. He referenced Mr. Jackson, his neighbor, who had applied for a home occupation permit and conversion of his residence and accessory apartment into three dwellings. Mr. Jackson is no longer living in Durham. He is still doing business as Jackson Siding and Window of Durham. It is no longer an authorized home occupation because the operator of the business is no longer a resident.

Geoffrey Colegrove will follow up on the Jackson/home occupation matter.

Motion by Gene Riotte, seconded by Dian O'Neal, to adjourn the meeting at 10:00 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
6/8/2005