

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF MARCH 7, 2007, MEETING

Present

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

Town Planner: Geoffrey Colegrove

Alternate: Mike Geremia

Absent

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

Alternate: Brian Ameche

The meeting was called to order by Richard Eriksen, Vice 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 Dave Foley, seconded by Ralph Chase, to approve the agenda of the March 7, 2007, meeting as amended to include discussion of the Grange Hall, potential change of zone (6a). Motion carried unanimously.

2. Possible Zone Change, William and Dottie Smith, Grange Hall

Jan Melnik read into the record a letter from William and Dottie Smith describing their intentions to convert the Grange Hall into a retail business that would sell gift items, dried flower arrangements, etc. A change of zone for the entire district (approximately 16 properties that currently allow for professional offices in the Main Street Historic District) will be pursued. A public hearing will first be necessary.

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It was noted that, if approved, such zone change would affect all of the properties in this special zone—thus allowing retail sales in all of them. No public hearing sign is required for a general zone change as it does not apply to one specific property.

Geoffrey Colegrove indicated that, practically speaking, there are only about 11 of the subject buildings that could have professional offices with retail sales.

The public hearing will be held on April 4th.

A notice will be published in the newspaper. It was also noted that even though a public hearing sign is not required, interested residents will likely read about the April 4th public hearing in the *Town Times* (based on a review of the minutes of the March 7, 2007, meeting).

3. Public Session

Diana Cruise addressed the Commission. She asked the status of the lighting problem at Murphy Pool. Geoffrey Colegrove indicated that he had forwarded the materials to Attorney Thomas Byrne; a letter will be sent to Mr. Murphy.

Sandi Friers, 23 Brittany Drive, addressed the Commission. There are ATVs that have been crossing town-owned property and individually owned property along Brittany Drive. Because ATVs need to be registered with the Motor Vehicle Department, local enforcement officers can enforce state statutes (that they may only cross public roads perpendicularly [like snowmobiles]). The ATVs have also been crossing wetlands. Geoffrey Colegrove noted that he had spoken with the Inland Wetlands Commission about this; he then suggested she speak with the First Selectman.

Sandi Friers also mentioned that a property at 77 Brittany Drive apparently is running a commercial oil business from the house. Geoffrey Colegrove indicated that the agricultural use of the property (greenhouses) is permitted; it was his understanding that the fuel was for the greenhouse. Sandi Friers stated that the truck says “Fuel & Service, LLC.” There is also a full-size bulldozer on the property. The oil truck is coming onto and out of the property at all hours of the night, creating a noise nuisance and perhaps environmental hazard. Geoffrey Colegrove will have the Zoning Enforcement Officer look into this situation and have a report at a subsequent meeting of the Planning and Zoning Commission.

Finally, Sandi Friers stated that Mr. Catania is running a commercial excavating business out of his home at 25 Brittany Drive. The noise is a problem, as is the fact that a full-size commercial grader is “running up and down the street.”

In both the case of the oil truck and the excavating grader, both businesses list their residential addresses as business addresses.

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Geoffrey Colegrove stated that the inspection of Brian Esparo's property on Bailey Road, originally scheduled for March 2, was postponed until March 5 because of heavy rain. The property was fully walked, photographs were taken, and the one vehicle in question (pickup truck) will be removed from the site. Another vehicle, a jaguar in reasonable condition, qualifies as the one unregistered vehicle that can be on the site. Brian Esparo is in the process of construct a building on his property to accommodate some of his "toys." Once the building is up—by the fourth of July, according to Brian Esparo—the incidental equipment and vehicles on the property will be garaged.

Brian Esparo stated that he wished to clarify for the record that he had had his day in court and "had lost." He said he was not at the meeting "to buck the system." He has been asked to clean up the site. However, he stated that he has 60 members of his immediate family, many with trucks, plows, backhoes—and his driveway is used when they visit. Sometimes they stay overnight and sometimes people leave cars at his property when they are on vacation.

He stated that a continuing concern and problem was what he characterized as an invasion of privacy with the "flashing of a camera over the fence" by his neighbor, Jim Piotrowski. He would like to see this situation stopped.

Richard Eriksen commented that when there are problems in neighborhoods between neighbors, the conflicts usually arise because someone is either not doing something they're supposed to ... or doing something they shouldn't be doing. He stated that with Brian Esparo's commitment to erect the barn on his property by July 4th (in order to store the equipment and vehicles that are currently scattered about the property), this will help to resolve some of the problem.

Brian Esparo indicated that work had progressed, but upon hitting ledge, delays occurred. As soon as it is warm, work will continue; again, he stated that the barn would be complete by the 4th of July (coincident with a large family party he hosts).

Jim Piotrowski, 48 Bailey Road, stated that he doesn't care about the dirt bikes and toys; rather, it is the welding on work trucks that occurs at the property and trucks coming in and out of the property along with stripping of trucks and work being done on construction equipment that, to him, constitutes a business operation being run from the residential area.

Brian Esparo denied that he was running a business from the property. He stated that in 2005, he was given a cease-and-desist order and told he could not run his snowplow business. His trucks meet at his home before every storm. He characterized the situation as being one in which he and his neighbor are different people. "Until one of us moves, we will always have this problem."

Richard Eriksen reiterated that Brian Esparo is not allowed to run a business from the property. There cannot be more than one unregistered vehicle on the property. The

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miscellaneous equipment and vehicles must be stored (referencing, again, the barn to be complete by July 4th of this year).

Brian Esparo also stated that the sanders will be gone from his property in a week (for sale via eBay).

Geoffrey Colegrove stated that those present on the site inspection on March 5 found the property to be in good shape.

Brian Esparo stated that some of the traffic to/from his house is by employees—some to feed his animals. In addition, construction vehicles are sometimes swapped. He noted, for the record, he also pays his taxes.

Richard Eriksen stated that noise complaints are civil matters that should be addressed through the Board of Selectmen.

Jim Piotrowski stated that he has been complaining for two years about a persistent pattern of business use of the property.

Tom Russell noted, for the record, that he has observed some of the former equipment stored at Brian Esparo's property now at 2081 Middletown Avenue in Northford; Brian Esparo acknowledged that he had purchased this property and was moving some equipment there. Brian Esparo also stated that he does some of what he does at his property "because of spite, because it irritates" his neighbor (keeping sander on residential property). He added that no one would appreciate or like having pictures taken of their activities from the property line on a constant basis.

Richard Eriksen admonished Brian Esparo not to say that he is "putting his sander up there (at his house) to spite his neighbor." Brian Esparo reiterated that he had bought the sander to sell "to spite him." He stated that he might buy things that are "not as attractive or as normal as other people do (toys)," but they fall into the same category—all of it is for sale.

Richard Eriksen then stated he hoped he wasn't hearing that a retail operation was being operated at the property.

Brian Esparo apologized for getting emotional. He bought the property on Bailey Road a few years ago and he does have to make a living—but he stressed that he was not making that living out of his house. The house is for family and friends.

It was agreed that the Commission would make one more visit to the property, which was scheduled for March 16 at 5:30 p.m.

Motion by Ralph Chase, seconded by Tom Russell, to recess the regular meeting at 8:10 p.m. for the public hearing. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: CT Area Classic Thunderbird Club
Owner: Regional School District #13
Location: Pickett Lane
Application: Special Permit for a One-day Event for an Antique Auto Show and Flea Market to be Held on July 22, 2007

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

Town Planner: Geoffrey Colegrove

Alternate: Mike Geremia

Vice Chairman Richard Eriksen 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.

Fred Klaus addressed the Commission on behalf of the Connecticut Area Classic Thunderbird Club. This is an annual process—seeking a permit for the one-day classic auto show and flea market event held on Regional School District #13 grounds. A permit has been provided by the Board of Education. No changes from the previous years' programs are planned. The event is set up on Saturday (lining the field) for the all-day Sunday program. Benchwarmers will provide food, as they've done in the past, and there will be auxiliary police coverage.

Jim Kowolenko and Dave Foley both endorsed the event as well-run.

Motion by Ralph Chase, seconded by Mike Geremia, to close the public hearing of Fred Klaus, Connecticut Area Classic Thunderbird Club, request for a one-day special permit, antique auto show and flea market, to be held July 22, 2007, Pickett Lane. Motion carried unanimously.

Motion by Ralph Chase, seconded by Tom Russell, to reconvene the regular meeting at 8:13 p.m. Motion carried unanimously.

4. Fred Klaus, CT Area Classic Thunderbird Club, Request for a One-Day Special Permit for an Antique Auto Show and Flea Market to be Held on July 22, Pickett Lane

Motion by Dave Foley, seconded by Jim Kowolenko, to approve the application for a one-day special permit for Fred Klaus, Connecticut Area Classic Thunderbird Club, to hold an antique auto show and flea market, to be held July 22, 2007, Pickett Lane. Motion carried unanimously.

5. Continuation of Public Session

Joe Davis, Mauro Drive, addressed the Commission. He stated that he had received a certified letter from Pat DiNatale two days earlier regarding plans to build an eight-foot game fence directly on his property line (the two properties are adjacent to one another). His understanding after reviewing the regulations was that the fence had to be at the setback from the property line; if it were to be directly on the property line, the property would need to be surveyed prior to installation. He thought that there was also a height limitation (six feet at the property line, eight feet if at the setback line).

Joe Davis discussed some of the history of the parcel. With the approval of a subdivided lot last year, the rear line of one property became the front line of the other parcel.

Geoffrey Colegrove indicated that the Department of Agriculture does fund installation of game fences; they are usually of a heavy-duty wire construction (square grid) with iron posts and are generally about eight feet tall. A permit is required to do this. If the eight-foot height is desired, the fence would have to be installed at the setback.

The regulations do not specifically state if a permit is required for fences for agricultural purposes; therefore, the Commission will require that a permit be sought.

Richard Eriksen suggested that Pat DiNatale be sent a letter asking him to come before the Commission for a permit. This will be sent via certified mail.

Joe Davis also referenced the one-lot subdivision from a year ago (that had previously been labeled not a building lot). In referencing the minutes of the September 20, 2006, meeting, he stated that it had been represented that there was an approved culvert for a wetlands crossing. However, Joe Davis stated that there was not a culvert. Pat Benjamin, in attendance at the meeting, stated that he had done the permit for the wetlands crossing, which was approved by the Inland Wetlands Commission. It may be that it hasn't been installed yet.

For the record, Joe Davis noted that he had purchased one of the two properties accessed by a right-of-way (shared access, 25 feet each); his was the former Whitticomb property.

He stated that the balance of Pat DiNatale's land is not landlocked. The easements over the property went with both the York (now DiNatale) and Whitticomb (now Davis) properties. The access cannot be eliminated. Geoffrey Colegrove indicated that this was likely a civil matter.

In terms of the Commission approving anything presented/certified by engineers, there is always the possibility of appealing a decision—but this generally must be done within two weeks of a decision. This matter is long past the point of an appeal, leaving civil remedies.

Joe Davis asked if it was customary to approve two-bedroom septic systems in the towns of Durham and Middlefield. While rare, this is allowed. The State of Connecticut requires a two-bedroom system at minimum. He also stated that he believed when the Mauro Drive subdivision was originally constructed, covenants stipulated three-bedroom homes. Geoffrey Colegrove stated that there were no such covenant provisions.

6. Nicholas Laudano, Request for a Special Permit for an Earth Excavation and Removal Permit to Create a Pond, 179 Parmelee Hill Road

Pat Benjamin addressed the Commission regarding the owners' desire to secure an earth excavation permit in order to create a pond. It will be about half an acre in size and 14 feet in depth. All excavated material will be removed from the property.

A permit will also be sought from the Inland Wetlands Commission. Harry Hall, the fire chief, is reviewing the plans. There will be a pull-out along Parmelee Hill Road with a 30-inch manhole and 18-inch line for fire access. All material must be removed from the site per the Army Corps of Engineers permit. There will be swamp mats and wood planks installed.

The total volume of material to be removed is about 4,890 cubic yards. Work is proposed to occur in July and August. Special notes will be on the plans for earth removal and the construction sequence. Hours of operation for trucking equipment are proposed at 7 a.m. to 7 p.m. weekdays and 7 a.m. till noon on Saturday (no excavation on Sundays or holidays). Access for the trucking equipment will be through the applicant's driveway. Seven trucks will be used for hauling—which should require about two weeks to complete the project. This is roughly 250 truck loads (23 trips a day). If the operation were to end earlier than 7 p.m. weekdays, then it might extend for three weeks.

There is no blasting proposed. All truck traffic will exit out Parmelee Hill Road to Route 17.

No filling of the unexcavated wetlands area is allowed (permanent or temporary). If a dewatering area is necessary, the Department of Environmental Protection has a special Type I dewatering area that would be installed.

A standard cash bond will be posted for erosion and sedimentation controls. The pond is being built for recreation purposes as well as fire department access.

Richard Eriksen stated that he would like to see the hours of trucking end earlier than 7 p.m.

Dave Foley noted concern with materials being dragged out onto Parmelee Hill Road and Route 17. He doesn't believe a tracking pad will take care of this problem.

A public hearing will be held April 18.

7. Stone Bridge Crossing, LLC, Request for a Special Permit for Active Adult Housing, Johnson Lane

Pat Benjamin addressed the Commission. This application is for the eleven acres remaining following the original Stone Bridge Crossing project about a year ago. Eleven units for active adult housing are proposed.

An 18-foot wide driveway is proposed; the average grade is 10% (at one point, it is 14% to reduce cuts). The existing detention basin will be used; it was deliberately oversized as part of the first project to accommodate these plans. One pipe will be resized. There is a zero increase in runoff post-construction.

There is no curb on the left-hand side of the road; a drainage swale will bring water into the drainage system and down to the detention basin. Everything is sized for a 100-year storm.

The buildings are proposed at 40 feet x 50 feet with two bedrooms. Septic systems and wells are shown on the plans. There will be 22-foot wide driveways.

Four top soil stockpiles are depicted on the site surrounded by silt fence.

A 20,000-gallon fire tank is proposed for the top of the hill. The existing pond will be cleaned out and turned into a fire pond (silting in has brought the depth of water to just 3-4 feet; cleaned out, it has a depth of 10-12 feet). Once the bridge plans are complete, the manhole will be designed.

There is no application before the Inland Wetlands Commission; there is no activity within 400 or so feet of the wetlands.

At the public hearing, elevations will be presented, along with landscaping plans.

The public hearing is scheduled for April 18. The State of Connecticut will not review the project until the town sanitarian has completed his review (state approval is required because it is over 2,000 gallons, yet under 5,000 gallons for septic discharge). There are 11 separate wells.

In terms of open space, it is proposed that the steep area of the parcel will be encumbered, along with the back area of previous lots to create a large corridor that connects to prior open space.

At the public hearing, Joan Molloy will address all legal issues related to the project.

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

The applicant was not in attendance.

Brian Curtis will do a formal review and it will be discussed when Rory Wilson is in attendance. It was noted that the Commission must keep a close watch on the dates of this application; if it lapses past 65 days from the time the application was filed and the Commission takes no action, the application is automatically approved. The applicant has not been in attendance at several of the recent meetings.

9. Payment of Bills

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

- Jan Melnik, Absolute Advantage — \$491.60 (minutes of February 7, 2007)
- Jan Melnik, Absolute Advantage — \$462.12 (minutes of February 21, 2007)
- Connecticut Federation of Planning and Zoning Agencies — \$90.00 (annual dues)
- *Middletown Press* — \$134.58 (new charges)

Motion carried unanimously.

10. Approval of Meeting Minutes

Motion by Dave Foley, seconded by Ralph Chase, to approve the minutes of the February 7, 2007, and February 21, 2007, meetings as submitted. Motion carried, 6-1, with all in favor with the exception of Tom Russell (in abstention).

11. Town Planner's Report

The lights at the new Durham Auto Center at the north end of Route 17 were discussed. One of the wall packs has been adjusted with a shield to determine if the solution is satisfactory; if it is, the other fixtures will all be corrected.

12. Miscellaneous

Release of the Greenland Realty bond is being tabled until issues concerning the piles of fill on the site are resolved.

Geoffrey Colegrove advised that the Arrigoni law suits had been decided in favor of the Planning and Zoning Commission; no appeals were filed.

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The Commission discussed having applicants provide extra copies of all plans for each Commissioner to have in their respective packet in advance of all public hearings and meetings.

With regard to road abandonment, Dave Foley suggested that the remainder of Mountain Road be proposed for abandonment to the Board of Selectmen. Geoffrey Colegrove will send a letter to this effect.

Motion by Ralph Chase, seconded by Mike Geremia, to adjourn the meeting at 9:07 p.m.
Motion carried unanimously.

Respectfully submitted,

Jan Melnik

3/20/2007