

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF MAY 4, 2005, MEETING

Present

Members: Brian Ameche, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Jackie Snow

Town Planner: Geoffrey Colegrove

Alternate: Ralph Chase

Absent

Members: Al Bradanini, Dian O'Neal

Alternates: Frank DeFelice, Gene Riotte

The meeting was called to order by George Eames, Chairman, at 7:30 p.m.
Ralph Chase was seated on the Commission in Al Bradanini's place.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Jackie Snow, to approve the agenda of the May 4, 2005, meeting as amended to reflect deletion of item #12 (J&J, Route 68). Motion carried unanimously.

2. Public Session

No business.

3. Jennifer Sisk, Crystal Real Estate, Discussion of Cease and Desist Order of Retail Sales, 179 Cherry Lane

Robert Sisk, Jennifer's husband, was in attendance. He indicated that they were not aware that they could not advertise. There was some confusion when he attempted to obtain a trade name certificate. The Commission clarified that they could only sell tack-related items/food for those clients stabling their horses at their barns. He assured the Commission that they would be in full compliance of their permit.

4. Mary Ryan, Renewal of Accessory Apartment Permit, 257 Mica Hill Road

Mary Ryan addressed the Commission regarding the renewal of the accessory apartment permit. There is no change to the structure and this approval would be in accordance with the regulations. This is only the second applicant in the Commission's memory to properly follow the regulations by seeking a permit renewal.

To Jan Melnik's query regarding the pending application Mary Ryan has before the Zoning Board of Appeals for several variances to construct a two-car garage, Mary Ryan indicated that this did not relate to the accessory apartment.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the renewal of an accessory apartment permit for Mary Ryan, 257 Mica Hill Road. Motion carried unanimously.

5. Payment of Bills

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

- Absolute Advantage, J. Melnik — \$419.48 (4/20/05 minutes)
- Absolute Advantage, J. Melnik — \$281.82 (4/6/05 minutes)

Motion carried 7-1, with all in favor with the exception of Jan Melnik (in abstention).

6. Approval of Minutes

Motion by Ralph Chase, seconded by Jackie Snow, to approve the minutes of the April 20, 2005, meeting as amended to reflect a substitution of PJM for Greenland Realty on page 4, paragraphs 3 and 5. Motion carried, 5-3, with all in favor with the exception of Jan Melnik, Dave Foley, and Brian Ameche (in abstention).

7. Town Planner's Report

Geoffrey Colegrove updated the Commission on the status of Trout Lily Road in Durham. Approximately 650 feet of road have been paved (widened to 18 feet) with a blasting agreement/paving agreement reached between Tony Cuomo and the neighbors.

The balance of about 450 feet will be paved to a width of 12 feet. This brings the site into compliance and will address longstanding issues at the site.

Geoffrey Colegrove advised that plans are moving forward for Grippos on Main Street to build the deli/convenience store that had been approved by the Commission previously. They are seeking to bring in, potentially, Dunkin Donuts as well as Subway. A new analysis of the water use at the site is being performed by town sanitarian William Milardo. The proposed uses are likely to generate a higher intensity of traffic than what had been originally proposed and approved. The Commission will want to see the plans to reflect traffic flows to/from the site, stated Richard Eriksen. Jan Melnik queried if the applicant is aware that drive-through facilities are not permitted in the regulations. The Commission will also want to examine hours of operation.

Geoffrey Colegrove will advise the Grippos that the Commission would like to review the site plan.

Regarding the signage at Durham Village, Geoffrey Colegrove will advise the occupants/property owner of a deadline of June 1 for erecting the new sign and removing the sandwich boards.

Motion by Dave Foley, seconded by Ralph Chase, to recess the regular meeting for the public hearings. Motion carried unanimously.

PUBLIC HEARING

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

Members: Brian Ameche, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Jackie Snow

Town Planner: Geoffrey Colegrove

Alternate: Ralph Chase

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

Attorney John Corona addressed the Commission regarding the subject application and reviewed the proposed site plan for the former Behrens site. The project engineer, Pat Benjamin, reviewed the changes made in response to comments from the town engineer, Brian Curtis. Out of concern for the trees at the front of the site along Route 17, a silt

fence and four-inch construction fence will be added to protect the trees during construction. Pat Benjamin stated that 10' x 20' parking spaces have been shown in the parking plan. The dumpster location to the side/rear of the building works well in the initial plans for the site; if an addition is constructed in the future, the dumpster will need to be relocated on the site. An erosion and sedimentation control blanket will be used during construction. Permanent grass seeding will comprise crown vetch and perennial rye grass along with creeping junipers at the front of the site. Wooden bollards will also be installed at the front of the property where the elevation changes with the slope. A reserve area for the septic has been added to the plans. A storm drain will be relocated to be more than 25 feet away from the existing well. The existing well will serve the current house; a new well will serve the new building.

In terms of the sign, while it has not yet been designed, it will be 15 square feet or less (the maximum allowed). No floor drains are proposed; appropriate means of storage will be used for all wastes and oils. The Connecticut Department of Transportation, District 1, will be reviewing the plans for drainage in the next six to eight weeks; they require the approval of the Planning and Zoning Commission before conducting their review.

To address the visibility of lights from the Pedersen home, Pat Benjamin indicated that eight 6-foot high white pines would be planted where trees had been previously removed. Lighting has been changed to metal halide lights.

In terms of maintaining the road, Attorney Corona explained that it is difficult to reach a common agreement when virtually all users of the road already have access arrangements protected by easements or other language. However, M&M Ventures will maintain the new portion of the road up to the point serving their site.

Brian Ameche asked for clarification of the footcandles generated by the proposed lighting. Pat Benjamin had already submitted a report describing the three fixtures on the front of the building and three on the back. These will have 70-watt bulbs at a height of 13.5 feet and produce .057 footcandles 30 feet from the light. There will be no uplighting; there is a painted lens and only the bottom of the fixture is open. The light posts will have 400-watt bulbs; from 47 feet away, there will be .05 footcandles; at the light itself, 10 footcandles are generated.

Brian Ameche expressed concern with possible glare as the light poles are viewed from Route 17 (then, approximately 25 feet in the air). Pat Benjamin indicated that the fixtures could be shielded or tilted at installation about 20 degrees. George Eames suggested that both steps would be wise to undertake at installation and Pat Benjamin agreed to do so.

Ron Mateas, 437 Main Street, expressed several concerns with the project. He described the proposed building as being surrounded by houses on three sides and felt that the uses were not fully defined—with no upper limits on the ultimate uses. He thought that a franchised lube center location could generate substantial traffic and also asked if there would be state emissions inspections conducted at the site as well as auto painting. These

generate concerns of air quality, odors, and noises. He asked that all work activities be limited to the interior of the structure with doors remaining closed other than during the entrance and exit of vehicles. He reflected on a comment from a Commissioner at the previous meeting, about the proposed use not being consistent with what the town would want for its gateway and suggested moving auto sales to the rear of the building and creating a wider buffer at Main Street. He hoped lighting could be kept as minimal as possible to prevent light trespass. In terms of retaining the trees on the site, he stated that the buffer would need to be at least equal to the width of the drip line from mature trees. He asked how floors would be washed and where that water would go, noting that the volume of runoff and contaminant levels should be controlled (i.e., no increase in peak runoff rates). He submitted his letter into the record detailing these concerns.

Pat Benjamin explained that there is very little increase in runoff for the site: 1.5 CFS for a 50-year storm. An underground detention facility is likely to be installed at the front of the property with an oil/water separator placed at the inlet to the catch basin. This has been discussed with the town engineer.

There are no plans for auto painting at the facility. In terms of protecting the trees, Pat Benjamin stated that when mature, the trees will ultimately encroach about six feet (overhang) over the fill in one area. In terms of traffic, there will be two bays for the quick lube operations—roughly six cars an hour at capacity. This is similar to subdivision peak flows in the morning and evening and very minimal; the Department of Transportation has agreed with this representation. The property is adjacent to an industrial zone, next door to a facility nearly identical in use, including the sale of used cars. It is not reasonable to require sales to be invisible from the road at the back of a site.

Attorney Corona indicated that it is not the intention to leave the garage doors open; however, during the hottest times of the year, it is common for similar facilities to have doors open to allow for ventilation. Speedi-Dry is used for cleaning the floors; it is biodegradable and then properly disposed. The normal hours of operation proposed for the facility will be 7:30 a.m. until 6:30 p.m., Monday through Saturday, and no business planned on Sunday. Attorney Corona indicated that the applicants would return to the Commission if the hours needed to be increased to a significant degree. Noise controls are already in place and the applicant certainly intends to be a good neighbor; however, it is not possible to promise that the front doors will be closed at all times.

Brian Ameche stated that while commerce is important, the site has prominence and the applicant would do well to take steps to enhance its neighborhood relationship by moving plantings to the top of the slope and making a serious effort to properly landscape the property.

Attorney Corona indicated that the owners are making a substantial investment to construct the facility and have every incentive to make the site look as good as possible. Moving plantings to the top of the slope would prevent the goal of any commercial or business activity. He also recapped the zones surrounding the property.

Geoffrey Colegrove indicated that a letter had been provided by the town sanitarian approving the leaching system and noting that a community water system could be avoided by simply having two wells (as proposed).

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

PUBLIC HEARING

2. Applicant/Owner: Greenland Realty, LLC
Location: 10 Mountain Road
Application: Request for a Special Permit to Remove 2,000 Cubic Yards of Traprock to Allow for Construction of Berm

Members: Brian Ameche, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Jackie Snow
Town Planner: Geoffrey Colegrove
Alternate: Ralph Chase

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 Al Bradanini's place.

Attorney Joan Molloy, with the firm of Loughlin Fitzgerald in Wallingford, addressed the Commission on behalf of the applicant. While she noted that much of the history of the site was familiar to the Commission, she wanted to place the facts into the record. The applicant appeared before the Commission beginning in the fall of 2003; in January 2004, a special exception was approved for the construction of a building for office/garage/trucks/equipment for Frank Melillo.

The business the company runs is that of a trucking company and Attorney Molloy stated that the applicant had represented this previously as using trucks to deliver materials to construction sites and storing trucks at the site, including some of the excess materials. Essentially, trucks leave the property in the morning, delivering materials to various sites, and then return at the end of the day. Equipment is stored primarily in the garage but, at times, excess equipment would be stored outside.

The Commission noted that what had been initially represented during public hearings was that the business would be a landscaping business and that excess materials such as mulch and small stone could be stored from time to time at the site.

Attorney Molloy then detailed some of the work which has already transpired at the site, including work with the town to install 1,000 feet of pipe along Old Mountain Road to enhance drainage. She stated that once work commenced, her client realized that there was far more rock than originally expected. This necessitated blasting and then the need for a temporary crushing operation. All the material was stored on the site, but it couldn't be used for the originally intended purposes. In order to complete the requirements of the site plan, in particular, to build the berm, 2,000 cubic yards must be removed. Up to 1,000 cubic yards is allowed for removal in the regulations, but a special permit must be secured for this volume. Some material has been brought on the site for construction of the berm (this is allowed). The applicant's ability to construct the berm is limited by the rock currently on the site; this must be removed for construction to begin, Attorney Molloy represented. She apologized for being unable to attend the meetings in April.

George Eames recapped some of the problems that have prompted neighbors to come before the Commission and the Board of Selectmen out of continuing frustration for many recent months. The original site plan was approved as presented with the idea of supporting the application of an individual seeking to do business in Durham. Critical to the success of the operation is conducting business in accordance with the regulations and requirements of the site plan. However, George Eames stated that apparently the applicant has had his own idea of how things should be done and this has left a "bad taste" in the mouths of the Commission members.

By way of explanation, Attorney Molloy stated that her client's experience with construction was limited to the construction of his own home some 20 to 25 years ago and the understanding that, during construction, "as long as you don't violate setbacks, you don't have a problem." He didn't realize, she asserted, that when there is a site plan approval for a commercial plan such as this, that is exactly what the town has approved and expects. Any changes must be presented to the Commission for approval. She added that the Commission can say that the applicant "should have known this," but that he has learned a lot of things and "if something could go wrong [at the site], it did go wrong." She has come before the Commission to remedy the problems, she has met with Geoffrey Colegrove. She added that the applicant will modify the site plan for the Commission's review to address the issue of the extra garage door and to make the berm two feet taller; however, she wanted to know what else the Commission would like to see so that a partial application is not rendered.

Richard Eriksen highlighted some of the Commission's sentiment in that the problems at this site have been ongoing for at least 16 months, much too long. What has occurred out at the site is not what was expected or approved. There is an area on the site plan labeled storage, yet at the entire northerly section of the site is a "huge pile of dirt." The applicant failed to address the issue of temporary stockpiling during construction. It should have been identified on the plans, but was not.

Furthermore, the original application presented the business as being seasonal in nature. Richard Eriksen also stated that the contour lines as reflected on the site plan must be

adhered to “without piles here, there, everywhere.” He also queried the presence of two very large tanks—these were not on the approved site plan and representation was specifically made before both the Planning and Zoning Commission and the Inland Wetlands Commission that there would not be tanks on the site and that there would be no repairs on the site.

Attorney Molloy clarified that the dirt pile on the site is actually topsoil being stockpiled to provide for final grading and the reestablishment of vegetation once the site work is completed. Because of the poor winter weather, work was delayed. However, she proposed three months, then stated the end of June for a goal in which to complete the work and appear before the Commission to report status.

The Commission was not satisfied with three months. It was noted that while an applicant does have five years in which to complete an approved site plan, the proviso is that there is *no operation of business* during that time and, of course, no issuance of a certificate of occupancy. A key sticking point with this applicant is that he has been aggressively running a full-scale operation without benefit of certificate of occupancy or a completed site plan.

George Eames suggested extending approval for 60 days and requiring Attorney Molloy to appear before the Commission during the first meeting in June and the first meeting in July to present progress reports. The second meeting could present a conflict for her schedule, she indicated.

Dave Foley disagreed with providing the applicant with 60 days. He noted that Mr. Melillo is operating a business from the location right now—with equipment and dumpsters on site. Mr. Melillo has represented that he “doesn’t have room to store materials in order to build the berm.” If he were to remove his trucks and dumpsters from the site, there would be plenty of room to move materials around, construct the berm, and complete the site. He stated that the Commission has been more than accommodating to this applicant—and that the applicant appears to have taken advantage and *continues to take advantage* of the Commission. To give another 60 days to the applicant is ludicrous, in his opinion. The applicant has already had 16 months and failed to demonstrate any productive work. He appears to be happy with the way things are, his trucks are operating, and “to hell with everyone else.”

Geoffrey Colegrove noted that the Commission’s counsel, Attorney Tom Byrne, had attended a special executive session with the Commission prior to the last meeting and proposed handling the problems in several steps. First, a permit is needed to get material off the site.

Dave Foley reiterated that meanwhile, the applicant continues to use the site for business operations and, not so incidentally, has the opportunity to make money from the sale of the 2,000 cubic yards of material at the same time.

Brian Ameche concurred, stating that the commercial use of the site must cease; the site is not in compliance and correction to address the site problems and bring the site into conformance with the approved plan must commence immediately.

Richard Eriksen stated that the purpose of the executive session with town counsel and the first selectwoman was to determine a prudent course of action—that is, allowing the removal of excess material first, then establishing the berm (to shield neighbors to a degree), then attacking the balance of the issues. The neighbors have been especially reasonable and the Commission has been more than reasonable, but the applicant clearly has not been reasonable.

Hours of operation were discussed. These were only specified for the temporary crushing operation. If rock removal were approved (2,000 cubic yards), hours would be stipulated.

Sandy Kovach, 89R Mountain Road, thanked the Commission for identifying the lack of integrity possessed by the operator of Greenland Realty.

Cindy Turcik, 9R Mountain Road, described the ongoing problems of truck traffic at all hours of the night and early morning and presented photographs. Virtually every truck into and out of the property must go by her home. This morning she was suddenly awakened at 4:00 a.m. by a loud truck. She recapped a recent day: truck leaves site at 4:00 a.m., new trucks begin coming onto site at 4:55 p.m., rolloff truck comes onto the site at 5:15 a.m., then leaves at 5:36 a.m., more drivers come into the site for the next few hours. This activity continues seven days a week. She questioned the safety of tractor-trailer traffic on Old Mountain Road; one recently used her driveway to back around in.

Fred Serle, Wallingford Road, stated that he had difficulty understanding all of this truck traffic, including at 11 p.m. on a Sunday, for a landscaping business. He noted that a guardrail was taken out by a truck—then later repaired. He pointed out that traffic backs up along Route 68 to accommodate trucks turning into/out of Old Mountain Road.

Darcy Serle, Wallingford Road, stated that while the neighbors realized there would be movement of earth materials to prepare the site in accordance with the approved plan, no one anticipated the ongoing nature of the operations or extended timeframe over which it would take place. However, she cannot imagine how it is appropriate to be moving rocks, soil, and trucks at 10 or 11 p.m. and having tractor-trailers traverse the road at those hours. She queried if Frank Melillo has these types of activities occurring next to the house he lives in on a 24/7 basis. It is a complete lack of respect for everyone in the neighborhood.

Dave Dingwell, 89R Mountain Road, stated that although some lights had been turned off, he frequently has lights shining into his living room and bedroom at 2 a.m., 3 a.m., and 4 a.m. and ongoing noise from 18-wheel tractor-trailers.

William Corvo (William Corvo Consultants, Industrial Park Road, Middletown) addressed the Commission on behalf of Bill and Diana Cruise. He stated that he has been acquainted with the Cruises and this property and area since 1965. He provided a detailed handout (entered into the record) annotated to reflect sections of minutes referencing the Greenland application and approval. He noted that the Cruises have had continuous discussions with the applicant and understood from Mr. Melillo's representations that the operations would be limited to a small office and garage for a landscaping business. Throughout the discussions, the Cruises were continually reassured about the operations and the Cruises attempted to be very positive throughout the site development process. However, after the permits were issued, it appeared that the Cruises' trust in Mr. Melillo has been misplaced.

William Bill Corvo reviewed the timeline of the approval, pointing out his belief that the Commission had never received formal architectural plans, signage, and lighting details (Geoffrey Colegrove later clarified that these documents had been submitted). He noted that the Cruises had been extremely reasonable and went along with the plans in good faith. He suggested that any amendment to the site plan include specific hours of operation. He also noted that a two-foot extension in the berm will not provide enough protection, in particular for the 18-wheel tractor-trailers that appear to be being used for the operations.

In replying to the concerns raised throughout the hearing, Attorney Joan Molloy indicated that the description of Greenland Realty's application was misleading. It was never represented as a landscaping business. Rather, landscaping materials would be stored on site along with running a trucking business and using other types of equipment. She referenced test holes conducted on portions of the property as not being indicative, necessarily, about the amount of rock ultimately found. Test holes should never trigger an automatic presumption of what comprises a particular property. At the time that she composed her April letter to the Commission, she thought that the Commission was taking the position that the applicant could not bring materials onto the site to construct the berm. Attorney Tom Byrne later confirmed that materials *can* be brought onto the site for berm construction.

Attorney Molloy also expressed great offense to the statement that she had misrepresented the application to the Commission. She stated that she had made every effort to be cooperative and extremely polite with the Commission and never knowingly misrepresented any activities to the Commission. She cited personal offense that she was being accused of doing that. She stated that what has been built is perhaps different from what was approved, but stated that throughout the process, she had worked very hard to be truthful and to have communications with the Cruises. Yet, she stated that since the problems have begun, she has not received one phone call from the Cruises or any other neighbors. Had that occurred, perhaps some of these problems might have been avoided. At this point, all she can do is try to develop a solution amenable to all parties. On behalf of her client, she stated a willingness to return to the Commission in 30 days, asked for

consideration from the Commission for approval to remove the 2,000 cubic yards of material, allow construction of the berm, and then review status.

Diana Cruise, 49R Mountain Road, addressed the Commission, querying how it was the responsibility of neighbors to contact the applicant's attorney to inform her of what was taking place inappropriately at the site. She stated that throughout the summer of 2004, truckloads of dirt were continuously brought in, but there was never any watering down at the site, as stipulated in the site plan. As of today, truckloads of processed rock continue to be removed from the side. Geoffrey Colegrove clarified that the applicant does have approval (since the last meeting) for removing up to 1,000 cubic yards of material. However, from Commission discussion, it appears clear that there's no real way of knowing how much material has already been removed from the site.

William Corvo reflected that it is not incumbent upon anyone in the neighborhood to go to anyone but the Planning and Zoning Commission with concerns about the site.

Dave Foley suggested that the site could probably be stabilized in two weeks with the equipment already on site; if the trucks were removed from the site immediately, the berm could be built in another two weeks. The applicant already has a permit and a requirement to follow the site plan—he should simply do it.

Geoffrey Colegrove recapped a problem surfacing when a complaint about traprock leaving the site was made. He went out to the site on two different occasions. The state police were called as well as the Department of Transportation and Durham's Public Works Department. Mr. Melillo was questioned; material was being brought to a friend's driveway. He was informed he did not have permission to do that.

The bottom line is that the site needs to be closed up in accordance with the approved site plan; the berm needs to be built and it can be enhanced by two feet without the need for a revised site plan.

William Corvo stated that the applicant should not be allowed to run his operations without a certificate of occupancy. He created his own problems and is apparently seeking the help of the Commission in letting him work out the problems while continuing to run a business. He suggested that the Planning and Zoning Commission has the duty and obligation to handle the situation and defend its Design Development District.

Sandy Kovach asked for clarification of the hours of operation. George Eames reiterated that hours of operation were stipulated for earth removal, crushing, and screening. Normally, they are not imposed on a regular business operation.

A cease-and-desist order was originally issued by the Commission on March 30. There is no restriction about bringing in structural fill to create the berm. Up to 1,000 cubic yards of material can be removed (as of April 2005).

Brian Ameche stated that a berm can be built with anything: top soil, peat, structural fill. The latter is very expensive and typically placed where buildings will be constructed. It seems to him that these are just roadblocks being thrown into the Commission's path. He shared Richard Eriksen's concern of being misled and not getting the straight story from the applicant. He stated that the commercial activity on the site must cease—the applicant does not have permission to conduct a commercial business now, there are no permits or certificates of occupancy in place to allow this. He has no legal right to conduct the business until the site plan, as approved, is enacted in its entirety.

Roger Kleeman, Tuttle Road, queried the status of the building being on the grand list (prior to issuance of a certificate of occupancy). Evidently, in October, the building will be evaluated with an assessment based on percentage of completion.

George Eames reiterated the Commission's intent to fully resolve the problems associated with this site.

Motion by Ralph Chase, seconded by Jackie Snow, to close the public hearing of Greenland Realty, LLC, request for special permit to remove 2,000 cubic yards of traprock to allow for construction of berm, 10 Mountain Road. Motion carried unanimously.

PUBLIC HEARING

3. Applicant/Owner: Arrigoni Enterprises, LLC
Location: Old Mountain Road
Application: Request for a Zone Change from Design Development District (DDD) to Heavy Industrial District (HID)

Members: Brian Ameche, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Jackie Snow

Town Planner: Geoffrey Colegrove

Alternate: Ralph Chase

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 Al Bradanini's place.

Attorney Richard Carella addressed the Commission on behalf of the applicant and introduced the site engineer, Pat Benjamin, to review the site location. The property is approximately 11 acres in the Design Development District.

A concept plan for the site was presented with possible plans (which would be presented under separate applications) for two 10,000 square foot buildings, one 5,000 square foot

building, and one 7,500 square foot building. The difficulty with the site is that because it is in the Design Development District, crushing and removal of rock is prohibited; however, in order to develop the site according to the desired plans, this step is necessary. Hence, an application for converting the zone to Heavy Industrial (a zone in which excavation, crushing, and removal is allowed) has been prepared.

Pat Benjamin stated that the entire site is wooded now. However, preliminary testing shows that about 85% of the site is traprock soils with the front portion of the site Charlton soils.

Blasting would need to take place with about 70,000 cubic yards of material estimated for removal. Elevation on the site changes from about 354 feet to some 86 feet higher. Blasting and grading would create a platform on the site for construction. Excavation will be necessary for probably 2 to 2.5 years—to entail blasting, crushing, and removal. Blasting would occur on approximately 30 to 50 days per year and crushing/removal would transpire over another 30 to 50 days per year.

The site does have specific site limitations with regard to how many buildings can be accommodated based upon septic capacity.

The alternate to the proposed plan is to allow development without removal and limited excavating and crushing on site; however, the net result, according to the applicant, is an unusable type of property for Design Development District purposes. The site itself is a very steeped slope. If building were to be stacked in a tiered fashion all the way up the hillside, they would be visible from all around. It was noted that the parcel already borders Heavy Industrial zone property.

Jim Kowolenko reflected on the fact that whether the zone is Heavy Industrial or Design Development District, it seems that at least two years will be required for removal of rock, based on the applicant's site development planning. Effectively, the site is first a gravel operation. He suggested the applicant reconsider stacked buildings on the site.

Pat Benjamin explained the constraints to building a terraced project; however, the calculations have not yet been performed regarding amount of material to be blasted/removed if the site were to be approached that way. It is likely that a conservative estimate for removal would be 50,000 cubic yards.

Attorney Carella pointed out that because the Design Development District does not allow for the blasting and removal, the change in zone was being sought. The applicant did not want to try to obtain a waiver of the regulations.

Geoffrey Colegrove distributed a letter from Frank Lane of Tilcon Minerals indicating that the company, while aware of the application, was taking a neutral stance regarding the desire for a zone change.

Attorney Carella stated that the applicant had attempted to speak with some of the neighbors about the proposal (conversations did not occur with all of them, however).

To Dave Foley's question regarding the possibility of an access other than Old Mountain Road, the response was negative.

William Cruise, Old Mountain Road, spoke, asking that the Commission not lose sight of the parameters of the Design Development District, reminding members that it took years to get the district in place. He also noted that based on his years in the construction industry, gravel removal is money—\$14 per cubic yard. The site could be designed without the removal of any gravel from the site. He also stated that it would take about two years to sell 70,000 cubic yards of material.

Roger Kleeman, Tuttle Road, addressed the Commission. He asked if the land adjacent to the property, owned by Tilcon, would still have a wall left to protect the site/separate it from the quarry. This would be the case. The property of the subject application is owned by Arrigoni, LLC, presently.

Carol Kleeman, Tuttle Road, stated her preference that the parcel remain in the Design Development District zone and not convert to Heavy Industrial. She also reflected on the traffic problems along Route 68 and into/out of Ozick Drive, in particular, truck traffic. The proposed gravel operation would only exacerbate the present difficult scenario. She added the projects can easily be constructed without blasting and in a tiered format—this is done all over the United States and in Europe.

Darcy Serle asked if the Commission did agree to approve a zone change to Heavy Industrial, would it "switch back" to Design Development District after the 2.5 years of blasting and gravel removal. This would not happen automatically; there would need to be a similar application, hearing process, and vote to change the zone again. She stated that she was not in favor of changing the parcel's zone to Heavy Industrial.

Diana Cruise addressed the Commission. She also stated a preference for the parcel remaining in the Design Development District; she suggested that perhaps Tilcon Minerals might be interested in buying the land.

Sandy Kovach indicated that her home has a crack in the foundation, believed to be brought on by the Greenland Realty activities; she asked what would happen if there were blasting even closer to her home from this proposed application.

Attorney Carella stated that the applicant is not seeking to operate a gravel operation. It is simply because the Design Development District language does not allow for the type of excavation that will be necessary at the site that a zone change was being pursued. They would certainly be open to receiving a waiver of the regulations of the Design Development District to enable excavation, blasting, and earth removal to accommodate construction.

Geoffrey Colegrove stated that because the Commission did not want to have an ongoing mining operation in the Design Development District, the language was written the way it appears. Maintaining a quarry operation for 2.5 years would exceed any parameter the Commission had in mind when initially crafting the new regulations for the zone.

Fred Serle asked that if the development proceeds, will the client construct a new road for Old Mountain Road (widen/pave). Right now, it is a town road.

Motion by Dave Foley, seconded by Jackie Snow, to close the public hearing of Arrigoni Enterprises, LLC, request for zone change from Design Development District to Heavy Industrial District, Old Mountain Road. Motion carried unanimously.

Motion by Ralph Chase, seconded by Dave Foley, to reconvene the regular meeting at 10:37 p.m. Motion carried unanimously.

8. M&M Ventures, LLC, Request for a Special Permit for Automobile Sales and Service, Route #17 and Parsons Lane

Motion by Jim Kowolenko, seconded by Jan Melnik, to approve M&M Ventures, LLC, request for a special permit for automobile sales and service, Rt. #17 and Parsons Lane, subject to the Department of Transportation's requirements for detention basin/stormwater and drainage adjustment; shoebox lights on building, Route #17 side, will be angled toward building; lights on poles will be shielded; bond estimate will be submitted to the Commission; no signage will be allowed on cars; all items will be in conformance with the town engineer's requirements. Motion carried unanimously.

9. 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

Considerable discussion ensued by Commission members regarding the most appropriate action to take concerning this property. Dave Foley reiterated, with strong agreement from Brian Ameche and Jan Melnik, that the applicant does not need to remove 2,000 cubic yards of material from the site in order to build a berm; the applicant simply needs to cease the commercial business operations, remove those vehicles and equipment from the site, and then use the site to perform all activities of the site development plan, including construction of the berm.

Richard Eriksen stated that the site needs to conform to the approved site plan. However, the best means of achieving that were debated at length.

Dave Foley stated that there is no reason that the applicant should be allowed to 'benefit' from the sale of gravel from this situation, in other words, continuing the commercial business and receiving gain from a business which has no certificate of occupancy or

right to be operating. The neighbors need to have the protection afforded by the construction of the berm.

George Eames was emphatic that the site be properly completed and in accordance with the site plan. He reiterated that the Commission had input from its counsel, Attorney Tom Byrne, with a sequence of steps proposed. He suggested that a decision on removal of the traprock (which the Commission was initially considering denial of) be tabled to allow the applicant a few weeks to demonstrate good faith, construct the berm, and cease commercial activities. Because the hearing is closed, the Commission now has 65 days in which to act upon the application (removal of 2,000 cubic yards of material).

Brian Ameche suggested the Geoffrey Colegrove visit the site at least several times a week to ensure that progress is being made. Attorney Joan Molloy will attend the Commission's meeting the first week in June to report on progress as well. The applicant must focus on bringing the site into compliance and be reminded that commercial activities are not permitted and not allowed. There is no performance bond as yet (occurs at the time of the certificate of occupancy); only an erosion and sedimentation bond has been posted. Geoffrey Colegrove has been instructed not to issue a certificate of occupancy until all work is complete as per the approved site plan.

The Commission discussed extending the current cease-and-desist order to prohibit all commercial activities and require removal of all vehicles and equipment not associated with site development.

Motion by Brian Ameche, seconded by Jan Melnik, to expand the cease-and-desist order for Greenland Realty, LLC, 10 Mountain Road, to eliminate all commercial activities on the site until the site is brought into compliance with the detail and specifics of the approved site plan; the applicant will remove all mechanical equipment, fuel tanks, and dumpsters not associated with site development effective upon receipt of certified notice. Motion carried unanimously.

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

Motion by Dave Foley, seconded by Brian Ameche, to approve Arrigoni Enterprises, LLC, request for zone change from DDD to HID, Old Mountain Road. Motion unanimously denied.

11. Miscellaneous

The status of open bonds is still being researched.

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Motion by Dave Foley, seconded by Ralph Chase, to adjourn the meeting at 11:10 p.m.
Motion carried unanimously.

Respectfully submitted,

Jan Melnik

4/27/2005