

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF NOVEMBER 1, 2006, MEETING

Present

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove
Alternates: Brian Ameche, Jackie Snow

Absent

Member: Dian O'Neal
Alternate: Frank DeFelice

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

1. Approval of Agenda

Geoffrey Colegrove stated that the attorney for Greenland Realty hadn't had a chance to meet with Brian Curtis (town engineer) and, therefore, would like agenda item 8 tabled to a future meeting.

Motion by Ralph Chase, seconded by Tom Russell, to approve the agenda of the November 1, 2006, meeting as amended to reflect deletion of item 8 (Greenland Realty, regarding erosion and sedimentation, tabled to a future meeting). Motion carried unanimously.

2. Public Session

David Dingwell asked for permission to speak during the Distinctive Building item on the agenda (item 9). Chairman George Eames consented.

3. Greenland Realty, LLC, Request for Release of Erosion and Sedimentation Bond, Mountain Road

This item was tabled to a future meeting.

4. Kelly Enterprises, Inc., Discussion of Permitted Uses and Signage, 27 Parsons Lane

James Blank, the property owner, appeared before the Commission following receipt of a letter from the town planner. There are two issues requiring attention. The first concerns signage at the property. While a broker sign advertising vacancy is permissible, along with the sign identifying the property itself, no other signs are permitted. Geoffrey Colegrove stated that the Commission had been informed during the initial public hearing that only one business sign would be used for the business; individual business signs would identify businesses within the site itself.

James Blank stated that he would inform his tenant that the sandwich board sign would need to be removed.

The other matter requiring resolution concerns the types of uses going into the building. It is a light industrial zone, but some of the uses do not fall under the use table (athletic facilities—a wrestling business—and a lawnmower repair business). The uses must either conform to the regulations or an amendment to those uses must be presented.

5. Distinctive Building, LLC, Modification to Site Plan, 45R Ozick Drive

The applicant/owner was not in attendance.

Geoffrey Colegrove stated that he was at a meeting recently at which hours of operation were discussed (property owner Rory Wilson was unable to attend that meeting). A timetable for the operation will be presented. Rory Wilson was encouraged to contact the abutters to work out an agreement. There had been an agreement previously with former First Selectwoman Maryann Boord. According to Sandi Kovach, information regarding this agreement has since been e-mailed to First Selectman Jim McLaughlin.

While there has been little objection to the activities at the site during the week and on Saturday mornings, the problem is activities on Sundays and operations beginning as early as 5:00 a.m. on any day at the site. The biggest problem for the neighbors is from the back-up beepers on trucks, along with construction noises.

If the Commission were to turn down the modification to the site plan, the applicant would be required to adhere to the requirements of the initially approved application, which would include fully paving the property. Rory Wilson has indicated that he would like a two-year extension on when the paving would be required. If the initially approved site plan is upheld and paving is not completed, then the certificate of occupancy will be

held up. However, the originally approved plan does not provide for hours of operation. If the Commission does move forward to approve the modifications to the site plan, hours of operation can be incorporated.

Sandi Kovach stated that the hours of operations that had been agreed to with former First Selectwoman Maryann Boord were 8 a.m. to 4 p.m. weekdays and half days (mornings) on Saturdays. Even 7 a.m. to 5 p.m. weekdays would be acceptable, but nothing on Sundays or holidays.

George Eames suggested that the Commission consider establishing language in the regulations to provide for hours of activity related to pre-construction and construction operations. Jan Melnik noted that she had received a telephone call from Rory Wilson noting concerns about this possibility. She stated that she encouraged him to come to the meetings to offer his input.

Diana Cruise asked about the lights that continue to be on at all hours of the night at Murphy Pool. Geoffrey Colegrove stated that when this became a problem previously, the Commission was informed that while the lights were for security, they would conform to the regulations. This apparently is not the case, as they shine directly off the back of the site in the direction of the neighbors' homes. Richard Eriksen suggested that Murphy Pool be cited for not bringing the site plan in for review and approval.

The Commission was also informed that there are lights directly over doors in one of the other businesses (A&S Electric), very bright and on all night. Geoffrey Colegrove will investigate this.

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

PUBLIC HEARING

1. Applicant/Owner: Ellen Sibia/Dolphin Days Learning Center
Location: Ozick Drive, Lot #7, Tax Assessor's Map #44, Parcel #1-7
Application: Request for a proposed special permit to construct a 10,000 square foot building for a day care facility with related parking

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove
Alternates: Brian Ameche, Jackie Snow

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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. Brian Ameche was seated on the Commission in Dian O'Neal's place.

Frank Magnotta, consulting engineer, addressed the Commission regarding requests previously made to adjust the site plan. The conservation easement has been reflected on the plans.

A request for the tree-planting note along Mountain Road has been added; the trees will be installed before construction work on the overflow parking begins. A gate is also reflected on the plans.

Dave Foley pointed out that this was not the Commission's intent; rather, it was intended that the tree-buffered area was to be constructed prior to the start of any construction work on the building.

Hours of operation for the business will be 6 a.m. to 6 p.m. Lights for the primary parking lot will include freestanding poles with shielded box lights; they will be on from 5 a.m. until 8 p.m. There will be downlights on the building itself (a total of 12) that will be on 24 hours a day.

Notes about proposed signage for the business are on the plans. There will be one sign attached to the building (the existing sign) as well as a freestanding sign. After some discussion regarding maximum size limitations, Frank Magnotta stated that these would be in conformance with the regulations. If there is just one use for the building (in other words, just the day care business and not the gymnasium, which would be a second use), the sign must be smaller.

Frank Magnotta reported that a letter from Brian Curtis stated that the proposed placement of the bridge over the brook will not create any hydraulic problems.

Geoffrey Colegrove asked about the number of times a year that the auxiliary parking area off Mountain Road will be used; this should be reflected on the plans. The representation at the previous public hearing was about three or four times a year (minimal, infrequent). It was reiterated that events would be staggered so that not all parents of all students would be attending functions at the same time. However, there was general agreement that to not place some kind of note on the plan was too nebulous. Also, without a number, there is no way of addressing any potential situation that might arise.

Ellen Sibilgia reiterated that the use is proposed as low-intensity; she also stated that at the previous hearing, she understood that she would not be required to specify an actual number (too restrictive on a business). Richard Eriksen recommended that language be added to say that the lot is for overflow parking and special event use only.

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Dave Foley stated that the Commission does not want to restrict the applicant's ability to operate her business. Brian Ameche stated his disagreement with this assertion—that it is the obligation of the Commission to determine whether or not a use fits the neighborhood or may be too intense an activity.

Jim Kowolenko stated that the applicant has presented a plan that more than exceeds what is required for parking. Tom Russell suggested noting on the plans that the auxiliary lot is not to be used for daily parking.

Cindy Tyrseck, 9R Mountain Road, addressed the Commission. She asked for confirmation that there would be no lighting in the extra parking lot. She also asked for further clarification of the lighting for the footbridge. These will be small bollards with low-intensity lighting (about four feet in height with low-wattage bulbs and shields).

It was also agreed that hours of construction would be placed on the map (7 a.m. to 5 p.m. and a halfday, mornings, on Saturdays).

To Cindy Tyrseck's query regarding the type of gate for the fence at the front of the auxiliary parking lot on Mountain Road, Frank Magnotta stated that it would be some type of metal gate (tubular steel or aluminum), probably two 12-foot sections with a chain and padlock.

Sandi Kovach, 89R Mountain Road, stated that in the previous hearing, there had been talk of being "good neighbors." However, she noted that there had never been a knock on her door to discuss what was proposed for the site. She is worried about hours of operation, light on the overflow parking lot, and the plans for the nature walk.

Frank Magnotta stated that the regulations do not require notification to neighbors of such an application—other than the public hearing notice. This is the forum for discussion and comment. There will be no lights in the overflow parking area. Plans have not been developed for the nature walk; however, this will be a very passive, relatively invisible use, given the wetlands and growth of the woods.

To Diana Cruise's question regarding the bridge and the walkway both being necessary, Frank Magnotta stated that it could not be expected that when the auxiliary lot is used, that people would be required to walk out along Route 68.

Brian Ameche asked for the photometrics on the lighting for the site; this was submitted prior to the last hearing.

Diana Cruise stated that she doesn't believe the applicant realizes "what Greenland Realty has caused in the neighborhood" and that it is "hard to trust that an applicant is going to come in" and do the right thing.

George Eames noted that this is an entirely different operation—no correlation between the proposed site plan and Greenland Realty. Issues related to Greenland Realty are not germane to this application.

Ellen Sibilias stated that the construction for the project would be completed in 6-9 months; it is not an ongoing operation (the construction activities).

To Brian Ameche's query regarding the finished floor elevation, it will be 280.5 feet (about 20 feet higher than the Ozick Drive/Route 68 intersection. It is the elevation of the site at the location proposed for construction.

Motion by Jan Melnik, seconded by Ralph Chase, to close the public hearing of Ellen Sibilias, Dolphin Days Learning Center, request for a special permit to construct a day care facility and related parking, 21 Ozick Drive. Motion carried unanimously.

PUBLIC HEARING

2. Applicant/Owner: Mark Braga, Braga Investments, LLC
Location: 459 Madison Road
Application: Request for a special permit to use the existing building for a natural and specialty foods store

Members: Ralph Chase, George Eames, Richard Eriksen, Dave Foley,
Jim Kowolenko, Jan Melnik, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Brian Ameche, Jackie Snow

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. Brian Ameche was seated on the Commission in Dian O'Neal's place.

Attorney John Corona addressed the Commission, representing the applicants. He introduced the project engineer, Pat Benjamin, who described the parcel at the former gas station site at the corner of Pisgah Road and Route 79. The site was formerly used for a general automotive repair business (with and without the sale of gasoline). There was an apartment on the second level of the building (this use will be eliminated). The site had also been approved for a wire assembly business in the recent past.

The proposed use for the property will be more aesthetically pleasing. A special permit application is required. It is a preexisting, nonconforming use. The building is currently 2,323 square feet in size; about 480 square feet will be removed. Pat Benjamin explained the proposed landscaping features (emerald arborvitae, junipers, azaleas, and sugar maples, all depicted on the plans) and areas of paving that would remain as well as the sites for the new septic system and the new well. Ten parking spaces are proposed.

The photometrics plan shows very low levels of light (from .6 to .1 footcandles) from the full cutoff fixtures.

As proposed, the new plans will provide for a site that is much more in conformity with the regulations. The previous coverage with gravel and asphalt had been 83%. Once the site is complete, the coverage total will be 57% and the setback to the north will also conform to the regulations.

It is the preference of the applicant not to pave the parking area, but use gravel instead. Hours of operation are proposed as a maximum of 6 a.m. until 8 p.m., seven days a week. Because of the nature of any business, this might require adjustment based on customer demands.

The nature of the business is to sell specialty and natural foods (all prepackaged). There is no restaurant connected with the application and no table service. All foods will be prepared off site. It will be similar to the Wheat Market in Chester (expensive items, not a regular grocery store).

If the use is approved as proposed, the site will not be able to go back to being a gas station or auto repair business.

The applicant will return to the Commission for approval of a specific sign once developed. It will definitely be smaller than what would previously have been associated with a nonconforming gas station.

In terms of the appearance of the building, the CertainTeed line of siding will be used, probably in ivory or off-white. It is an expensive material, equal to wood siding. Attorney Corona noted that the applicants live very near the site and intend "to do the right thing" in developing this property. He also stated that the Commission "has seen the wisdom" of allowing other nonconforming uses to change (i.e., the former hot dog stand is now a garden center on Route 79) and that these have been positive moves.

To Jan Melnik's query regarding proposed lighting, there will be a light over the door at night, limited to the hours of operation.

Dave Foley stated that if the Commission were to approve the application without the signage details presented, this would need to be a condition of approval.

Irene Roberts, Dead Hill Road, addressed the Commission regarding the parking off Pisgah Road. There will be two employee parking spots in that location.

To Richard Eriksen's query regarding the dumpster, it will be on the existing concrete pad, but screened by a six-foot stockade fence and arborvitae.

Brian Ameche asked about the well arc extending off the property into the roads. Attorney Corona noted that the local and state health departments have no problem with this; it is part of the preexisting, nonconforming use. The well arc requirement relates to residential development. It was noted that coffee can be served at the business if made from bottled water. For the record, Attorney Corona noted that the existing apartment has used the well water without problem for many years.

Motion by Richard Eriksen, seconded by Jim Kowolenko, to close the public hearing of Mark Braga, Braga Investments, LLC, request for special permit to use the existing building for a natural and specialty foods store, 459 Madison Road. Motion carried unanimously.

Motion by Ralph Chase, seconded by Jan Melnik, to reconvene the regular meeting at 9:00 p.m. Motion carried unanimously.

6. Vincent Baker, Request for a Proposed 10-Lot Subdivision, Old Blue Hills Road

This application is not yet ready to have a public hearing established. The site walk will be held on November 4, 2006, at 9:00 a.m.

Geoffrey Colegrove advised that there was ample time. The applicant does not want to hold the public hearing until all comments are resolved. The Commission must schedule a public hearing within 65 days of the application submittal date; there is still plenty of time.

7. Ellen Sibilias, Dolphin Days Learning Center, Request for a Special Permit to Construct a Day Care Facility and Related Parking, 21 Ozick Drive.

Motion by Richard Eriksen, seconded by Dave Foley, to approve the application of Ellen Sibilias, Dolphin Days Learning Center, to construct a day care facility/related parking, 21 Ozick Drive, with the following stipulations:

- Add "During special events" to auxiliary parking area
- Size of the sign will conform to the regulations and be submitted for the Commission's review and approval
- Hours of construction will be 7 a.m. to 5 p.m. Monday through Friday and half-days on Saturdays
- Hours of operation of the business will be 6 a.m. to 6 p.m. Monday through Friday

Motion carried, 7-2, with all in favor with the exception of Brian Ameche and Gene Riotte (in abstention).

8. Mark Braga, Site Plan Review for Natural and Specialty Foods Store,
459 Madison Road

Motion by Ralph Chase, seconded by Dave Foley, to approve the application of Mark Braga, Braga Investments, LLC, request for special permit to use existing building for natural/specialty foods store, 459 Madison Road, with the following conditions:

- Signage will be subject to the provision that the applicant has presented a sign concept and will secure the approval of the Commission for the specific size and design (to be significantly reduced in scope from previous gas station/nonconforming use signage) prior to execution and
- Hours of operation to be 6 a.m. until 8 p.m. seven days a week

Motion carried unanimously.

9. Pat DiNatale, North Plains Realty, LLC – Site Plan Review

Attorney John Corona stated that there will be guardrail around the entire back of the property—square wood bollards—this is now on the map. Pat Benjamin stated that this will be either metal beam guardrail/core 10 with wood installed over it. There are two handicapped parking spaces at the front of the property and one in the back; there are a total of 52 parking spaces.

The slope along the south side of the property is between 8% and 10%.

In terms of the slope at the back, stone will be added for the winter (it hasn't been fully seeded) with jute or erosion and sedimentation fabric.

The applicant previously agreed to incorporate the recommendations of the Durham Garden Club for plantings along the front of the site; these will conform to Department of Transportation requirements for plantings along a state highway.

To the issue of building height, Pat Benjamin explained the complex formula by which this is calculated. He referenced section 02.08.02 in the regulations that stipulates the formula. The elevation value of the average height at the highest roof surface is 251.46 feet; grade plan elevation equals 221.51 feet. Therefore, the vertical distance is in accordance with the regulations at 30 feet, plus or minus. To Brian Ameche's query, Pat Benjamin stated that the standard calculation method was used (the same in all towns and as used by Dick McManus), shooting the highest end of the gable roof, shooting the grades around it, the roof line, and the average ground to the average of the highest roof surfaces.

Geoffrey Colegrove stated that hay bales had been installed to replace the erosion and sedimentation fencing that had been obscured during construction. Black top will be installed on November 3; this will be the binder course with final work completed in the spring.

Motion by Ralph Chase, seconded by Jim Kowolenko, to approve the modified site plan of North Plains Realty, LLC, west side of Connecticut Route #17. Motion carried unanimously.

10. DR&G Club, LLC, and JRD Development, LLC, Informal Discussion of Active Adult Community, CT Route #79

Dave Swanson and Pat Bennetto, the developers, were in attendance. Pat Benjamin, the project engineer, addressed the Commission. It is anticipated that the application will be presented within the next 30 days.

The project will be served by a community septic system, which is not within local jurisdiction, but the State Health Department (approval is presently pending).

The project will be on a heavily wooded 72 acres. There are 46 units proposed.

George Eames asked the status of talks about a possible senior center for the town's use; this idea had been advanced several years ago. The response was that early reactions from the town weren't completely favorable; in addition, the existing building (the former Durham Rod & Gun Club clubhouse) and septic would not suffice in any event. It is still possible that a portion of the site might be available to the town for construction of a senior center, but these talks are still preliminary. It would be a freestanding proposal if it were to go forward.

To a query regarding length of the private drive, it is 2,700 feet from Route 79 to the furthest cluster. The 20-foot driveway will narrow down to 18 feet feeding the smaller cul de sacs and 16 feet wide for one cul de sac. The applicants are trying to get as much ground infiltration as possible.

Dave Foley asked the status of water/wells on the property, given the lead from the former use of the site (for target practice/hunting). Pat Benjamin stated that this will be addressed through the State Health Department. However, the type of lead used in shot typically becomes inert once it is in the ground.

Attorney Corona noted that a community water system will require constant monitoring and controls; a professional will be hired to maintain it.

In terms of age restrictions, one member of each family must be at least 55 years old.

Conversations have commenced with Harry Hall and David Herr of the volunteer fire department regarding fire protection. It is planned that there will be a tank, a lake on the site, and a detention basin.

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To Richard Eriksen's query regarding previous ownership of the property, the state had a complete A-2 survey of the property that resolved previous questions.

A site visit will be scheduled for December 9.

11. Proposed Amendment to the Durham Zoning Regulations, Section 05. "Common or Shared Driveways" and require bonding of driveways and to include construction specifications for common driveways

A response was received from the fire department; while it would be desirable for common driveways to accommodate vehicles as large as 8'6" wide, 43 feet long, and 69,000 pounds, it is not realistic that this can be accomplished.

Motion by Brian Ameche, seconded by Dave Foley, to approve the proposed amendment to the Durham Zoning Regulations, Section 05., "Common or Shared Driveways" and require bonding of driveways and to include construction specifications for common driveways per language distributed November 1, 2006, and attached, effective November 21, 2006. Motion carried unanimously.

12. Payment of Bills

Motion by Ralph Chase, seconded by Gene Riotte, to approve payment of the following bills:

- Absolute Advantage — \$492.55 (minutes of 10/18/06)
- Absolute Advantage — \$174.00 (partial transcript of North Plains hearing, April 2006)

Motion carried, 8-1, with all in favor with the exception of Jan Melnik (in abstention).

13. Approval of Minutes

Motion by Ralph Chase, seconded by Dave Foley, to approve the minutes of the October 18, 2006, meeting as presented. Motion carried, 7-2, with all in favor with the exception of Jan Melnik and Gene Riotte (in abstention).

14. Town Planner's Report

Notice was provided to the Hitching Post Café at the south end of town to remove the freestanding illuminated sign (they have 10 days to take action).

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15. Miscellaneous

It was noted that the previously stripped DeMartino site (off Tri-Mountain Road) has begun to stabilize with vegetation starting to grow back. The Commission has an \$8,000 bond for landscaping and buffering.

Brian Ameche recommended that further stabilization is needed by the driveway; the bond should also not be released until the driveway is paved.

Geoffrey Colegrove will resubmit the original Planning and Zoning Commission report for the annual town record (the Board of Finance indicated that the first report was not received).

George Eames and Richard Eriksen will be meeting with the town's finance director, MaryJane Malavasi, regarding carryovers for 2005-2006 (there is nothing that can be done about this) as well as planning for overages.

Jan Melnik stated that at a previous Commission meeting, questions were raised about Torrison Landscaping perhaps operating from a home-based location on Fowler Avenue without a home-based business permit. She verified that the business is operated from 51 Industrial Park Road; the business owner brings one marked pickup truck to his home on Fowler Avenue (this is permitted).

Motion by Jim Kowolenko, seconded by Dave Foley, to adjourn the meeting at 9:53 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

11/6/2006