

# TOWN OF DURHAM

## Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

## MINUTES OF OCTOBER 18, 2006, MEETING

### Present

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

Town Planner: Geoffrey Colegrove

Alternates: Brian Ameche, Frank DeFelice, Jackie Snow

### Absent

Members: Dian O'Neal, Gene Riotte

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. Frank DeFelice  
was seated on the Commission in Gene Riotte's place.

### 1. Approval of Agenda

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the agenda of the  
October 18, 2006, meeting as amended to reflect inclusion of a site plan review for Pat  
DiNatale/North Plains Realty as item 8A. Motion carried unanimously.

### 2. Public Session

Dave Dingwell addressed the Commission, seeking permission to speak during items 7  
and 8 on the agenda. Chairmen Eames consented to this request.

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

Geoffrey Colegrove stated that the town engineer recommended not releasing this bond at this time, pending his recent site inspection of the property.

The Commission agreed to accept the recommendation of the town engineer.

Motion by Jim Kowolenko, seconded by Richard Eriksen, to table discussion of the release of the Greenland Realty bond per recommendation of the town engineer (not to release it). Motion carried unanimously.

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

As the applicant/owner was not in attendance, this agenda item was tabled.

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

Attorney John Corona addressed the Commission on behalf of the applicant. He advised that Pat DiNatale had acquired additional land totaling about 5,500 square feet (from Cozy Corner) since the approval of the original application in order to expand parking at the rear of the project as well as to improve traffic flow. Pat DiNatale would like to extend the driveway, relocate it further away from the building, and create a green area to the rear of the building. This will add an incremental 11 parking spaces, plus enable traffic to circulate around the building. It represents not only convenience/ease of mobility at the site, but an improvement from a safety point of view.

The Inland Wetlands Commission and the Zoning Board of Appeals have both reviewed and approved the modifications to the site plan.

To questions concerning grade from Frank DeFelice, John Corona stated that the grade is about 10% on the south side of the property and 12% on the northly side. The dumpster is going to be relocated to the extreme south corner of the site.

There will be about 3,000 square feet of space available at the rear of the building for rental purposes. This will be a walk-out situation. Additional space on the rear floor will accommodate storage for the main floor tenants as well as house mechanicals for the building. Trucks will still offload to the back of the building, then circle around. John Corona indicated that typically box trucks can be expected (as opposed to 18-wheel tractor-trailers).

Some improvement was made to the site in terms of erosion control. In the area behind the new parking spaces at the back, there will be matting because of the significant slope. With the purchase of the additional land, grading can be more gradual in nature.

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Changes recommended by the town engineer, Brian Curtis, include revisions to the plan to reflect ADA handicapped spaces (two at the front of the property), grading changes, and the inclusion of “attractive, wood-faced guardrails.”

To Brian Ameche’s query regarding site coverage, the original site plan had been approved at 65.9% (reflecting an allowance for exceeding the regulation maximum of 60%); now the coverage will be 71.5%. The additional parking spaces comply with the regulations for the amount of square footage and planned uses of the building.

Jan Melnik asked if there would be some sort of fencing or guardrail at the rear of the parking area behind the building because of the grade. John Corona indicated that Pat Benjamin had discussed the possibility of this; the applicant will incorporate into the plans whatever recommendations Brian Curtis provides.

Pat DiNatale stated that he was “working out parking lot grades ‘as we speak’,” noting that he will do the appropriate thing at the back of the site—“something a little nicer than metal guardrail.”

In terms of what will be at the front of the site (hedges, plantings, etc.), Dan Pompeii of the State Department of Transportation has expressed concern with any plantings that will obscure line of site. Pat DiNatale committed to adhering to whatever the Garden Club proposes that the State Department of Transportation will allow.

Because the Commission did not want to approve the modifications to the site plan with conditions, the applicant will return with said revisions already incorporated in the plans for review of the Commission. These include the following:

Stipulations that the plans be revised to show two ADA-handicapped parking spaces on the site, that the plans reflect the required grade changes, that the parking space calculations be reflected on the plans, and that attractive guardrails be incorporated in front of the parking spaces running along the rear of the site as well as any other town engineer comments from the final review.

In terms of the applicant proceeding with work at the site, there was a “favorable feeling” noted by the Commission.

Motion by Richard Eriksen, seconded by Ralph Chase, to recess the regular meeting for the public hearing at 8:02 p.m. Motion carried unanimously.

## PUBLIC HEARING

1. Applicant/Owner: Ellen Sibilial/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, Frank DeFelice, 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. Frank DeFelice was seated on the Commission in Gene Riotte's place. Brian Ameche was seated on the Commission in Dian O'Neal's place.

Frank Magnotta addressed the Commission on behalf of the applicant. He presented revised architectural renderings that depicted a partial brick front and glass windows on the northerly side of the building facing Route 68. Parking spaces along the entrance driveway have been eliminated, per the town engineer's comments. There have been minor adjustments made to the septic system to address the comments of the town sanitarian.

With regard to the noncommunity/nontransient water system, Frank Magnotta stated that the state has authority over this system, not the town. Applications have been filed with the appropriate state agencies (State Health Department and Public Utility Control) for this system and approval is pending. He added that the local health department and director of health/town sanitarian are not directly involved. A copy of the package will be provided to the local health department.

Frank Magnotta then reviewed the memo from the town engineer (October 12, 2006):

A1 – Signage. Regarding signage, at this point, the applicant has not determined signage that will be attached to the building. A free-standing, six-foot sign is planned for the driveway (in accordance with the regulations). At the time of the building permit application, the sign details will be confirmed (and conform to all regulations).

B1 – Grading, Utilities, and Erosion Control Plan. The slopes at the rear of the building are such that, at 1%, additional drains should not be necessary. Sheet flow should handle drainage to the wetlands. Any problems that evidence during construction will be addressed.

B2 – Stormceptor Stormwater Treatment Unit – Frank Magnotta will submit the final details from the manufacturer; these are dictated by the manufacturer and will be provided to the town engineer for approval.

B3 – Footbridge. Details, including hydrologic analysis of the overall watershed for the brook, will be submitted to the town engineer and building official for approval. Verification is required from the Connecticut Department of Environmental Protection as to whether or not a diversion permit is required for the bridge crossing; this is currently being pursued. The applicant would like to have site plan approval before incurring engineering expenses on the bridge. Frank Magnotta did describe that the premanufactured structure features a 40-foot clear-span bridge.

B4 – Architectural Details. Plans have been submitted.

B5 – Water Supply. Frank Magnotta indicated that the local health director does not have approval authority for a public water system; approvals are entirely at the state level.

C1 – Bonds. Frank Magnotta will be responsible for developing bond estimates to submit to the town engineer for erosion and sedimentation control as well as a driveway bond; bonding for the driveway is necessary prior to securing a building permit. A certificate of occupancy will not be issued without completion of the site plan.

Geoffrey Colegrove asked Frank Magnotta to review the coverage requirements. About 50% of the site is in open space. At 56,000 square feet of impervious area (including the auxiliary parking area, even though it is gravel), the coverage will be 24% (versus a maximum of 117,000 square feet allowed on the 5.4-acre site).

Lighting details were submitted on the revised plans, including fixture specifications for the lights attached to the building along with several free-standing lights in the parking area off Ozick Drive. All are downlights with wattages specified. Frank Magnotta indicated there will be no lights in the gravel parking area; four-foot high bollards with small lights will be used for the walkway to the parking area from the building. A photometric plan of light output was submitted with the plans.

Frank Magnotta reviewed the elevations for the property from off-site locations. Cindy Turcik's home is at an elevation of about 340, a very high elevation that looks over most everything in the area. The elevation of the floor of the proposed building is 280, representing a 60-foot difference in elevation. There are significant woods between Mountain Road and Ozick Drive (roughly 400 feet of woods) that will help to screen the view of the building. Because the building is single-story with a low roof, it will not be as intrusive. Parapets will shield mechanical equipment located on the roof. Beyond the building, the grade drops away from the building.

There will be an above-ground 500-gallon oil tank in a concrete container (for spillage) with a cover to keep out rainwater.

Geoffrey Colegrove asked that a conservation easement be placed over the wooded area because of the critical nature of the woods to the project. Ellen Sibilía stated that she is aware of the problem with clearcutting by the previous owner. However, she wants to retain as much of the natural woods as possible, keeping the area intact to accommodate nature trails and educational facilities (nonspecified) for her students. She also implored the Commission not to penalize her for the previous owner's wrongdoing.

It was agreed that a conservation easement over the buffered area and the wooded and wetlands areas would be desirable.

Tom Russell and Dave Foley queried the structure of the footbridge (steel versus wood). Frank Magnotta stated that it would likely be a very resilient stained wood (not pressure-treated, but requiring little maintenance). The bridge itself would be partially screened from view of Route 68 during most times of the year.

Frank DeFelice asked for clarification of the parking spaces: there are 42 in the paved area and 32 in the overflow area. He presented several photographs from the Public Safety Committee for the Commission's review. They show blockage of Ozick Drive during some Dolphin Days events wherein emergency equipment could not access Ozick Drive if needed. This is despite posted "no parking" signs.

Ellen Sibilía explained that the new plans afford ample parking plus auxiliary parking. In addition, the policy will be to limit attendance for events by not holding entire school-wide events (rather, just 30 or 40 kids per event). She added that she will send out letters stipulating no parking is permitted on the streets. The current parking plan allows for 12 cars; the proposed plan allows for 74 with limited attendance. This will be more than adequate.

Frank DeFelice suggested making the entrance driveway wider. Frank Magnotta noted that while 15 feet is the norm, at 18 to 20 feet, there is more than adequate space as required by the regulations. Parking will not be permitted along the driveway because of the limited area and landscaping.

Brian Ameche stated that he would like the town engineer to address the driveway; this was already completed by Brian Curtis—it is why the parking spaces along the driveway were removed from the site plan.

Attorney Joseph Milardo of 73 Main Street, Middletown, addressed the Commission on behalf of Cindy Turcik and the Cruises. He stated that there have been activities in the area resulting from the "new zone" that have caused problems for people residing in the area for years. He noted that many representations were made throughout the public hearings for Greenland Realty (amount of traffic on site, activities, hours of operation, storage) that, ultimately, were not reflected on the final, approved site plan. He doesn't want a repeat of this problem, nor does he want to see an overburdening of Mountain Road.

Attorney Milardo stated that he was disappointed that the town has not contacted him regarding the status of Mountain Road. It is his clients' contention that this is not a town road. He admonished the Commission to be very careful in approving any drive that would exit onto Mountain Road, citing the private property interests of the residents. His conclusion is the opposite of the inconclusive opinion reached by Attorney Ken Antin several years ago concerning the status of the road.

In referencing the proposed footbridge, Attorney Milardo stated his belief that it was unlikely the applicant would incur the expense of a metal-steel frame-constructed bridge to access auxiliary parking space if it were only being used once or twice a year. He suspects it will be used for more occasions than just overflow for 1-2 special events per year. He recommended the applicant access Route 68 from a curb cut on the front of the property. In terms of parking spaces, he thought that there would be 20 in the overflow space.

Ellen Sibilgia responded that the plans would be to use the overflow parking area for perhaps three to four functions per year, adding that the teachers of the school would never be willing to walk the distance between the auxiliary spot and the school. She stated that she will not be plowing the parking lot, except for a Christmas event, and that it will stay snowed in all winter long. She indicated that she has always complied with any rules or regulations imposed and that her business reputation has been good in the area. She stated that she had incorporated the auxiliary lot and footbridge on the plans since the last public hearing in order to accommodate what seemed like a push from the Commission to create auxiliary parking and alleviate the problems with parking on Ozick Drive. Buffering trees have been added to the plans.

Richard Eriksen stated that Ellen Sibilgia has the same legal rights to use Mountain Road (owning abutting property) as do the residential neighbors in that vicinity—whether it is ever determined to be a town road or a private way.

Attorney Milardo agreed with this representation, but added that how the use conforms with the neighborhood is at issue—and removing the cut from Mountain Road and making the access from Route 68 would better “balance the equities.”

Frank Magnotta responded that all abutting owners to Mountain Road enjoy the same rights of use. Substantial improvements have been made by the town to this road recently, including the taking of land to accomplish some of the work. He speculated that the town would not do this if it were not a town road.

Dave Foley suggested that a gate be installed on the Mountain Road parking lot access so that the lot could not be used every day. Ellen Sibilgia replied that she was intending to do this anyway.

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Attorney Milardo stated that he had provided a letter to Geoff Colegrove at the meeting about four weeks ago; that was subsequently faxed to the first selectman's office, but Attorney Milardo responded that there's been no contact from the first selectman.

Darcy Serle, Route 68, addressed the Commission. Her house is at a lower elevation along Route 68 across from a commercial site. She was pleased to hear about the gate that is planned. She also asked about lighting in the evening hours once the leaves are off the trees.

Frank Magnotta reiterated the proposed lighting for the main parking area on Ozick (all downlighting) and use of bollards for the walkway. There will be no lights at the auxiliary parking area. The lights at Ozick Drive will be on a timer. The business closes at 6 p.m. and all lights will be off by 8 p.m.

Cindy Turcik, 9R Mountain Road, addressed the Commission. She stated that since the property was erroneously clearcut by the previous owner, she now sees lights on cars coming west along Route 68. She asked how the buffer would help with this situation.

Frank Magnotta stated that she is at such a high elevation that the white pine trees planned for the buffer (a six-foot height) are unlikely to grow to the point of obscuring all light on Route 68. He also noted that there is no septic planned or shown on the plans for the auxiliary parking area (this was removed from the plans presented at the last hearing).

Dina Ditacchio, 99 Old Blue Hills Road, stated that her children have attended Dolphin Days and have had to park on the street several times. She noted that at a recent family night at the John Lyman School, many cars parked in a grassy area near the school that was lit by a large flood light. She didn't think it was right to ask a business to limit the number of their school events. She also expressed confusion over why a town road is not a town road (Mountain Road).

Jim Pollard, Wallingford Road, asked who was responsible for plowing Mountain Road. The town has taken care of this for about the past five years. For nearly 40 years leading up to that point, the Turciks and the Cruises independently maintained the road in its entirety.

Sandy Pilla, 123 Baileyville Road, addressed the Commission in support of the application. She stated that there is no problem now with the expansion of the old parking lot; with the new plans for parking, all problems will be eliminated, in her opinion.

Dave Dingwell, 89R Mountain Road, addressed the Commission. He stated that he appreciated the gestures being made by the applicant; however, he asked that such things as the proposed gate, actual lighting, and the timers for the lights, along with proposed hours, be actually reflected on the plans.

Dave Foley asked that a sequence of construction also be added to the plans, including

the planting of the buffers first, before construction. Frank Magnotta indicated he would show the sequence before starting work on Mountain Road and said that the buffer would be completed first.

Brian Ameche asked the occupancy and portions of the building that would be used. From 92 to 120 students will be accommodated, along with 18 teachers. The building will be 10,000 square feet, of which 7,000 square feet will be constructed and used; the remaining 3,000 square feet could be phase two for a possible gymnasium.

Brian Ameche stated that the Commission had discussed imposing possible replanting requirements on any developer for this lot, recognizing that there was not a means by which to admonish the previous owner for clearcutting. This would be the time to undertake that effort, even if it means burdening the applicant with that problem.

Richard Eriksen stated that there are a lot of trees still on the site. He asked about the cutting plan and limits of activity—this is already depicted on the plans. Frank Magnotta noted that many areas are revegetating themselves. The proposed conservation easement will protect much of the same areas as previously clearcut.

Frank Magnotta stated that the time of the application is such that he will need local approval before state agencies will complete their permits.

The Commission discussed stipulating such things as the number of employees, number of children/students, number of annual events, hours of operation, lighting, timing of lighting, and auxiliary parking gate on the site plan.

Jan Melnik stated her opinion that it would be too onerous on a business to ask it to confine the special events held in the course of a year to a particular number.

The driveway was discussed; there will be one-way circulation and Ellen Sibilgia agreed with the idea of striping the driveway and noting “no parking” (fire lane).

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

An extension was provided to the Commission on this application by the applicant.

Motion by Dave Foley, seconded by Ralph Chase, to reconvene the regular meeting at 9:20 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. A site walk is scheduled for October 28 at 9 a.m. (*NOTE: As of 10/24/06, this was changed to November 4, 2006, at 9:00 a.m.*)

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

Attorney John Corona addressed the Commission, noting that this matter was reviewed as part of an informal discussion some months ago. He explained the concept for the property, now owned by the Bragas. The site is about one-quarter acre in size. A portion of the building will be eliminated with the business established entirely within the remaining portion of the structure. Traffic will enter the site from the south; there will be parking spaces along the front.

A low-intensity use is planned. The apartment on the second floor will be eliminated with the area used for storage. The site can only accommodate a limited amount of leachate; therefore, food service (restaurant style) is not permitted on the site, nor is any food preparation on site allowed. A new well will be drilled.

Attorney Corona described the proposed business as being similar in nature to the Wheat Market or Fromage.

A public hearing will be planned for November 1<sup>st</sup>.

8. 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

Geoffrey Colegrove stated that this was referred to Attorney Thomas Byrne as well as the fire chief, Harry Hall. Language might be adjusted based on input from the fire department. A section of the text will be revised to reflect deletion of the word "maximum" from modifying a 10% grade.

9. Payment of Bills

Motion by Richard Eriksen, seconded by Ralph Chase, to approve payment of the following bills:

- Attorney Tom Byrne — \$975.00 (Greenland Realty)
- Absolute Advantage — \$445.52 (minutes of 9/20/06)
- Absolute Advantage — \$462.12 (minutes of 10/4/06)
- *Middletown Press* — \$104.82 (new charges)

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

10. Approval of Minutes

Motion by Ralph Chase, seconded by Jim Kowolenko, to approve the minutes of the September 20, 2006, meeting as presented. Motion carried, 8-1, with all in favor with the exception of Jan Melnik (in abstention).

11. Zoning Enforcement Officer's Report

Chris Flanagan asked if he would be able to make comments during this portion of the meeting regarding zoning compliance; the response from the chairman was in the affirmative.

Ed Grimes will be establishing a log to monitor activities at the Bailey Road/Esparro site; there have been continued complaints about the construction operation and vehicles on the site.

Mr. Kelly will be asked to come to the next meeting to discuss activities at the warehouse business on Parsons Lane; some activities are occurring which are not permitted in the use tables (lawnmower repairs and sale, wrestling, etc.). Signage is also a problem.

Richard Eriksen noted that a number of Commissioners received telephone calls regarding activities occurring at Distinctive Building's site on Ozick Drive early on a recent Sunday morning. While there is a noise ordinance, there should be something included in the regulations that monitors activities of construction.

Dave Foley noted that there is still an additional sign in front of the Hitching Post at the south end of town on Route 17 that is not in compliance with the approved site plan.

Chris Flanagan then raised his concerns about the DiNatale site at the south end of Main Street. He stated that he was a member of the Zoning Board of Appeals. His first question concerned the change in grade along the front of the building—from initially being planned for about 15 inches above the roadway to now between 3.5 and 4 feet. He asked if this was approved by the Commission.

George Eames explained that it was found to be a mistake and corrected through the site plan review process (raised initially back in September). The revised plans have not yet been voted on by the Commission and won't be until the revised site plans are finalized.

The second concern noted by Chris Flanagan was a continued lack of sedimentation controls on the job. He asked if the town engineer verifies this. George Eames explained that the town engineer has reviewed the application "with a fine-toothed comb"; this was one the concerns previously brought up and has been incorporated. There were also questions about additional fill brought onto the site; the applicant has gone before the

Inland Wetlands Commission three times for the necessary approvals. Chris Flanagan stated that no additional sedimentation and control measures were implemented following the addition of more fill. Richard Eriksen noted that the town engineer makes inspections and issues requirements as need occurs; this is not as much a concern of the Commission after an application has been reviewed and approved. Chris Flanagan expressed concern about the exposed, uncovered dirt washing off and settling into lower areas on the site and below the site.

The final concern was with regard to the height of the building. In reviewing the approved plans and the building as built, the height of the building does not appear to be in conformance with the height regulations, per Chris Flanagan's review. George Eames noted that this question had been raised by the Commission and it was verified that the plans were in accordance with the regulations.

The height of the building cannot exceed 35 feet on average. In other words, if the back were 42 and the front 32 and the sides equidistant, the average would be 37. Chris Flanagan believes the average is actually 38 feet. If this were the case, he asked what then would be the remedy. There was not a definitive response. Rather, the Commission will ask that shots be taken by a surveyor and certification provided to the Commission (Geoffrey Colegrove will contact Pat Benjamin immediately). It was reiterated that the plans were submitted in accordance with the regulations and approved on that basis.

Jan Melnik accessed the minutes of the April 5, 2006, meeting at which this matter was discussed in the applicant's original public hearing. The minutes reflect discussion of the height for the building and it was presented as being 34 feet. The Commission requested that this portion of the hearing (concerning building height) be transcribed for review at the next meeting.

#### 12. Town Planner's Report

Geoffrey Colegrove stated that there was some movement of the project on Route 79 (proposed active adult community); this has been ongoing for some years now.

#### 13. Miscellaneous

All members of the Commission are invited to attend a meeting of the Economic Development Commission on October 24 at the library. Brian Miller, an economic development consultant, will be in attendance.

There will be three workshops held during November in Haddam by the Connecticut Land Use Academy; Commissioners interested in attending should notify Geoffrey Colegrove's office. Judy is coordinating attendance and the Commission will pay the registration fees.

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Frank DeFelice reviewed the language in the regulations and noted that commercial buildings are allowed up to 40 feet by special permit.

The Commission also discussed requiring applicants to provide sufficient copies of an application for all Commission members.

A question was raised about Torrison (a local contractor) having a home occupation from a property on Fowler Avenue; this will be investigated.

Jan Melnik stated that she had received a phone call from Trish Dynia of the Historic District Commission asking whether the Planning and Zoning Commission had purview over lighting on Main Street. In this particular case, a resident has complained about the freestanding light pole at the Durham Market (it has been there for decades). She will be informed that a person with a complaint (after possibly speaking with the property owner) should address this concern with the first selectman's office.

Motion by Jim Kowolenko, seconded by Dave Foley, to adjourn the meeting at 10:35 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik  
10/25/2006