

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF JANUARY 6, 2010, MEETING

Present

Members: Ralph Chase, Lisa Davenport, Cathy Devaux, Frank DeFelice, George Eames,
Richard Eriksen, Chris Flanagan, Dave Foley, Joe Pasquale

Town Planner: Geoffrey Colegrove

Alternate: Campbell Barrett

Absent

Alternates: Mike Geremia, Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Campbell Barrett was present, but not seated, as there was a quorum.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Dave Foley, to approve the agenda of the January 6, 2010, meeting as presented. Motion carried unanimously.

2. Public Session

Donia Viola addressed the Commission about a wetland near Atlas Concrete; George Eames asked her to save this for the public hearing.

3. Payment of Bills

Motion by Ralph Chase, seconded by Cathy Devaux, to approve payment of the following bills:

- Attorney Steve Byrne - \$2,925.00 (Reg. Dist. #13 site plan)
- Attorney Steve Byrne - \$1,487.50 (Reg. Dist. #13 special permit)

- Attorney Steve Byrne - \$312.50 (Reg. Dist. #13 zone change)
- Attorney Steve Byrne - \$1,775.00 (Arrigoni vs. Durham Planning and Zoning Commission)
- Midstate Regional Planning Agency - \$55.20 (regulation copies)
- *Middletown Press* - \$70.33 (new charges)
- *Middletown Press* - \$60.80 (new charges)

Motion carried unanimously.

Geoffrey Colegrove explained that he had expended research time on the Arrigoni matter in addition to Attorney Byrne's efforts. Some of the fees might end up being covered by insurance.

4. Approval of Minutes

Motion by Dave Foley, seconded by Frank DeFelice, to approve the minutes of the December 16, 2009, meeting as amended to reflect corrections on page 8 (Joe Pasquale received a call from Diana Cruise on December 15 and went to Mountain Road on December 15; he saw nothing. He returned to the site on December 16 and observed a low-bed trailer, an 18-wheel tractor trailer, and a loader on the site). Motion carried unanimously.

For the record, it was noted that the minutes of the two site walks on December 19, 2009, contained the same error regarding attendees. When these minutes are voted on, it should be noted that Campbell Barrett *was* in attendance and Ralph Chase was *not* in attendance.

5. Zoning Enforcement Officer's Report

Geoffrey Colegrove is preparing a letter in concert with Bill Milardo regarding the keeping of small farm animals on a property on Old Blue Hills Road.

A complaint was filed by the neighbor against Tom Russell with regard to cleaning up the property. Al Johanson is involved in photographing the violations. Some of the material relates to construction equipment that needs to be removed from the site. Mr. Russell has been asked to begin to move equipment as soon as possible (i.e., street sweeping equipment). A deadline has been agreed upon.

George Eames stated that he had received from Nathan Jacobsen documents regarding the Turkey Hill subdivision; corrections to the drawings are now acceptable. The signed and sealed mylars are ready to be filed in the Durham land records.

A letter from Attorney Steve Byrne was read by George Eames. Attorney Byrne stated that their rate of \$125 per hour has remained unchanged for over 20 years; the rate for legal services has increased over that time. The fee charged to municipalities will increase to \$150 per hour effective July 1, 2010. Their usual rate for individuals is between \$200 and \$250 per hour. All other fees remain unchanged (no charge for standard phone calls, half-rate charge for travel, etc.). A January 4, 2010, status report was provided by Attorney Byrne; Geoffrey Colegrove will see that this is provided to all Commission members.

6. Election of Officers

Nomination by Richard Eriksen, seconded by Frank DeFelice, for George Eames, Chairman.

Nomination by George Eames, seconded by Ralph Chase, for Richard Eriksen, Vice Chairman.

Nomination by George Eames, seconded by Ralph Chase, for Cathy Devaux, Secretary/Treasurer.

Motion by Ralph Chase, seconded by Frank DeFelice, to close nominations. Motion carried unanimously.

Motion by Dave Foley, seconded by Ralph Chase, to cast one ballot to elect the above slate of officers. Motion carried unanimously.

7. Town Planner's Report

Geoffrey Colegrove stated that he had filed preliminary budget numbers with the Board of Finance. There has been \$10,000 earmarked for the Plan of Conservation and Development in the new budget (as there was in this year's budget); the renewal year is 2013. Geoffrey Colegrove has plans to begin work on this document.

To Chris Flanagan's question about the budget for the town planner, Geoffrey Colegrove stated that last year, the budget was \$67,000 (with \$10,000 a part of that number for the Assistant Zoning Enforcement Officer).

To Frank DeFelice's question regarding the Arrigoni lawsuit, it is currently in federal court.

8. Approval of Special Site Walk Minutes

Motion by Dave Foley, seconded by Frank DeFelice, to approve the minutes of the December 19, 2009, site walks (DiNatale and Greenland Realty) with the following revisions:

- 1) Campbell Barrett was present for both; Ralph Chase was *not* present.
- 2) Page 2 of the DiNatale site walk: the *operator* (not applicant) is the only employee.

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

Richard Eriksen queried the future practice of having the recording secretary attend site walks and prepare minutes and the resultant impact on the budget from additional bills. George Eames indicated that, in the case of these recent site walks, it was at Attorney Steve Byrne's recommendation that Jan Melnik attend and prepare notes from the walks. This will be evaluated (her attendance at site walks) on a case-by-case basis going forward.

Motion by Ralph Chase, seconded by Frank DeFelice, to recess the regular meeting at 8:00 p.m. for the public hearing. Motion carried unanimously.

PUBLIC HEARING

1. Applicant/Owner: DiNatale Rentals, LLC
Property Location: 593 Wallingford Road
Proposed Activity: Request for special permit for an automobile and equipment service business in the heavy industrial zone

Present

Members: Ralph Chase, Lisa Davenport, Cathy Devaux, Frank DeFelice, George Eames, Richard Eriksen, Chris Flanagan, Dave Foley, Joe Pasquale

Town Planner: Geoffrey Colegrove

Alternate: Campbell Barrett

George Eames, Chairman, opened the public hearing and read the legal notice. Campbell Barrett was present, but not seated on the Commission.

Attorney John Corona addressed the Commission on behalf of Pat DiNatale, the applicant, who was also in attendance. He presented the amended parking plans for the Commission's review; the change reflects concerns of some Commission members, including Dave Foley, noted at the site walk. The parking has been moved so that the building helps to shield visibility to the residential neighbors. It would be unlikely that all the parking spaces would ever be used at the same time.

Attorney Corona provided a copy of the October 7, 2009, public hearing minutes as a part of the record (this hearing supported the zone change that enables the present application).

In addressing an earlier comment from Donia Viola, Attorney Corona stated that there is no new construction; hence, there will be no application to the Inland Wetlands and Watercourses Agency.

Attorney Corona corrected an earlier statement he had made regarding purview as it relates to the Department of Motor Vehicles (there have been a number of recent changes). The applicant *will* be required to go before the Inland Wetlands and Watercourses Agency, which acts as an agent for the Department of Motor Vehicles.

Cathy Devaux asked how long the present business has been in operation. Attorney Corona indicated that he did not know the answer to that question. He stated that the applicant before the Commission is not the operator of the business. The license for the Department of Motor Vehicles is granted in the name of the operator (not property owner or applicant).

Pat DiNatale stated that the operator has been in the unit for about eight months. At the initial stages, it was a “tinker shop” that evolved to the current business. At that point, Pat DiNatale informed the operator that this wasn’t a permitted use. Because the operator was interested in remaining in the present location, the application permit process was commenced.

Lisa Davenport stated that her husband’s vehicles had been repaired by the same operator in a different unit at the site.

Attorney Corona stated that this was not relevant to the matter at hand.

Richard Eriksen stated that the point is whether or not this use is appropriate in this particular site, which is the subject of the public hearing.

George Eames indicated that at a previous public hearing, a resident’s question was whether or not it would be possible for all 80 units at the site to have similar businesses; that would not be possible as each would have to come before the Planning and Zoning Commission for approval of a special permit.

Pat DiNatale indicated in a conversation with George Eames that he is not interested in a proliferation of these types of businesses (indicating that perhaps this one plus one more at the most would be his desire). As the property owner, Pat DiNatale can determine to whom he wishes to rent a unit. Pat DiNatale clarified that he is before the Planning and Zoning Commission to rectify the situation and have in place the appropriate permit.

Geoffrey Colegrove stated that the regulation requires a special permit application. Anyone seeking a permit would have to appear before the Commission wherein the Commission can determine if the criteria is met (which includes the presence of other uses, similar uses and, perhaps, an excessive number of uses).

Attorney Corona noted that at any time in town, there are any number of “illegal” (or unpermitted) activities going on. In his opinion, it would not be the best tactic to ‘scold’ an applicant who is attempting to go through the proper channels and secure a permit for such an activity (it sends a conflicting message to others in the community). He pointed out that the Commission has the ability to enforce the zoning regulations at any time.

Frank DeFelice noted during the site walk that he observed that the building is constructed of higher quality materials than he’d initially anticipated (structural steel, height of concrete, etc.). He is aware that there is additional fireproofing required. Pat DiNatale and Attorney Corona have met with the fire marshal and the building official to discuss possible options; the design will not be perfected until it is determined that this use is approved initially. The two adjoining walls that lead to adjacent space would be enhanced if/when approved.

Dave Foley asked if there would be a specific unit attached to the approval for this particular use. Pat DiNatale stated that the unit is #66. To the question as to what would happen if the operator

wished to expand the business by absorbing an adjacent unit, this would require a site plan review by the Commission.

Dave Foley expressed concern with unlimited hours of operation. Even though the business is in the heavy industrial zone, it is adjacent to a residential zone.

George Eames said that hours were discussed during the site walk as, generally, being between 9:30 a.m. and 6:00 p.m. However, because of the nature of the work, hours will be dictated based on customer need and this will frequently be evenings and weekends (so that company vehicles serviced by this business are not out of service during working hours).

Attorney Corona stated that historically the Commission has not imposed hours of operation in other heavy industrial uses that are adjacent to residential uses (i.e., town garage, Durham Manufacturing, etc.). What goes on inside the unit is nearly invisible to the area; a condition of approval could be that all activity take place indoors with doors closed. The operation will primarily be repairing light-duty vehicles, not heavy equipment with backup beepers. He suggested it was a dangerous precedent to set hours of operation in a heavy industrial zone.

Dave Foley noted an additional concern that any approval granted “goes with the property” (i.e., an automotive repair operation, a horse crematorium); the next property owner might not be as diligent as Pat DiNatale in carefully overseeing the site. The potential is that the site could be used as a business incubator, which is not necessarily a bad thing. This needs to be a consideration, in Dave Foley’s opinion.

Richard Eriksen reminded everyone that because a special permit is required, the Commission has the opportunity to carefully review and consider future operations. Any expansion of an approved business would require a subsequent site plan review/approval process.

Geoffrey Colegrove stated that there are performance criteria that could be considered (lights, noise, etc.); for instance, instead of imposing precise hours of operation, it could be “No observable activities from the premises.” He noted that noise or other observable impacts might make more sense than hours of operation.

Attorney Corona stated that all of the other car repair businesses in town, which are in commercial districts, are adjacent to residential uses. This is in the heavy industrial zone.

Frank DeFelice stated that he would be in support of a business incubator concept, provided that there is no negative impact on the residential neighbors. However, he is not in favor of limiting hours of operation.

Richard Eriksen stated that other than checking brakes on a truck, for instance, all activity would be indoors with the doors closed. The town already has a noise ordinance.

Lisa Davenport asked what the original use of the property was. Attorney Corona stated that it was for multiuse industrial buildings able to be adapted to all uses on the heavy industrial use

table. There are a wide range of industrial activities on the site presently (storage of heavy equipment, use for parking equipment throughout day, use by hobbyists, etc.).

Lisa Davenport stated her support for a business incubator concept. She had researched the files and found an application for retail sales of firearms (a state police officer has a permit for retail sales, which was required for a federal permit; the unit is used for storage in that case). She also questioned bathroom facilities within the units. Pat DiNatale stated that about 50% of the units have telephones, heat, and bathrooms.

The first building was constructed in 1998. Two buildings share a pump chamber and leach fields, but with separate tanks. The back units have power only, but no bathroom facilities.

Geoffrey Colegrove indicated that most of the uses in the heavy industrial zone—as long as they are on the use table—are by site review plan. The horse crematorium and the retail/storage for firearms are by special permit.

Pat DiNatale stated that about 30% of the units are hobbyists. There are electricians, insulation contractors, a sheetrock company, plumbers, and other trades represented. In addition, there is storage for Hobson & Motzer, United Cleaning, and other companies. The primary activity on the site is traffic the first thing in the morning and then again from 4:00 to 6:00 p.m.

Joe Pasquale expressed concern with protecting the residential neighborhood (i.e., doors stay closed during operation). During the zone change, he said that five neighbors noted concern during the hearing. He added that the horse crematorium did have hours of operation imposed. He suggested consideration of “self-imposed limitations,” i.e., the business owner voluntarily suspends operations until approval from the Planning and Zoning Commission is granted and a license is secured from the Department of Motor Vehicles.

Attorney Corona stated that if the Commission grants the permit this evening, all obligations would have been fulfilled. He noted that DMV license issues, health code issues, etc. are all outside the purview of the Planning and Zoning Commission. The applicant will next go to the Zoning Board of Appeals. This will add more time to the process. It was also noted that a cease-and-desist order could be imposed. In this case, this is an applicant (on behalf of a business operator) coming forward to secure permit approval; many operations in town exist without a permit at all.

Attorney Corona noted that industrial space, such as provided by Pat DiNatale, became viable solutions for people who might previously have operated from basements and garages at their homes.

Chris Flanagan stated his impression that the proposed activity was a suitable use in the building. He questioned whether an additional three-foot door for egress would be desirable. The fire marshal is satisfied with the current arrangement.

Cathy Devaux asked if it would be possible to require business operators to seek a permit first before starting a business such as this. Pat DiNatale stated that this was the first time since 1998 that an operation of this sort presented itself; he sought legal counsel and is following the permit process. When neighbors have complained about the overall operation, Pat DiNatale has been very diligent about running a solid operation and addresses all issues, particularly when specific unit numbers are provided. He explained how lights were, at one point, an issue; 48 light fixtures were changed out with new ones. If there are problems with tenants, they are promptly handled.

Fred Serle, 608 Wallingford Road, addressed the Commission. He is directly across the street from the site. He stated that Pat DiNatale is a good neighbor. His biggest concern is that the site becomes a “catch-all” and there is free access to the site for “friends” of the business operators. The problems (noise, multiple trucks late at night) have been caused those visiting. He would like to see gated/locked access.

Donia Viola, 46 Partridge Lane, addressed the Commission. Her concern is safety and the town’s liability, in particular, if something were to happen prior to approval of the Department of Motor Vehicle. She also expressed concern with the lack of a second egress in the event of a fire or other emergency.

Impact on traffic was another area of concern (along Route 68), especially if there were additional businesses approved in this area. She suggested consideration be given to also adding a window to the building for ventilation. She wondered if the EPA should be involved with emissions testing for a business of this type.

Motion by Frank DeFelice, seconded by Ralph Chase, to close the public hearing for DiNatale Rentals, application for a special permit, 593 Wallingford Road. Motion carried unanimously.

Motion by Ralph Chase, seconded by Frank DeFelice, to reconvene the regular meeting at 8:55 p.m. Motion carried unanimously.

9. DiNatale Rentals, LLC, Request for Special Permit for an Automobile and Equipment Service Business, in the Heavy Industrial Zone, 593 Wallingford Road

Richard Eriksen stated that there is no application before Inland Wetlands, speaking as an individual. By including a condition of approval to meet all building and fire codes, this would include any requirement that might be imposed for a second door for egress as well as the fireproofing of walls.

The applicant will need to go before the Zoning Board of Appeals in February. The application cannot be made to the Department of Motor Vehicles until after the ZBA’s approval. Therefore, as a practical matter, this would extend things to at least the middle to end of March.

George Eames pointed out that during the site walk it was noted that an exhaust hose would likely be installed through the door (subject to the requirements of the Department of Motor Vehicles).

January 6, 2010

Page 9

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the DiNatale Rentals application for a special permit to operate an automobile and equipment service business at 593 Wallingford Road, Unit #66, with the following requirements:

- 1) facility meet all local, state, and federal building and fire codes
- 2) activities be conducted inside the building with the doors closed

Motion carried unanimously.

10. Miscellaneous

Dave Foley asked how much the Commission has paid in terms of legal costs for the Greenland Realty matters over the years. Geoffrey Colegrove indicated that Attorney Tom Byrne's bills did not enumerate as Attorney Steve Byrne's bills do by specific case. Geoffrey Colegrove will ask the town finance director if this is possible to calculate.

Lisa Davenport asked if allowing 30 days for the DMV application was adequate. It was noted that while this was not made a condition of approval for the DiNatale Rentals application, 30 days would be a reasonable timeframe in which the licensing process could occur.

Motion by Frank DeFelice, seconded by Dave Foley, to adjourn the meeting at 9:10 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

1/14/2010