

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF FEBRUARY 3, 2010, MEETING

Present

Members: Ralph Chase, Lisa Davenport (arrived late), Frank DeFelice (arrived late),
Cathy Devaux, George Eames, Richard Eriksen, Chris Flanagan, Dave Foley
Town Planner: Geoffrey Colegrove
Alternates: Campbell Barrett, Mike Geremia

Absent

Member: Joe Pasquale
Alternate: Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Mike Geremia was seated on the Commission in Frank DeFelice's place (who arrived later in the evening). Campbell Barrett was seated in Joe Pasquale's place.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Richard Eriksen, to approve the agenda of the February 3, 2010, meeting as presented. Motion carried unanimously.

2. Public Session

No business.

3. Miscellaneous

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George Eames read a letter received from the Department of Transportation concerning the school/athletic complex on Pickett Lane. A letter must be filed by Regional School District #13 in the land records prior to securing a permit to do the work. Geoffrey Colegrove will convey this requirement to superintendent Susan Viccaro.

A copy of the town's new "Code of Ethics" acknowledgement was distributed to every Commission member who had not yet signed the form and returned it to the town clerk's office.

George Eames informed the Commission that the annual meeting of the Connecticut Federation of Planning and Zoning Agencies would be held on March 18 at the Aquaturf. Geoffrey Colegrove will include copies of the notice with the next Commission mailing.

A letter was received from Attorney Steve Byrne on behalf of the Connecticut Federation of Planning and Zoning Agencies thanking the Commission for the opportunity to present the recent planning workshop on January 20. Attorney Byrne will present a second workshop prior to the next meeting (February 17, 7 p.m.) to discuss the town's Plan of Conservation and Development as well as the Subdivision Regulations.

4. Payment of Bills

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

- Attorney Steve Byrne - \$825.00 (RSD #13 site plan)
- Absolute Advantage - \$369.56 (minutes of 1/6/2010 meeting)
- Absolute Advantage - \$432.36 (minutes of 12/16/2009 meeting)
- Absolute Advantage - \$251.21 (minutes of 12/19/2009 site walks)
- Absolute Advantage - \$433.81 (minutes of 1/20/2010 meeting)
- Attorney Steve Byrne - \$737.50 (RSD #13)
- Attorney Steve Byrne - \$1,337.50 (Jackson enforcement matter)
- CT Federation of Planning & Zoning Agencies - \$100 (book order for Commission members)
- CT Federation of Planning & Zoning Agencies - \$150 (workshop for Commission members; booklets distributed at no charge)

Motion carried unanimously.

Lisa Davenport was seated at 7:45 p.m.

Geoffrey Colegrove will arrange for copies of Attorney Tom Byrne's book for Richard Eriksen, Cathy Devaux, George Eames, and Jan Melnik (Chris Flanagan has an extra copy that he will bring to the next meeting).

5. Greenland Realty, Request for Modification to Existing Site Plan to Include Outside Storage of Construction Equipment and Vehicles and On-site Fuel Tank

Geoffrey Colegrove advised that counters had been installed at Greenland Realty on December 10, operating until the 20th, when the cables were destroyed by snow plows. The daily counts varied, generally ranging from about 20 to 50 trips. There were trips as early as 3 and 4 a.m. and most end-of-day trips were concluded by 8 or 9 p.m. He stated that there was no real concentration of activity at any one time of the day.

The Commission discussed possible conditions of approval, including requirement for and specifications of bollards. These would fall under the purview of the fire marshal/fire chief. Also discussed was possibly providing curbing around the concrete pad, sufficient in size to accommodate the entire contents of the tank in the event of a catastrophic leak. However, this idea created an unresolved question of how to handle the accumulation of rainwater.

Richard Eriksen expressed frustration with not being able to discern the difference among the heavy industrial, light industrial, and Design Development District zones—that uses were blurring. He said that while he knows what heavy industrial is and should be, there had been “industrial creep” among the light industrial zone and the Design Development District. He stated his impression that the Design Development District had been initially developed to provide almost a buffer—or area of sensitivity between heavier industrial uses and the residential neighborhood. He further stated that he was uncomfortable with what had transpired at Greenland Realty—that what was occurring was not what he had originally envisioned when the zone was created. He pointed out that it was not the fault of the applicant, but, rather, was the fault of the “Commission because we can’t say no and don’t define what the Design Development District is.” In his opinion, a fuel tank and the storage of heavy equipment/vehicles are heavy industrial uses.

George Eames indicated that while there might be some overlap, the Commission has already defined the distinctions among these zones and needs to enforce what is in place.

Geoffrey Colegrove clarified that the three zones are *not* distinguished by their uses. The Design Development District has very generalized and ancillary inclusions. Both the heavy and light industrial zones go back a long time in the creation of the original regulations. There is actually very little difference—same area requirements, same coverage requirements, and most of the same uses are allowed in all three zones (with several notable exceptions—activities that are not permitted in the light industrial or Design Development District). The Design Development District has landscaping requirements and other standards that are far more stringent than either of the industrial zones.

Geoffrey Colegrove pointed out that the Design Development District has essentially been fully built out (one lot adjacent to the active Greenland site remains; Ozick Drive is fully developed).

Richard Eriksen stated that there are some things happening in this zone that should never have happened and never have been allowed to happen in the first place. He believed that the addition of a fuel tank would be an intensification of use to what is already taking place on the site.

Ralph Chase asked how close the applicant was to full compliance with the original conditions of the first permit. He stated that over time, the “rules of the game” had been changing while there

has not been a good job done of implementing one set of regulations before implementing another set. He was uncertain as to what was acceptable or not in this location.

There was discussion about the large ‘mountain’ of dirt on the site—the fact that there was a difference of opinion on the part of the Planning and Zoning Commission and the Inland Wetlands Commission, thus leaving the pile at a standstill.

Richard Eriksen stated that he was not pleased with how the applicant had interpreted the original site plan approval. He is not happy with what is already taking place on the site and with what has been allowed by the Commission. From the perspective of Inland Wetlands, he stated that the site is not in compliance with the original site plan. He asked how the Commission could contemplate another revision to the plan when the site is not in compliance with the originally approved site plan.

Chris Flanagan concurred with Richard Eriksen and George Eames. He suggested taking a step back and evaluating the history carefully. He further encouraged the curbing of the concrete slab—if the fuel tank is approved—and suggested that a slab about 50 feet long, 25 feet wide, and 8 to 12 inches in height would accommodate the full capacity of the tank in the event of a leak. He also suggested consideration of creating a moderate depression where the trucks will be coming up to the fueling area.

Dave Foley noted that he could think of no other site in town during his history with the Commission that has generated more complaints and more enforcement actions by the Commission. He described the current use of the site—whether it is what was envisioned and approved or not—as being incompatible with the abutting residential neighbors. He stated that, over the years, some of the adjacent residential property owners had attended more Commission meetings than had some Commission members. He described the current use as “a problem” and any expansion of that use “a mistake.” He said that while the Commission can’t go back and “undo” the decision, it can keep from making a bad situation worse by not allowing the applicant to expand its use of the site. To allow up to ten pieces of heavy equipment/vehicles on the site would worsen the existing problem, require further policing, and is not recommended, in his opinion.

Clarifying the composition of the neighborhood, all of the area homes with the exception of Dave Dingwell’s (which is in an industrial zone) are in the residential zone.

Geoffrey Colegrove stated that the only difference between this site and those on Ozick Drive is the distance from the road/visual impact. Other uses on Ozick Drive are equally intense. Dave Foley pointed out that Ozick Drive activities are not generating “tons of complaints.”

Geoffrey Colegrove indicated that part of the current application is to address an omission from the initial application—that outside parking areas for storage of vehicles or equipment had not been specified on the original site plan. The issue of proximity to residential sites was discussed. Geoffrey Colegrove stated that an intensification of use would be increasing the building size, amount of traffic, etc. Adding a fuel tank would not result in that, in his opinion.

Lisa Davenport asked if the reason behind the need for additional landscaping in the Design Development District is for buffering adjacent to the residential zone (it is). She stated that if the buffering provides a visual block from the residents, she wouldn't think that outside storage of vehicles would be a problem.

The applicant has agreed to replace the dying arborvitae with white pines. Initially, these will not be as tall as the existing arborvitae. Equipment/exterior storage would be visible during a period of growth by properties to the west; there would definitely be visibility by the property to the south. While the Commission could require supplemental screening closer to where the vehicles will be parked, it would be impossible to completely block view by off-site properties.

Lisa Davenport stated that she did not believe she had enough information at this point; however, she commented on the difficulty of running a business during these economic times. She asked if it had been an oversight on the Commission's part with the initial application approval to have not provided for exterior storage. The omission was on the part of the applicant; Geoffrey Colegrove added that at the time of the initial application, the applicant had plenty of active job sites on which to have equipment stored.

Geoffrey Colegrove also stated that the applicant had initially installed a fuel tank, which was not on the approved site plan, and subsequently removed it. He pointed out that there are other industrial sites in town that have fuel tanks, including some in the Design Development District, that did not come back to the Commission for site plan approval or permits.

Dave Foley stated his opinion that the exterior storage of heavy equipment/vehicles would represent an increased intensity of use (moving those items around, bringing a low boy onto the site, etc.). It would also be likely that these activities would occur in the early morning and late at night, further disrupting the neighborhood.

Chris Flanagan noted that even if the equipment were stored in the building, there would still be activity moving things in and out; hence, the activity level wouldn't increase with exterior storage.

Mike Geremia referenced the language in the regulations referring to the Design Development District—encouraging development, *which is compatible* with surrounding and abutting neighborhoods.

Chris Flanagan reflected on the fact that while the heavy equipment/truck traffic may create problems and noise, if, instead, the site were an office park with 50 passenger vehicles traveling in and out each day, that might be equally onerous.

Frank DeFelice arrived at 8:27 p.m. He was not seated (having not had an opportunity to listen to the tapes of the previous hearing); therefore, Mike Geremia remained seated.

Dave Foley stated that whatever the Commission allows to happen on the site that is subject of

the application could conceivably take place on the adjacent property owned by the applicant; therefore, any action taken could be precedent-setting. That open site is the last remaining property to be built up in the Design Development District.

Motion by Richard Eriksen, seconded by Ralph Chase, to approve Greenland Realty, LLC, request for modification to an existing site plan to include outside storage of construction equipment/vehicles and onsite fuel tank subject to:

- 1) providing shop drawings for approval of fire marshal and fire chief for the concrete pad
- 2) with installation of bollards (approximately 18” in diameter and approximately 4’ above ground and 4’ below ground) placed about every two feet in conformity with approval of fire marshal/fire chief
- 3) all matters satisfying all state, federal, and local regulations
- 4) landscaping—replacement of arborvitae with white pines as committed by applicant prior to implementation of fuel facility
- 5) limitation of outside storage to no more than 10 vehicles/pieces of heavy equipment

Motion unanimously denied.

6. Approval of Minutes

Motion by Mike Geremia, seconded by Ralph Chase, to approve the minutes of the January 20, 2010, meeting as amended to reflect the spelling of Searle (not Serle) and Richard Eriksen making motion on page 12 (not Frank DeFelice). Motion carried unanimously.

7. Zoning Enforcement

Geoffrey Colegrove stated that there was a response from Attorney John Corona on behalf of the Fair Association with regard to the complaint of vehicles being stored and operated from the fairgrounds on a regular basis. Attorney Corona noted in his January 27 letter that the existing permits for the Durham Agricultural Fair Association allow for storage as a permitted use.

George Eames explained that this was not the point of the complaint. The issue is not with storage, but, rather garaging (and operation) of a company from the fairgrounds and use of Canfield Lane for daily access. There has been “creep” within the residential zone. The vehicles apparently belong to the Connecticut Cable Company.

Geoffrey Colegrove stated that the Commission’s decision in 1988 was very broad—allowing between six and seven uses for the Fair Association.

There has been an increase in the number of inappropriate signs along Main Street. Kurt Bober has been collecting those mounted to trees and poles. When Al Johanson returns from vacation, Geoffrey Colegrove will provide him with a punchlist detailing the sign regulations and the

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violations for him to use on a site-by-site basis (attempting a soft approach to educate business owners and hopefully coax compliance). Voluntary removal of the offending signs will be encouraged. This approach will be pursued before issuing individual letters with notices of violation.

Geoffrey Colegrove recommended that the Commission establish either a subcommittee or handle through a workshop as a whole Commission the language and regulations for home occupations. The current regulations do not differentiate between levels of activity. Many types of home occupations operate without any visible exterior changes, have no employees, and do not need a business sign. He pointed out that there are a number of property owners with “wood for sale,” technically home occupations, but they are operating without permits.

Geoffrey Colegrove will begin to assemble some material (Portland recently revised their home occupation regulations; Haddam has a three-tiered system; Middlefield has a two-tiered system) about home occupations for the Commission’s consideration.

He also asked how the Commission would like to handle the annual request of the Durham Veterinary Hospital for a pet fair. There are plans to hold it at the Allyn Brook Park pavilion this year (May 16, 2010). It was agreed that a site plan review was the appropriate way to secure approval.

Geoffrey Colegrove stated that he had been approached by someone interested in buying one of the condominiums on Ozick Drive (a unit in Rory Wilson’s facility) to open a golf therapy/training facility (similar to the softball/pitching training facility that the Commission approved on Ozick Drive some years ago. This will be on the agenda of the next meeting and the potential applicant will be advised to come before the Commission for further discussion.

Frank DeFelice stated that he had attended town moderator’s training with Dave Montgomery earlier in the evening and found it very beneficial.

Motion by Ralph Chase, seconded by Dave Foley, to adjourn the meeting at 9:02 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik
2/10/2010