

TOWN OF DURHAM

Planning and Zoning Commission
P.O. Box 428
Durham, Connecticut 06422-0428

MINUTES OF FEBRUARY 17, 2010, MEETING

Present

Members: Ralph Chase, Lisa Davenport, Frank DeFelice, Cathy Devaux, George Eames,
Chris Flanagan, Joe Pasquale
Town Planner: Geoffrey Colegrove
Alternate: Campbell Barrett

Absent

Members: Richard Eriksen, Dave Foley
Alternates: Mike Geremia, Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Campbell Barrett was seated on the Commission in Richard Eriksen's place.

1. Approval of Agenda

Motion by Frank DeFelice, seconded by Chris Flanagan, to approve the agenda of the February 17, 2010, meeting as amended to reflect the addition of executive session, pending litigation. Motion carried unanimously.

Motion by Ralph Chase, seconded by Frank DeFelice, to go into executive session, pending litigation, at 7:10 p.m. Motion carried unanimously.

~ Executive Session ~

Lisa Davenport arrived at 7:25 p.m.

Motion by Ralph Chase, seconded by Frank DeFelice, to come out of executive session at 7:44 p.m. Motion carried unanimously.

2. Public Session

No business.

3. Zoning Enforcement Officer's Report

Motion by Frank DeFelice, seconded by Ralph Chase, to file a notice of zoning violations in the land records for the John Jackson Main Street property. Motion carried unanimously.

4. Workshop: Subdivision Regulations and the Plan of Conservation and Development

Attorney Steve Byrne, the Commission's counsel, presented a workshop on both the subdivision regulations as well as the Plan of Conservation and Development.

Attorney Byrne noted that because new construction is less active during the current economic times, many planning and zoning commissions are revisiting their subdivision and zoning regulations. He stated that subdivision applications could be denied now on the basis of a lack of conformity with the general requirements. He did note that an application could not be denied simply because it would generate additional traffic.

With special permits, however, the Commission can examine traffic issues, parking, etc. Subdivisions, on the other hand, are a permitted-by-right use as long as specific lot requirements are met. A town road being inadequate to handle traffic from a new subdivision is not an appropriate basis on which to deny an application. The Commission cannot force a subdivision applicant to address off-site concerns (these can, however, be something that a developer negotiates—improving a road that leads to the subdivision, but not directly in front of the subdivision; in other words, there can be subdivision “deal-making”).

Attorney Byrne pointed out that the actions the Commission can take are to approve, deny, or approve with modifications (*not* conditions). He noted that there is no longer a requirement for notice to an adjoining municipality for subdivision projects within 500 feet of an adjacent town line.

The Plan of Conservation and Development was discussed. The Commission is required to review/reevaluate the document every ten years to determine if revisions are necessary (but not necessarily change/revise it). Durham's plan is due for review/revision in 2013. To not do so creates a situation where the state Office of Policy and Management would have a reason for withholding funding to the town (requiring the first selectman to provide an explanation).

Geoffrey Colegrove advised that there is money in both the current year's budget as well as next year's budget. He will begin work on certain sections and suggested that the Commission might wish to establish a subcommittee to begin the general review.

Attorney Byrne stated that the authority of the Plan of Conservation and Development is purely advisory. However, it is a good idea—in particular with zone changes or special permit applications—to mention how actions conform with the POCD. It provides great weight and gives a judge something on which to base a decision; likewise, if an action of the Planning and Zoning Commission is not supported by the POCD (i.e., the decision of P&Z is contrary to what is in the POCD), it makes it more likely that a judge would reverse the P&Z decision.

Attorney Byrne reviewed the requirement for filing of mylars on the land records following subdivision approval. It is unclear what happens if the first 90-day filing period expires before an applicant seeks an extension (i.e., can a second 90 days be granted retroactively?). He also discussed municipal improvements. Even with a rejection of an 8-24 review by the Commission, a town could conceivably (through the town meeting form of government) go forward with plans; the decision of the Planning and Zoning Commission with regard to municipal improvements is purely advisory.

The workshop wrapped up at 8:45 p.m.

5. Maureen Melleky, Possible Golf School “Back on Course” at 45 Ozick Drive

Geoffrey Colegrove referenced a letter provided by Maureen Melleky, who is investigating the possibility of operating her business in this location (Suite 9, 45R Ozick Drive). She described the golf performance enhancement business that she has operated since 1997. She is also a licensed physical therapist. She will be the sole proprietor of the business with no employees. At a maximum, there would be two people/vehicles at any one time (one appointment arriving as another is concluding). Any group lessons would be provided at a golf course. She plans to operate the business Monday-Friday, from 10 a.m. to 6 p.m.

Maureen Melleky stated her interest in purchasing the unit as a condominium. It is about 1,250 square feet in size. She will have two treatment rooms, an office area, and nets along the mezzanine for golf balls. Parking requirements would be minimum—the two to three spaces in the front of the unit are more than adequate. The use is very similar to the baseball pitching facility operated in the same building. While it is not a specific use for the industrial park, it was determined to be an acceptable use by the Commission.

The applicant has spoken with the town sanitarian, Bill Milardo.

Motion by George Eames, seconded by Cathy Devaux, to approve the acceptability of use of 45R Ozick Drive, within the Design Development District, and no objection for operation of “Back on Course,” a golf performance enhancement business by Maureen Melleky. Motion carried unanimously.

Geoffrey Colegrove indicated that he would sign the zoning permit for this purpose.

6. Cuomo Construction Company, Inc., Modification to Special Permit for an RV Parking Area, Route #17 and Meetinghouse Hill Road

Attorney John Corona addressed the Commission on behalf of the applicant. The property has already been approved for a 10-unit retirement complex (age 55 and over). Tony Cuomo is interested in creating a gravel pad for the storage of RVs for residents (up to four on a 50' x 75' site adjacent to the complex with a separate entrance off Route 17). The request has been approved by the Inland Wetlands Commission. This would be storage only—the RVs would not be used for extra sleeping arrangements; there will be no lighting or utilities for the pad. No repairs would be conducted on the site. A separate curb cut permit will be required from the Department of Transportation. No gate is planned.

Motion by Ralph Chase, seconded by Lisa Davenport, to approve the modification to the special permit for an RV parking area, Cuomo Construction, Co., Inc., Route #17 and Meetinghouse Hill Road. Motion carried unanimously.

Joe Pasquale expressed concern with establishing a precedent in other subdivisions. Geoffrey Colegrove indicated this could conceivably only occur in subdivisions with common ownership areas. To Frank DeFelice's query regarding time limitations for the parking of such vehicles, the regulations simply require that vehicles be registered with the allowance for up to one unregistered (but drivable) vehicle on a site—parked behind the dwelling. Of course, in this instance, the association can impose additional guidelines.

Geoffrey Colegrove recommended that as much of the treeline in the area of the proposed pad be maintained as possible.

7. Discussion of Possible Changes to the Home Occupation Regulations

Geoffrey Colegrove distributed language from the home occupation regulations of Portland, Haddam, and Middlefield for the Commission's consideration. He will draft language that melds some of the best ideas of each for the Commission to review at its next meeting.

It was noted that a home occupation permit is granted to an individual; if he/she moves, the use at the property disappears.

8. Payment of Bills

Motion by Ralph Chase, seconded by Frank DeFelice, to approve payment of the following bill:

- Absolute Advantage - \$381.41 (minutes of 2/3/2010 meeting)

Motion carried unanimously.

9. Approval of Minutes

Motion by Cathy Devaux, seconded by Ralph Chase, to approve the minutes of the February 3,

2010, meeting as presented. Motion carried unanimously.

10. Town Planner's Report

A letter was received from David and Susan Estabrook, 3 Buckingham Meadow Road, E. Setauket, New York, regarding their plans to purchase a home on Higganum Road and their desire to operate a home-based business (fasteners). There would be no external employees, no signage, and no traffic save daily UPS deliveries. This will be on the agenda of the March 3, 2010, meeting.

Geoffrey Colegrove advised that a letter had been sent by the Zoning Enforcement Officer to 110R Foot Hills Road (regarding the pygmy goats); complaints have been received from the abutter concerning the barns/structures and composting activities.

With respect to the continuing proliferation of signs along Main Street, Geoffrey Colegrove will prepare a checklist that can indicate the type of violation; the ZEO can make friendly visits to businesses, pointing out the areas where there is noncompliance with the regulations. This approach will be used in lieu of certified letters/formal enforcement at this time in an effort to secure voluntary compliance (and save legal funds). Several Commission members commented about the signs posted to telephone poles; these are sometimes removed by State DOT workers or, occasionally, the Public Works Department.

Geoffrey Colegrove indicated that he had had a conversation with Attorney John Corona, legal representative for the Durham Fair Association, regarding the business/trucks being parked at the fairgrounds and using Canfield Lane on a regular daily basis. It is Attorney Corona's assertion that this use is covered under the permit issued in approximately 1988. However, there was acknowledgement that the activity has an impact on residential abutters and changes will be made to eliminate those impacts. The business use is expected to continue for another year.

Frank DeFelice asked if the permit that the Fair Association has extends to new properties if/when acquired; this would not be the case.

Geoffrey Colegrove will check the details of the original permit from 1988, particularly in light of the fair now being extended to four days. He believed the original permit stipulated a three-day fair.

Motion by Cathy Devaux, seconded by Frank DeFelice, to adjourn the meeting at 9:40 p.m.
Motion carried unanimously.

Respectfully submitted,

Jan Melnik
2/23/2010

