

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF APRIL 7, 2010, MEETING

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

Absent

Member: 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 Dave Foley's place.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Chris Flanagan, to approve the agenda of the April 7, 2010, meeting as presented. Motion carried unanimously.

Lisa Davenport was seated on the Commission at 7:33 p.m.

2. Public Session

No business.

3. Kumar Realty, LLC, Request for a Proposed 2-lot Subdivision, Parmelee Hill Road and Indian Lane

The application for this proposed two-lot subdivision has been continued to the April 21, 2010, meeting.

4. Discussion of Possible Changes to the Home Occupation Regulations

Geoffrey Colegrove distributed proposed language breaking home occupations into two categories. The first (12.04.01.01) is for a home occupation that will not change the outside character of the dwelling or neighborhood, has no outside employees or storage, has no signage, and no parking for customers. A home occupation would be limited to no more than 25% of the floor area.

Prohibitions for a home occupation include:

- Signage and any on-site advertising
- Lighting inconsistent with that normally found in a residential zone
- Operation of the occupation on the property outside the dwelling
- Storage of merchandise or materials associated with the occupation on the property outside the dwelling
- Frequent vehicular loading and unloading of materials associated with the occupation
- Customer parking spaces on the property
- Use of more than 25% of the floor area (assessor's card) of the dwelling
- Employment of non-resident employees
- Violation of noise or other applicable ordinances
- Cause the expansion of the residence to accommodate the home occupation

The second section, 12.04.02.01, provides for establishing a home occupation in a residential dwelling, attached garage, or an existing accessory building only after a site plan approval has been granted by the Commission. Prohibitions include:

- Signage (non-illuminated) in excess of two square feet
- Lighting inconsistent with that normally found in a residential zone
- Use of more than 25% of the floor area (assessor's card) of the dwelling
- Employment of more than two non-resident employees
- Violation of noise or other applicable ordinances
- Cause the expansion of the residence to accommodate the home occupation
- Changes in the external dwelling
- Increasing traffic substantially or create safety hazards
- Having a deleterious effect on abutting or adjacent property

The current regulations require notification to neighbors within 100 feet of the dwelling; this is proposed to change to abutters within 100 feet of the dwelling.

Geoffrey Colegrove stated that he had incorporated standards, enforcement provisions, and a termination clause as a result of an e-mail received from Joe Pasquale. A home occupation permit is not transferable. The Commission has the ability to establish hours of operation or

duration of permit. If a permit is revoked for noncompliance, the homeowner must wait 12 months to reapply. If a home occupation ceases operations for more than 12 months, the permit is terminated.

Richard Eriksen asked about the requirement to own and live in the house. Geoffrey Colegrove stated that there could be a situation where an owner and a renter both sign the application—as long as the operator of the business is living in the residence. Lisa Davenport pointed out that 12.04.02.05 stipulates that the person conducting the business must be a resident of the dwelling.

Campbell Barrett and Frank DeFelice discussed the issue of illuminated signs—recommending incorporation of a bullet point that says “illuminated signs are prohibited” and elimination of the bullet that discusses non-illumination. Campbell Barrett also stated that an introduction to the section might begin with, “to the extent that a proposed home occupation application does not qualify under 12.04.01.01,” then segue into the actual language. It was also suggested that 12.04.02.01 be modified to read, “Home occupations requiring a zoning permit.”

Commission members discussed the concept of retail and internet sales. The key is that there be no perceptible difference in the neighborhood and that any sales be essentially incidental to a service provided (i.e., a hairdresser who also sells patrons shampoo). Joe Pasquale mentioned the situation with the horse boarding business that also had retail sales. This was prohibited because it went beyond merely having certain items for sale to those customers already boarding their horses. There was an advertisement in a trade journal offering items for sale to anyone. The Commission agreed that stating no retail sales was an appropriate strategy.

Campbell Barrett recommended beginning the documents with an introductory clause, “A home occupation, as defined in section...”

Chris Flanagan suggested that consideration be given to limiting the overall size of a home occupation. However, after discussion, it was agreed that there wouldn't be likely to be much impact because of the other limitations in the home occupation language.

Richard Eriksen asked if there should be a renewal requirement. Geoffrey Colegrove stated that with the inclusion of standards of enforcement and termination, there is a way to revoke a permit.

Ralph Chase stated that he had a problem with imposing a 12-month hiatus in a case where someone is trying to make a living. He suggested, instead, that the Commission prescribe what restitution must be performed and then enable renewal of a permit under certain criteria. Campbell Barrett agreed that it should be at the discretion of the Commission to allow a revoked permit to be reapplied for earlier than 12 months.

Chris Flanagan queried about the possibility of someone first making exterior changes to an accessory building (for instance, attaching a breezeway to an accessory building, connecting it to the house) and then applying for a home occupation that would take place in the accessory building.

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Geoffrey Colegrove stated that while this is possible, it wasn't likely that someone would plan perhaps 18 months ahead for such a use.

The proposed language will be reviewed for a final time at the next meeting before going to a public hearing.

5. Town Planner's Report

Geoffrey Colegrove stated that First Selectman Laura Francis had provided language regarding the fair housing commitment and compliance with grant funding criteria. A response is required from the Planning and Zoning Commission.

Geoffrey Colegrove stated that he had heard an agreement had been reached between the attorneys representing Regional School District 13 and Mrs. Cheyney. This followed a meeting between Superintendent Susan Viccaro and Mrs. Cheyney. Evidently the suit has not yet been dropped, but there is a tentative agreement in place.

6. Payment of Bills

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

- Absolute Advantage - \$304.31 (minutes of 3/17/2010 meeting)
- Midstate Regional Planning Agency - \$6,766.80 (March expenses)
- Midstate Regional Planning Agency - \$3,811.36 (January expenses)
- Attorney Steve Byrne - \$625.00 (Arrigoni)
- Attorney Steve Byrne - \$637.50 (Regional School District #13)

Motion carried unanimously.

7. Approval of Minutes

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the minutes of the March 17, 2010, meeting as presented. Motion carried, 8-1, with all in favor with the exception of George Eames (in abstention).

8. Zoning Enforcement Officer's Report

Geoffrey Colegrove met with Al Johanson regarding signage along Main Street. Al will be personally visiting those businesses where there are violations and advising them verbally.

There will be follow up regarding the activities at B&G (Behren's former gas station); there is a roll-off unit along the sideyard line as well as a new structure that has been erected. There are excessive signs as well.

A complaint from a resident of James Road East will be inspected (activities within 100 feet of wetlands).

There is a fence application for the property line of the Old Blue Hills Road site where pygmy goats are being raised.

There has been a complaint from a Park Place resident regarding stacks of pallets and wood; but there are no zoning violations.

The Russell property on Route 17 continues to be cleaned up. Al Johanson did a survey and gave until May 15 to remove the remaining construction debris/material that should not be on the property. A good faith effort is being made.

A complaint was received from a Salted Road resident concerning cutting of trees by JC Farms; however, there are no violations (on JC's property, within his rights).

Geoffrey Colegrove indicated that he is coordinating with Bill Milardo and Dick McManus the situation of a building falling down on South End Avenue.

George Eames stated that a cable company is still using Canfield Lane for access to/from the fairgrounds where a business appears to be operating. Geoffrey Colegrove will investigate; previous inquiries had resulted in a commitment to *not* use Canfield Lane. Joe Pasquale stated that a business does appear to be operating from the fairgrounds with an office-type 40-foot box trailer and transformers being stored outside.

Jan Melnik asked if there had been a permit secured for a music event scheduled for Sunday, May 30 (Memorial Day weekend), B.O.M.B. ("Bring Our Music Back"). There will evidently be music on four stages, a "battle of the bands" type of event. No permit had been sought; this led to a discussion regarding the fair's permit, which reads annual multiday events as well as secondary use for recreation purposes.

Joe Pasquale indicated that it is his impression that the fair is "mandating that the town react to accommodate their expansion" to a 3.5-day fair; in other words, making the decision unilaterally to add the extra day, then requiring town services (town hall will be closed half a day Thursday and all day Friday), the fire department, ambulance, back up fire department in Westfield, etc. to respond.

Geoffrey Colegrove suggested that the Board of Selectmen, Public Safety, and the Planning and Zoning Commission meet in a roundtable venue to discuss and have dialogue with the president and some of the executive board of the Durham Fair Association.

Frank DeFelice noted that there is apparently nothing that could prevent the fair from growing to a one-week or even two-week event.

To Lisa Davenport's query, Geoffrey Colegrove stated that it is difficult to modify a permit once it is issued. This effort was made some years ago through subcommittee and discussions with the Fair Association deteriorated without resolution. The best focus would be on addressing public

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safety concerns and issues, police protection, etc. There are related issues—whether the school parking lots would be available, loss of customers for businesses in town, etc.

George Eames noted that the B.O.M.B. event is requiring that the Exchange Club open its booth—in part, to ensure staff is there to protect the equipment.

Frank DeFelice pointed out that there is noise-monitoring equipment that could be used that day.

In another matter, Cathy Devaux distributed photographs taken at Greenland Realty on Mountain Road just before Palm Sunday. A second pile of dirt is “growing” in height and there appears to be encroachment into the wetlands. There continues to be no dust control on the site. Trucks also continue to be washed on the site.

Geoffrey Colegrove stated that he would visit the site and issue a notice of zoning violation (nothing on site plan for storage and activity within 100 feet of wetlands). Richard Eriksen stated that he would apprise the Inland Wetlands Commission of the same concerns.

9. Town Planner's Report

Geoffrey Colegrove stated he would provide copies of the most recent reports issued about the Lyman shooting range. While there have been significant improvements and incidents appear to be dropping off, there are still concerns.

Motion by Joe Pasquale, seconded by Chris Flanagan, to adjourn the meeting at 9:10 p.m.
Motion carried unanimously.

Respectfully submitted,

Jan Melnik

4/14/2010