

RECV'D: Office of the Town Clerk
May 27, 2010 at 10:34am

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF MAY 19, 2010, MEETING

Present

Members: Ralph Chase, Frank DeFelice, Cathy Devaux, George Eames, Richard Eriksen,
Dave Foley, Chris Flanagan, Joe Pasquale
Town Planner: Geoffrey Colegrove
Alternates: Campbell Barrett, Steve DeMartino, Mike Geremia

Absent

Member: Lisa Davenport

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Campbell Barrett was seated on the Commission in Lisa Davenport's place. Steve DeMartino and Mike Geremia (both alternates) were present, but unseated.

Steve DeMartino was welcomed to the Commission as an alternate.

1. Approval of Agenda

Motion by Dave Foley, seconded by Ralph Chase, to approve the agenda of the May 19, 2010, meeting as amended to include addition of "amended District #13 site plan" (13a) to reflect judgment/settlement (and as a separate motion) as well as open the home occupation hearing and continue to 8:45 p.m. so as to wrap up District #13 issues first. Motion carried unanimously.

Geoffrey Colegrove suggested that if there were not many in attendance for the home occupation public hearing, it be postponed to follow the executive session and Regional School District #13 agenda item.

2. Public Session

Duncan Milne, 253 Main Street, addressed the Commission as both a resident and in his capacity as chairman of the Historic District Commission.

He discussed the roles of the Planning and Zoning Commission as well as that of the Historic District Commission. The latter is responsible for overseeing the historic consistency of buildings (exterior appearance, windows, siding, etc.). He distributed a document prepared by the former chairman of the Historic District Commission (Jim McLaughlin) describing the authority of that group and the mandates. He stated that he had heard a possible inaccuracy—that the Planning and Zoning Commission might be taking some role or authority in determining siding on buildings in the historic district. He stated that this was the province of the Historic District Commission.

Geoffrey Colegrove indicated that the village district is a concept that can be adopted (and has been, in some towns); however, to date, the Durham Planning and Zoning Commission has not opted to go in this direction.

Attorney Steve Byrne, the Commission's counsel, in attendance for the executive session, stated that the general statutes give the Planning and Zoning Commission the authority to dictate how buildings will look, including review of materials, the appearance and style, and design review. The implication would be that property owners in the Historic District would be required to satisfy the requirements of both the Planning and Zoning Commission and the Historic District Commission.

Duncan Milne asserted that this would be contradictory, adding that the whole matter is extremely confusing. Attorney Byrne indicated that the Planning and Zoning Commission would be unlikely to adopt and change something in the regulations that would directly conflict with the provisions of the Historic District Commission.

Duncan Milne also urged that the Planning and Zoning Commission be cognizant of the importance of sidewalks, particularly in the Historic District, when considering making any changes to the regulations. He asked about the nature of 'temporary signage' in town, with the impression that if a sign is up overnight, it is not temporary.

As a private citizen, Duncan Milne stated that he was aware of the agenda item for 253 Main Street (Fairground Mortgage at the corner of Main Street and Maiden Lane). He asked that the Commission consider issues related to reuse of the building as well as parking and signage.

Trish Dynia addressed the Commission, seeking clarification with regard to Historic District rules.

Attorney Steve Byrne explained that the Commission has the ability to create regulations for Main Street buildings and could implement the "village district," a mechanism for dealing with an area that may exceed what is covered by the Historic District. The "village district" concept goes beyond the jurisdiction of the Historic District Commission; however, Durham has not implemented the "village district."

Trish Dynia stated that, for instance, the Historic District Commission doesn't allow vinyl siding. She asked if the Planning and Zoning Commission would overrule the Historic District Commission's policy on this if the "village district" were enacted.

Attorney Steve Byrne explained that, essentially, two approvals are required—in other words, if an individual were wishing to conduct some activity in the historic district that was under the jurisdiction of the Planning and Zoning Commission and the Historic District Commission, two "yes" decisions would be required (the activity could not go forward if one of the bodies said "no").

Frank DeFelice stated that he had written an open letter in the newspaper several months ago soliciting input from residents regarding their wishes for the town's Plan of Conservation and Development, with which the actions of the Planning and Zoning Commission must align. He stated that he had received a considerable amount of input, most electronically. Ultimately, this will be relayed to the Commission as the update to the Plan of Conservation and Development proceeds.

Trish Dynia pointed out to the Commission her opinion that these issues were not under the purview of Frank DeFelice. She queried if his actions reflected a conflict of interest, noting that he had recently been turned down by the Historic District Commission on a request to install vinyl siding on a house he owns on Main Street.

Frank DeFelice responded that there was no conflict of interest and added that the Historic District Commission had approved his requests for window replacement and a new roof. He added that the article he had written was for the sole purpose of collecting input that would be useful to the town's update of its plan.

3. Mary Ryan, Renewal of Accessory Apartment Permit, 257 Mica Hill Road

Mary Ryan addressed the Commission regarding her five-year renewal of her accessory apartment. She stated that there were no changes to the building or use since the last renewal.

Motion by Ralph Chase, seconded by Cathy Devaux, to approve the accessory apartment renewal permit for her location at 257 Mica Hill Road. Motion carried unanimously.

4. Lisa Stopka, Academy for Little Learners, Request for an Amendment to a Special Permit to Allow Part-time Summer School Program, 68 Main Street, Durham Agricultural Fair Association, Owner, public hearing to be scheduled

Lisa Stopka addressed the Commission regarding her desire to operate a part-time summer school in her current location. She would like to operate for five weeks during the summer, being open two days a week from 8:30 a.m. until 12:30 p.m. and two days from 8:30 a.m. until 2:00 p.m.

She explained that she is hoping to subsidize her income from the preschool during the summer; it is difficult to survive on a year-round basis without summer income and she is required to pay full rent in the summer but as of the last decision of the Commission, she is not allowed to be open in the summer.

She stated that she is a licensed teacher in the state of Connecticut, with a license to teach 2-5 year-olds as well as Pre-K. She does not provide day care; this will be a true summer school program with a curriculum focused on language development and kindergarten readiness as well as learning through fun, art, play, and socialization. Weather permitting, children will be outdoors 50% of the time. There will be no sleeping or napping; snacks only will be provided by the children.

By law, she is allowed to have two-year-olds in the program for only a certain number of hours per day; she cannot have more than eight two-year-olds at a time with a specific number of teachers.

The program is for children between the ages of 2 and 6; there are plenty of programs and camps available for older children, but very few for children in this age group. She developed the program in response to demand from the parents of her existing students.

The public hearing will be scheduled for June 2. There is a letter of support for the application from the property owner, the Durham Fair Association.

5. Phil Perrino, Informal Discussion of Possible Optometric Office, 243 Main Street

Phil Perrino addressed the Commission and corrected the agenda item that the discussion was with regard to a possible *optometric* office, not a *dental* office. Both he and his wife are optometrists, currently practicing at 16 Main Street. They are considering purchase of the property at 243 Main Street (Kirk Hager's Fairground Mortgage business and residence). They are seeking to locate their optometric practice in the existing commercial space within the structure; there will be no expansion of the existing nonconformity. While there are no plans to expand the residential areas of the property, that would be permissible.

Phil Perrino stated that he is not looking to really change anything, but, rather, integrate into the community as much as possible. There are no plans to alter the exterior of the building; they may reconfigure some of the interior office space to better accommodate their requirements.

To concerns regarding signage expressed earlier by the chairman of the Historic District Commission, Duncan Milne, Phil Perrino stated that he is very open to hearing and addressing the concerns of both the Planning and Zoning Commission and the Historic District Commission. Planning and Zoning requirements relate to size and illumination (no internally lit signs) and the Historic District Commission is concerned with appearance.

Geoffrey Colegrove stated that there can be no increase in utilization of professional office square footage. Any new use would need to be similar to most recent use (or less intense). The

use can't intensify or revert to an earlier use (i.e., retail operations would not be permitted, even though there was the previous variety store some decades ago).

Geoffrey Colegrove suggested that a zoning permit be sought and that there be referenced the plans to use "x" amount of existing business/commercial/professional space for the specific use of an optometric practice. The use is nonconforming.

A meeting was recommended with the town sanitarian, Bill Milardo, and Mr. Perrino was provided with contact information. He stated that the proposed professional use would not be likely to have any impact on the adequacy of the septic system.

Geoffrey Colegrove outlined the process for seeking a zoning permit. He noted that a sign permit is required through the zoning regulations; the Historic District Commission has different requirements related to signage.

To Joe Pasquale's query as to whether or not the parking is adequate for what is planned, Phil Perrino indicated that is more than adequate.

Phil Perrino described his practice—people generally come into his office for the express purpose of selecting glass frames; they typically end up requiring frames following their appointments, but there might also be demand for people who end up getting contacts.

Geoffrey Colegrove stated that no public hearing was required; he would issue a zoning permit. A professional office matches closely the nonconforming use provided that retail is a secondary component of the operation equation.

Because no one was in attendance for the purpose of the home occupation public hearing, it was agreed to postpone the public hearing until about 8:45 or 9:00 p.m. and go immediately into Executive Session.

Motion by Dave Foley, seconded by Cathy Devaux, to adjourn the regular meeting and go into Executive Session at 8:15 p.m. Motion carried unanimously.

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Executive Session

**Discuss Proposed Settlement between Karen Cheyney and
Regional School District #13**

* * * * *

Regional School District #13 proposed settlement of zoning appeals regarding renovated athletic facilities at Cuginchaug High School, 144 Pickett Lane. The Planning and Zoning Commission will consider proposed settlement terms of two Superior Court appeals. Proposed stipulated judgment is on file at the Planning and Zoning Office in Town Hall, and is summarized as follows: Regional School District #13 will install a 10 foot high acoustic fence for a distance of 100 feet on the east side of the eastern parking

lot, and will extend the chain link fence on the north side and northeast corner of that parking lot. The conditions of the site plan stated in the Planning and Zoning Commission's October 2, 2009 approval letter will be modified to provide that use of the renovated fields will occur no earlier than 8:00 a.m. In addition, Regional School District #13 will undertake a variety of obligations to an abutting property owner involving signage, traffic management, trash pickup, rules for field users, and availability of toilets.

Motion by Richard Eriksen, seconded by Dave Foley, to come out of Executive Session at 8:42 p.m. Motion carried unanimously.

6. Action on Proposed Stipulated Judgment/Settlement

Attorney Steve Byrne highlighted the terms of the stipulated judgment, then recommended the Commission take its vote in public, noting reasons for (or against) the vote. If approved, then discussion would segue to the site plan revision presentation.

Motion by Ralph Chase, seconded by Cathy Devaux, to approve the stipulated judgment and agreement between Karen Cheyney and Regional School District #13 for reasons detailed in the minutes of this portion of the meeting and attached herein (by virtue of these minutes). Motion carried unanimously.

Frank DeFelice stated for the record his reasons to support this, especially with regard to item 9 – which stated that field tests be conducted of the speaker system initially and that, thereafter, all events be conducted in compliance with noise standards at the property line as stated in the town ordinance and state regulations. He said that he supports this because if there were any suspicions or worries that this provision would not be applicable (in some areas of the town ordinance, it is insinuated that the school district would be exempt) this caveat ensures that they not take advantage of that exemption and that they would have to comply with town of Durham's noise ordinance.

Geoffrey Colegrove added that the stipulated agreement is consistent with the original conditions of approval and that there is nothing in the stipulated agreement contrary to those conditions. The agreement is completely consistent with the previously approved site plan for Regional School District #13 and there are no conflicts. Further, the approved amended site plan reflects the settlement reached between the district and Karen Cheyney.

Geoffrey Colegrove noted that the amended agenda provided the opportunity to the public to comment. George Eames opened discussion to anyone in the public that wished to speak; there was no public comment.

Geoffrey Colegrove noted that, as part of the stipulation, the lighting appeal would be withdrawn once approval this evening was provided.

Richard Eriksen noted for the record that approval of the fence height as part of the stipulated agreement, which is an exception to the provisions of the zoning regulations, is restricted only to this specific use in this particular instance. Campbell Barrett added that this exception is being made solely to facilitate the stipulated agreement and provide for judicial economy.

Attorney Tim Hollister, speaking for the school district, stated that the amendments to the site plan were confined to this area (where the fence is located). He noted that several months of negotiations had transpired among the parties.

Dick Webb, speaking on behalf of the school district, described that the fence would be ten feet high to create a noise barrier and extend 100 linear feet. There will be footings in the initial construction. Steel pipe will go into the footings, then an interlocking type of product will be used (he disseminated a sample of the composite material). The fence will then be filled with recycled rubber material to create the noise buffer and attenuate sound for adjacent properties. This product is commonly used on highways and along rail lines. The finish of the fence is also designed to help repel graffiti. There will be 20 additional linear feet of chain link fence as well as a four-foot pass-through gate to allow for a path that connects to Guire Road (used by the school's runners).

The color of the fence has not been confirmed, but it will be a darker, natural-appearing material to blend into the existing surroundings.

Dave Foley asked if the fence was in addition to the previously approved buffer plantings. Dick Webb confirmed that this was the case. The plantings will be relocated a little further to the south and east with no change in the amount of plantings (only a modified location). There will be no plantings in front of the wall—there is a space limitation between the limits of the proposed parking area and the fence.

Tim Hollister noted that the Inland Wetlands Commission approved the footings for the fence a week ago.

The other changes, as part of the stipulated judgment, are that none of the fields covered by the site plan will be used prior to 8:00 a.m. (end times have already been established) and that the speaker system will not be turned on more than one hour before the start of a scheduled event.

Joe Pasquale asked how close the fence was to the parking lot stalls. Dick Webb responded that the fence is about 2.5 feet back from the edge of the parking area.

Dick Webb was asked if there was any benefit to having plants in front of the wall to help prevent graffiti. He stated that a low-maintenance vine might be possible. He reiterated that the finish on the fence is specifically designed to be able to address graffiti.

The site plan, as originally approved, provided the required parking and, therefore, the parking lot size cannot be decreased. Tim Hollister added that if plantings were installed in front of the

fence, it would make it more difficult to keep that area clean and free of debris. There will be crushed stone at the bottom of the fence.

Mike Geremia stated that the fence will be no more susceptible to graffiti than the side of the high school building.

Tim Hollister referenced a list of the four amended site plans that are part of the stipulated judgment that will be attached to the motion.

Motion by Dave Foley, seconded by Cathy Devaux, to approve the amended District #13 site plan, referencing four attached site plans*, dated May 3, 2010, in accordance with stipulated judgment and agreement. Motion carried unanimously.

* District #13 Amended Site Plans:

1. Coginchaug High School – Regional School District 13, Durham, CT – Layout Plan C-101.1
2. Coginchaug High School – Regional School District 13, Durham, CT – Dimension Plan C-102.1
3. Coginchaug High School – Regional School District 13, Durham, CT – Grading Plan C-201.1
4. Coginchaug High School – Regional School District 13, Durham, CT – Erosion and Sediment Control, Phase I, II, and III C-202.1

7. Northern Heights, LLC, Request for a Proposed 1 Lot Subdivision/Division, Crooked Hill Road

Timothy Lee, Esq, speaking for the applicant, addressed the Commission, presenting the plans for what he characterized as the first division of the property in Durham; the parcel is 12 acres in size and the applicant is seeking a simple split into two lots. The adjacent 150 acres in Guilford has already been split; however, he stated that the Durham Planning and Zoning Commission has no jurisdiction in Guilford. He stated his belief that he was entitled to a free first cut in Durham.

Geoffrey Colegrove stated that his interpretation is that this would be a subdivision (or resubdivision), as the Guilford splits had already occurred.

Attorney Lee reiterated that the statutes were very clear that Durham's authority is solely limited to property within the town of Durham and a signature of the ZEO can sign off on a simple first split. He added that this 12 acres was never subject to any subdivision before the Commission.

There was considerable discussion back and forth on this issue. Attorney Steve Byrne noted that the Planning and Zoning Commission *may* consider conditions beyond its borders when deciding an issue within its jurisdiction and that a boundary line does not automatically split a lot.

To Frank DeFelice's question, Geoffrey Colegrove indicated that if this were deemed a first split there is no requirement for a well arc and no conservation space required, just a ZEO signature

and recording of the mylar. As a resubdivision, there is referral to the Inland Wetlands Commission as well as a public hearing, if the Commission desires.

Frank DeFelice stated that this issue is not new to the Commission, noting the Gastler parcel that overlapped into Middlefield. The Planning and Zoning Commission examined access through Middlefield when looking at those parcels and, therefore, establishes that the Commission does have a history of looking beyond its borders when deciding an application.

Attorney Steve Byrne was asked to review this matter and provide a formal opinion. The item will be placed on the agenda of the June 2 meeting.

Motion by Dave Foley, seconded by Frank DeFelice, to recess the regular meeting at 9:38 p.m. for the public hearing, home occupation proposed amendments. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: Planning and Zoning Commission
Proposed Amendment: Proposed Amendments to the Durham Zoning Regulations
Section 12.04 "Home Occupations"

Present

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

Town Planner: Geoffrey Colegrove

Alternates: Campbell Barrett, Steve DeMartino, Mike Geremia

George Eames, Chairman, opened the public hearing and read the legal notice. Campbell Barrett was seated on the Commission in Ralph Chase's place. Steve DeMartino and Mike Geremia were present, but unseated.

Geoffrey Colegrove recapped the differences between a home occupation requiring a zoning permit versus one requiring a visit to the Commission.

If there is signage, employees, additional parking, or any other modifications, then the application must come before the Planning and Zoning Commission.

Approvals are based on representations made before the Commission and if circumstances change that cause an activity to go out of compliance, there is language to revoke a permit. Geoffrey Colegrove stated that he had incorporated some language from the regulations of the towns of Portland, Middlefield, and Haddam. The Commission reviewed and refined the language a number of times in previous meetings.

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The 'Holly Locks' regulation was discussed; if that were deleted, it would be a legitimate nonconforming use; by retaining the language, it is conforming under section 12.04.02.05 of the regulations. The barber shop (Tony Fulmine) was the only other business in town with a similar scenario (nonresident family member operating the business).

There was no public comment.

Campbell Barrett commended Geoffrey Colegrove for his excellent job in developing the amendments and putting together many elements that reflected the Commission's intent.

Motion by Dave Foley, seconded by Frank DeFelice, to close the public hearing of proposed amendments to the Durham Zoning Regulations (home occupations). Motion carried unanimously.

Motion by Dave Foley, seconded by Cathy Devaux, to reconvene the regular meeting at 9:45 p.m. Motion carried unanimously.

8. Proposed Amendments to the Durham Zoning Regulations, Section 12.04 "Home Occupations"

Motion by Joe Pasquale, seconded by Dave Foley, to approve the proposed amendments to the Durham Zoning Regulations, Section 12.04, "Home Occupations," effective June 15, 2010. Motion carried unanimously.

9. Jan Melnik, Request for an Accessory Apartment Special Permit, 440 Higganum Road, Manton LaFountain, Owner, Public Hearing to be Scheduled

Jan Melnik described the plans to construct an accessory apartment for Manton LaFountain at the rear of his residence at 440 Higganum Road. The public hearing was scheduled for June 2, 2010.

10. Payment of Bills

Motion by Dave Foley, seconded by Cathy Devaux, to approve payment of the following bills:

- Attorney Steve Byrne - \$562.50 (District #13)
- Absolute Advantage - \$381.41 (minutes 4/7/10)
- Absolute Advantage - \$369.56 (minutes 4/21/10)
- *Middletown Press* - \$66.13 (new notices)
- Attorney Steve Byrne - \$1,175.00 (District #13)

Motion carried unanimously.

11. Approval of Minutes

Motion by Ralph Chase, seconded by Richard Eriksen, to approve the minutes of the April 21, 2010, meeting as presented. Motion carried unanimously.

12. Zoning Enforcement Officer's Report

Geoffrey Colegrove stated that he had received a phone call from Mr. DeVecchio regarding the Stephens Woods subdivision. There is a \$6K-\$7K bond; once the remaining trees required have been installed, the balance of the bond can be released.

Geoffrey Colegrove advised that Al Johanson had visited Tom Russell's property and would be going back this week to recheck progress.

Information was distributed about Shadle Farm on Haddam Quarter Road. There is advertising on the internet and via Facebook for a retail operation (organic products produced in the kitchen) as well as cooking lessons/dinners. Retail sales are not permitted and no home occupation permit has been sought. Geoffrey Colegrove will send a letter indicating that there may be violations of the health code (commercial kitchen operations and septic concerns) as well as the need for a home occupation permit. They will be asked to cease operations until they have come before the proper authorities.

13. Miscellaneous

Frank DeFelice indicated that he had had a 45-minute conversation with the state police regarding the upcoming B.O.M.B. music festival planned for the fairgrounds on Memorial Day weekend. He was assured that there are no safety concerns, per Sgt. Calvo, and that it is a "first-class operation" with, apparently, an "open checkbook" to provide for police coverage.

The Commission then discussed the permit that the Fair Association has—there is essentially nothing that would prevent the Fair Association from expanding the fair to two weeks. In addition, with these types of uses, there appears to be nothing to constrain the number of activities they hold. It becomes a question of appropriateness for the town.

Frank DeFelice asked that Attorney Steve Byrne investigate again the provisions of the permit, stating his belief that there has been an intensification of use. He suggested something might be able to be accomplished via an ordinance if the permit cannot be changed.

Geoffrey Colegrove recommended that a subcommittee comprising members of the Commission and the Fair Association sit down and discuss the matter.

George Eames noted that the trucking operation is still running from the fairgrounds. From the Commission's review of the Fair Association's permit, there is no legitimate provision for operating a trucking company.

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Frank DeFelice described a recent contact from someone interested in leasing farmland (“only if two acres or more”) for growing organic vegetables and stipulating a requirement for a perc test.

Motion by Ralph Chase, seconded by Chris Flanagan, to adjourn the meeting at 10:21 p.m.

Motion carried unanimously.

Respectfully submitted,

Jan Melnik

Jan Melnik

5/26/2010