

TOWN OF DURHAM

Planning and Zoning Commission

P.O. Box 428

Durham, Connecticut 06422-0428

MINUTES OF MAY 20, 2009, MEETING

Present

Members: Cathy Devaux, George Eames, Dave Foley, Jim Kowolenko, Gene Riotte,
Tom Russell
Town Planner: Geoffrey Colegrove
Alternates: Mike Geremia, Stuart Keating

Absent

Members: Ralph Chase, Frank DeFelice, Richard Eriksen
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. Stuart Keating was seated in Richard Eriksen's place.

1. Approval of Agenda

Motion by Dave Foley, seconded by Mike Geremia, to approve the agenda of the May 20, 2009, meeting as presented. Motion carried unanimously.

2. Public Session

No business.

3. Ed Barrett, Altered Rides, Site Plan Review for Upholstery, Restoration, Restyling Seats, Sewing, Fabrication of Seats and Interior of Motor Vehicles, Installation of Seats and After Market Products, Light Manufacturing of Automotive and Motorcycle Seating, Audio Video Entertainment, Truck Lettering and Sign Painting, Pinstriping, Dealer Services Sunroofs, Convertible Tops, and Woodworking Business, 41A

Commerce Circle

As the applicant was again not in attendance, the Commission determined to make a motion to deny the application without prejudice.

Motion by Dave Foley, seconded by Mike Geremia, to approve the application of Ed Barrett, Ed Barrett, Altered Rides, Site Plan Review for Upholstery, Restoration, Restyling Seats, Sewing, Fabrication of Seats and Interior of Motor Vehicles, Installation of Seats and After Market Products, Light Manufacturing of Automotive and Motorcycle Seating, Audio Video Entertainment, Truck Lettering and Sign Painting, Pinstriping, Dealer Services Sunroofs, Convertible Tops, and Woodworking Business, 41A Commerce Circle. Motion unanimously denied.

(Note: As is customary with the Commission's motions, they are all framed in the affirmative; Cathy Devaux and Stuart Keating inadvertently voted 'aye,' believing that they were voting to deny the application without prejudice; it was their intent to do this, thus, their votes were actually in the negative.)

4. Town Planner's Report

Geoffrey Colegrove indicated that the Greenland Realty matter would probably be back before the Planning and Zoning Commission in June. A soil scientist has reviewed the wetlands areas on the site relative to the tank being considered.

In terms of the defoliated buffer, Geoffrey Colegrove stated that the trees had been eaten by deer, but would grow back.

Dust control is a valid problem at the site; it was part of the original site approval. The Commission agreed that this should be a requirement (to have on-site water equipment to wet down and maintain control of the dust) the next time the applicant is before the Commission.

The subcommittee of the Planning and Zoning Commission addressing structures, setbacks, yard requirements, etc., has met twice. Serving on the subcommittee are Frank DeFelice, Mike Geremia, Stuart Keating, Tom Russell, and Jim Kowolenko.

5. Payment of Bills

Motion by Gene Riotte, seconded by Mike Geremia, to approve payment of the following bills:

- Absolute Advantage – \$394.42 (minutes 5/6/09)
- Midstate Regional Planning Agency – \$4,285.24 (March expenses)

Motion approved unanimously.

6. Approval of Minutes

Motion by Gene Riotte, seconded by Dave Foley, to approve the minutes of the May 6, 2009, meeting as submitted. Motion carried unanimously.

Motion by Mike Geremia, seconded by Dave Foley, to recess the regular meeting for the public hearing of Kelly Pedersen at 8:00 p.m. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: Kelly Pedersen
Request: Request for a Modification to an Existing Special Permit to Allow a Day Care Center to be Open for the Months of July and August at 68 Main Street; Owner: Durham Fair Association, Inc.

Present

Members: Cathy Devaux, George Eames, Dave Foley, Jim Kowolenko, Gene Riotte,
Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Mike Geremia, Stuart Keating

George Eames recused himself. Gene Riotte assumed the chair as Acting Chairman and opened the public hearing. Mike Geremia was seated on the Commission in Frank DeFelice's place. Stuart Keating was seated in Richard Eriksen's place.

Dave Foley noted that the public hearing sign was posted at the property.

Kelly Pedersen, 20 Little Lane, addressed the Commission. She stated that she was seeking to continue the same activities already held the other ten months of the year into July and August (a year-round operation). There would be no bus activity during the summer months and the hours of operation would be as they exist currently, from 8:30 a.m. until 5:30 p.m. five days a week. She indicated that by law she can have up to 19 full-time children enrolled (the number is dictated by the square footage).

George Eames, 10 Town House Road, addressed the Commission as the property owner in nearest proximity to the existing day care operation (within 100 feet). He read a prepared statement into the hearing record. The original special permit application was approved by the Planning and Zoning Commission on April 20, 2005. The application capped the number of children at 20 with three employees and limited hours of operation to those matching the school schedule (8:30 to 5:30, closed June through August and also closed on weekends and the Durham Fair weekend).

At that initial hearing, George Eames stated that he had no objection to the day care facility. The business has now been in operation for a little over four years and George

Eames stated that, “for the most part, it has been okay.” He did note that during play time outdoors, the children are “very noisy.” While this is a natural thing, for children to be very vocal while playing outside, it is disruptive to the peace and quiet of the neighborhood during a time of year when residents wish to enjoy their yards, the outdoors, their pools, outdoor entertaining, etc. He stated with the current application request to extend the operations to July and August, he could not be in favor, chiefly for the reason of noise and impact on the neighborhood. He stated his belief that the day care facility should stay on the same schedule as that of the schools in Durham and as was originally approved in 2005.

Motion by Dave Foley, seconded by Tom Russell, to close the public hearing of Kelly Pedersen, request for modification to existing special permit to allow day care center to be open for the months of July and August at 68 Main Street; owner: Durham Fair Association, Inc. Motion carried unanimously.

Motion by Dave Foley, seconded by Tom Russell, to reconvene the regular meeting at 8:07 p.m. Motion carried unanimously.

7. Kelly Pedersen, Request for Modification to Existing Special Permit to Allow Day Care Center to be open for the months of July and August at 68 Main Street; owner: Durham Fair Association, Inc.

Jim Kowolenko asked if there was anywhere else on the property of the day care facility that children could play; given that the hearing was closed, this question could not be asked of the applicant.

Dave Foley stated for the benefit of those new to the Commission since 2005 that the Fair Association had originally come before the Commission and asked for a nonresidential use of this building, which was denied. A lawsuit was filed and the Commission’s decision was upheld (the reasoning being that a nonresidential use in a residential zone would erode the residential character of the neighborhood). Dave Foley noted that while he wasn’t present the evening that the 2005 application was voted on, he would have been opposed at that time and still is on the basis of impact to the residential nature of that portion of Main Street. To expand the use, in his opinion, would not be appropriate. He reiterated his belief that the original approval for the day care was “a mistake in the first place.”

Geoffrey Colegrove stated that the use is permitted in the farm-residential zone by special permit; the use may be considered nonresidential, but it is not a use that is not permitted. He cautioned about a previous decision being in the past and suggested it would not be appropriate to make a prejudicial characterization about the issue before the Commission.

Dave Foley responded, stating it was his belief that this was a function of the Commission—to discuss opinions and viewpoints with every Commission member subsequently voting as he or she feels appropriate.

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Cathy Devaux agreed with the comments represented by Dave Foley, adding that she did not feel it would be appropriate to deprive people of the enjoyment of their own properties. While the application was approved for the school year only and she believed this to be appropriate, she did not think it should be extended to the summer.

Jim Kowolenko stated that there must have been a reason for initially targeting just the school year. Geoffrey Colegrove explained that this timeframe was as presented by the applicant originally. There have been recent ads advertising the summer hours and expansion of the operation.

Motion by Dave Foley, seconded by Jim Kowolenko, to approve the application of Kelly Pedersen, modification to an existing special permit to allow a day care center to be open for the months of July and August at 68 Main Street; owner: Durham Fair Association, Inc. Motion denied, 6-1, with all in opposition with the exception of Tom Russell (in abstention).

Motion by Dave Foley, seconded by Mike Geremia, to adjourn the meeting at 8:17 p.m. Motion carried unanimously.

Respectfully submitted,

Jan Melnik

5/27/2009