

RECV'D: Office of the Town Clerk
October 15, 2009 at 2:18pm

TOWN OF DURHAM

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

MINUTES OF OCTOBER 7, 2009, MEETING

Present

Members: Ralph Chase, Frank DeFelice, Cathy Devaux, George Eames,
Richard Eriksen, Jim Kowolenko, Gene Riotte, Tom Russell
Town Planner: Geoffrey Colegrove
Alternates: Mike Geremia, Stuart Keating

Absent

Member: Dave Foley
Alternate: Mark Laudano

The meeting was called to order by George Eames, Chairman, at 7:30 p.m. Mike Geremia was seated in Dave Foley's place. Stuart Keating was present but unseated.

1. Approval of Agenda

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the agenda of the October 7, 2009, meeting as presented. Motion carried, 8-1, with all in favor with the exception of Tom Russell (in opposition).

2. Public Session

No business.

3. Mike Corona, Durham Auto Center, Request for Release of Landscaping Bond, 428 Main Street

October 7, 2009

Page 2

Motion by Ralph Chase, seconded by Frank DeFelice, to approve the request for a reduction of landscaping bond at 428 Main Street to return all but \$3,000.

Applicant/owner: Mike Corona, Durham Auto Center. Motion carried unanimously.

4. Mark Kauffman, Request to Modify Condition to Extend Hours of Operation for Food Concession, 13 Middlefield Road

Motion by Richard Eriksen, seconded by Ralph Chase, to approve the request to modify the conditions of approval to retain dates of operation for a food concession stand, 13 Middlefield Road and to conform to the approved site plan. Applicant: Mark Kauffman, Owner: Marianne Corona. Motion carried unanimously.

5. John Corona, Esq., Discussion of Condition of Approval for Large Animal Incineration Facility

Attorney John Corona addressed the Commission. He stated that the original condition #6 predated the state's regulation of emissions from incinerators. These incinerators are now regulated by the State Department of Environmental Protection (as of June 12, 2009).

He proposed a change to have testing done in the first year and then elimination of the subsequent required testing. In other words, the oversight for these incinerators would fall under the purview of the state.

George Eames agreed that duplicate testing is not appropriate. Frank DeFelice stated his understanding that the state will require testing every five years.

Jim Kowolenko stated that he was not comfortable with the state telling a town what to do; he stated that he would be more comfortable with requiring annual testing.

Attorney Corona also discussed condition #9 related to a veterinarian's certification of the absence of infectious or communicable disease (there would be a delay of several weeks, which is inappropriate when considering a dead horse). The applicant will ask that owners of horses certify in writing that there was not a communicable disease present.

Attorney Corona stated that these points would be discussed in an application that would require a public hearing.

Motion by Richard Eriksen, seconded by Ralph Chase, to schedule a public hearing for modification of the conditions of approval for Connecticut Horse Cremation, LLC, for November 4, 2009. Motion carried unanimously.

Motion by Mike Geremia, seconded by Ralph Chase, to recess the regular meeting for the public hearing at 8:00 p.m. Motion carried unanimously.

PUBLIC HEARING

1. Applicant: Pasquale DiNatale
Request: Request for a Text Amendment to the Durham Zoning Regulations, Section 07, "Industrial Districts," Add Subsection 07.01.03. #25 to allow "Automobile and Equipment Service, and Public Garage, all without Sales as a Principal or Accessory Use" by Special Permit in the Heavy and Light Industrial Zones

Present

Members: Ralph Chase, Frank DeFelice, Cathy Devaux, George Eames,
Richard Eriksen, Jim Kowolenko, Gene Riotte, Tom Russell

Town Planner: Geoffrey Colegrove

Alternates: Mike Geremia, Stuart Keating

George Eames, Chairman, opened the continued public hearing and read the legal notice. Mike Geremia was seated on the Commission in Dave Foley's place. Stuart Keating was present, but not seated on the Commission.

Attorney John Corona addressed the Commission describing the applicant's desire to add a new use to the use table for the heavy and light industrial districts. He described a number of the other uses allowed currently in these zones. He further detailed that this addition would be allowed only by special permit, thus giving the Commission regulatory powers. He added that uses similar and even more intense are allowed on Main Street. The proposed uses would be less noxious than what currently is allowed in the use table.

Geoffrey Colegrove clarified that sales of all things are prohibited (i.e., cars, lawn mowers, or gasoline). There are incidental sales involved with service (i.e., service might entail a new air filter, but no outright retail sale of air filters).

Cathy Devaux stated her impression that, if approved, this would be a disaster. She was cautioned regarding a prejudicial viewpoint on the application.

Darcy Searle, 608 Wallingford Road, addressed the Commission and asked the number of industrial zones in town. Geoffrey Colegrove stated there is a Light Industrial zone off Parsons Lane, a Design Development District off of Route 68 (Ozick Drive), and a Heavy Industrial zone on the south side of Route 68 and the east side of Route 157.

Joseph Pasquale, Parmelee Hill Road, addressed the Commission. He asked if auto body work is included or just mechanic's work. Attorney Corona indicated that auto repair and auto body work is done currently in shops; it is the applicant's desire to include both.

Joseph Pasquale stated his impression that most applicants come to the Commission with a need attached to the zoning text change. He asked if there were any positive attributes associated with the change; he can easily envision a number of negative impacts. He added that there are 149 storage units in the industrial area, 16 of which are small. He asked that it be clarified the number of service facilities in the zone. He said that the storage areas were not designed with this purpose in mind. He noted that there appeared to be no other property or business owners present to speak in favor of the application. Finally, Joseph Pasquale stated that there could be significant negative impacts to making this change to one of the gateways to the town of Durham.

Joseph Pasquale quoted John Corona from the September 16, 2009, public hearing for the Regional School District #13 projects: "the Planning and Zoning Commission is a veteran group that views many applications and generally has a history of doing things right the first time. Having seen some mistakes made and living with the result and consequences, the Commission has frequently used the guideline, it's not who you are, but what you are applying for that matters." He concurred with these remarks.

Harry Hall, speaking on behalf of the fire department, stated that there would be an impact on delivery of emergency services if the application moves forward. He stated that there are probably occupancies today that are operating illegally. He asked how enforcement was handled. In February 2006, there was a fire at the storage facilities on Route 68; while bad, no one was hurt. He hoped the Commission would be cognizant of these points.

Attorney Corona stated that there might be a misconception that the facility is a self-store facility. The facility is not an unoccupied structure or passive storage facility. Other facilities of a similar nature in town resemble what occurs at the Route 68 site. This is an industrial zone—there is the manufacture of fireworks, a bus depot, machine shops, etc. It is not a park and the uses are heavy industrial in nature. The proposed uses are, in fact, likely to be less intense than what already goes on in the industrial district.

Joseph Pasquale clarified that he was not referencing any specific units in his monologue. He indicated that the statements he offered were his opinions.

Geoffrey Colegrove indicated that he signs zoning permits for business uses on applications for which the text in the use tables allows; referral is often made to the fire marshal and the building official for uses in these storage facilities.

Motion by Jim Kowolenko, seconded by Frank DeFelice, to close the public hearing on the zoning text amendment to the Durham Zoning Regulations Section 07, "Industrial Districts," Add Subsection 07.01.03. #25 to allow "Automobile and Equipment Services,

October 7, 2009

Page 5

and Public Garage, all without sales as a principal or accessory use” by special permit in the Heavy and Light Industrial Zones. Motion carried unanimously.

Motion by Mike Geremia, seconded by Jim Kowolenko, to reconvene the regular meeting at 8:34 p.m. Motion carried unanimously.

6. Zoning text amendment to the Durham Zoning Regulations Section 07, “Industrial Districts,” Add Subsection 07.01.03. #25 to allow “Automobile and Equipment Services, and Public Garage, all without sales as a principal or accessory use” by special permit in the Heavy and Light Industrial Zones

Frank DeFelice stated that the text change is not specific to any building until such time that an application is rendered, at which point the Commission would consider it under special permit. He noted that there are a number of safety guidelines and requirements in place for such uses and facilities.

Stuart Keating stated that the request certainly fits in with the uses of a heavy industrial zone, despite the fact that there are residential neighbors who disapprove of such uses. These uses also occur within the garages on Main Street.

Ralph Chase asked for clarification of industrial uses versus commercial uses. Geoffrey Colegrove stated that the industrial/manufacturing uses do tend to be consistent with what traditionally occurred 50 years ago, when language was first crafted in the zoning regulations. The economy has changed and current facilities on Main Street are in commercial zones. The SIC codes include such auto body and repair uses as industrial activities. As proposed, car sales and gasoline pumps (commercial) are *not* being transferred to the heavy industrial zone; there would be no retail sales associated with the text change in the heavy and light industrial zones.

Richard Eriksen noted that he was not present at the first public hearing on this application and, therefore, would not be voting.

Motion by Frank DeFelice, seconded by Jim Kowolenko, to approve the zoning text amendment to the Durham Zoning Regulations Section 07, “Industrial Districts,” Add Subsection 07.01.03. #25 to allow “Automobile and Equipment Services, and Public Garage, all without sales as a principal or accessory use” by special permit in the Heavy and Light Industrial Zones. Effective date: November 1, 2009. Motion carried, 6-2, with all in favor with the exception of Ralph Chase and Cathy Devaux (in opposition).

7. Payment of Bills

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

- Attorney Steve Byrne - \$587.50
- Attorney Steve Byrne - \$625.00

October 7, 2009

Page 6

- *Middletown Press* - \$1,392.38
- Midstate Regional Planning Agency – July and August bills

Motion carried unanimously.

8. Approval of Minutes

Motion by Ralph Chase, seconded by Tom Russell, to approve the minutes of the September 16, 2009, meeting as amended to reflect a correction on page 13 that Andy Meiman is with the ambulance corps and not the fire department. Motion carried unanimously.

9. Town Planner's Report / Zoning Enforcement

Geoffrey Colegrove reviewed several enforcement matters being pursued.

He noted that he will prepare proposed conditions of approval on the lighting fixtures for Regional School District #13's application. He will incorporate salient content from previous hearings/minutes.

10. Miscellaneous

Gene Riotte advised that TDNorth has a newly installed internally illuminated sign (3-4 weeks ago) along Main Street. Geoffrey Colegrove will follow up on this matter.

Harry Hall asked if there would be a way that the Planning and Zoning Commission and emergency services could work more closely together on review of applications. He asked if he could receive copies of the agenda and the minutes. The information is on the website.

The Commission agreed that this would be desirable; perhaps a step could be included in the process where the Commission asks if an applicant has gone to the fire marshal.

Geoffrey Colegrove stated that the agenda, minutes, and applications would be sent to the fire marshal.

Diana Cruise noted that there are three large, exposed propane tanks at Rory Wilson's site on Ozick Drive; there is a hunting area directly behind this. There is concern about gunfire and proximity to these tanks.

Motion by Ralph Chase, seconded by Frank DeFelice, to adjourn the meeting at 9:07 p.m. Motion carried unanimously.

Respectfully submitted,

October 7, 2009
Page 7

Jan Melnik
10/15/2009