

**RECV'D: Office of the Town Clerk
February 12, 2010 at 8:56 am**

**TOWN OF DURHAM
ZONING BOARD OF APPEALS**

Meeting Minutes
Thursday, February 11, 2010
Town Hall, Third Floor Meeting Room

Call to Order: The meeting was called to order at 7:30 PM by Chairman Bill LaFlamme at the town hall meeting room.

Roll Call: Members present: Chris DiPentima, David Heer, John Hogarth, Bill LaFlamme and David Slight. Alternates Present: Pam Lucashu. Staff: Trish Dynia

Seating of Alternates: Pam Lucashu was seated for David Heer from the beginning of the meeting through the first public hearing, Silenex Associates. David Heer was reseated for the second public hearing. Pam Lucashu was seated for David Slight for the second Public Hearing, Danny's Unlimited.

Approval of Agenda: *A motion was made by John Hogarth, seconded by Chris DiPentima to approve the agenda as submitted. The motion passed unanimously.*

Payment of Bills: None.

Approval of Minutes: *A motion was made by Chris DiPentima, seconded by David Slight, to approve the January 14, 2010 minutes as written. The motion passed unanimously.*

Public Session: None.

A motion was made by Pam Lucashu, seconded by John Hogarth, to open the public hearing at 7:40 PM. The motion passed unanimously.

PUBLIC HEARING

Silenex Associates, LLC, Request for a 12' Minimum Front Yard Variance from Section 05.02.01 (A) of the Durham Zoning Regulations to Construct a Barn on an Existing Foundation, Hellgate Road: Professional Engineer Pat Benjamin briefly reviewed the plan presented at the January 14, 2010 meeting. He noted that the applicant, Nick Xenelis, mistakenly arrived at 9:30 instead of 9:00 AM for the January 30, 2010 site walk. At that time there were still two Commission members walking the site.

COMMISSION QUESTIONS AND COMMENTS

In response to a question from John Hogarth regarding the proposed barn design, Mr. Benjamin replied that it would be a two story wood sided barn similar in design to another owned by Mr. Xenelis at the south end of the property. The driveway would access the barn at the rear through the second floor. The current foundation will accommodate a 110' long structure, but the entire footprint might not be used. The applicant is considering building at 60' in length, but the structure would still require the same variance.

Pam Lucashu asked if the abutting neighbors had been notified of the on-going public hearing as requested at the January meeting. Mr. Benjamin replied that they had notified the abutting landowners via mail. No replies written replies were received but Mr. Benjamin noted that a neighbor, Tadd Swierczynski, was present in the audience.

QUESTIONS AND COMMENTES FROM THE PUBLIC

David Heer of 55 Hellgate Road stated that he was one of the abutting neighbors who received a letter. He was concerned with the fact that the letter simply stated the date of the public hearing and contained no further details other than a phone number to call for more information. At the January meeting, the Chairman had requested that the abutting land owners be notified of the specifics and asked for their approval of the proposed variance.

Mr. Heer also expressed the following concerns: 1. Hellgate Road is a cul-de-sac and residents living there would have to drive by the barn on a daily basis. 2. Over the past two years heavy construction equipment has been parked on the property and used only occasionally, therefore it appeared to be abandoned. 3. Construction of the barn represents a 5% to 10% increase of lot coverage. 4. Wetland integrity could be compromised if there is refueling and/or seepage of oil and gas from equipment that may be stored in the barn. 5. The hardship appears to be self-created because the property owner abandoned the barn project. 6. Town tax records indicate that the owner does not pay taxes on the property. 7. Children walking by while playing or returning home from the school bus could be put in danger if they played on the equipment or entered the barn. 8. It is not clear what his intentions are regarding use of the barn.

Mr. Benjamin responded as follows: 1. The applicant states in his application that the barn will be used for farm related activities. 2. Concerns regarding what is happening on the rest of the property are an issue for Planning and Zoning, not ZBA. 3. The applicant essentially does not want to rip out an existing foundation. 4. If the application is denied, the applicant could easily receive approval from the building department for a similar structure outside the front yard buffer, which would not change the issues regarding the view from neighbors and/or safety of children. He further stated that current and proposed activities do not present any

danger to children. 5. It is not a self-imposed hardship, but rather one that was created by revised town regulations.

A motion was made by Chris DiPentima, seconded by John Hogarth, to close the public hearing. The motion passed unanimously.

A motion was made by John Hogarth, seconded by Chris DiPentima, to approve a 12' minimum front yard variance from Section 05.02.01 (A) of the Durham Zoning Regulations, to construct a barn on an existing foundation, Hellgate Road, hardship being right of way was expanded by town regulations for subdivisions.

Discussion: Pam Lucashu noted that wetland issues do not fall within this Commissions purview. John Hogarth stated that although the barn would not be entirely out of abutting neighbors' view, the applicant has a legitimate hardship, and moving the barn out of the review area would not change this situation.

The motion passed unanimously.

(At this time David Heer was reseated on the board and David Slight recused himself for the second public hearing.)

PUBLIC HEARING

Danny's Unlimited, LLC, In Accordance with Section 14-54 of the Connecticut General Statutes, Request for a Certificate of Approval of the Location to Obtain a License to Repair Motor Vehicles at 589 Wallingford Road. Owner: DiNatale Rentals, LLC: Attorney John Corona spoke for the applicant and noted that he has appeared numerous times over the years before this Commission due to what many consider an outdated state statute because the statute pre-dates zoning in many municipalities.

Chairman LaFlamme distributed copies of Section 14-54 of the Connecticut State Statutes, which reads in part as follows: "Any person who desires to obtain a license for dealing in or repairing motor vehicles in a municipality with a population of less than twenty thousand shall first obtain and present a certificate of approval of the location for which such license is desired from the board or authority designated by local charter... and such certificate shall be approved by the Board of Appeals..."

COMMISSION QUESTIONS AND COMMENTS

In response to a question from Pam Lucashu regarding property location, Attorney Corona reviewed the map and noted that the property lies on the north side of Route 68 in a heavy industrial area.

David Heer asked if the Fire Marshall had approved the location. Attorney Corona replied that the Building Official and Fire Marshall had reviewed the plan and are working on a firewall design to protect neighboring units.

Chris DiPentima noted that the agenda refers simply to the property at 589 Wallingford Road, but in the application it is noted that the approval is specifically designed for Unit 66.

Bill LaFlamme asked if members had reviewed the Durham Planning and Zoning minutes and State Statute distributed earlier in the meeting. Members replied that they had.

QUESTIONS AND COMMENTS FROM THE PUBLIC

None

A motion was made by Pam Lucashu, seconded by Chris DiPentima, to close the public hearing. The motion passed unanimously.

A motion was made by David Heer, seconded by Chris DiPentima, that in accordance with Section 14-54 of the Connecticut General Statutes, the Commission authorizes the Zoning Enforcement Officer to grant the request for Certificate of Appeal of the location to obtain a license to repair motor vehicles at 589 Wallingford Road, Unit 66. The motion passed unanimously.

Miscellaneous: Chairman LaFlamme distributed information regarding a Planning and Zoning conference being held in March. Admission to the event is \$40 and members wishing to attend should fill out the form. There is money available in the budget for reimbursement.

Chairman LaFlamme asked that members who had not signed and returned the Code of Ethics form should do so as soon as possible.

Recording Secretary Trish Dynia informed the Chairman that she had received an e-mail from the First Selectman's office stating that the third floor meeting room at Town Hall was not available for the November 18, 2010 meeting. There is a room available at the Durham Public Library that evening and the reservation has been made.

Adjournment: *A motion was made by David Slight, seconded by John Hogarth, to adjourn the meeting at 8:05 PM. The motion passed unanimously.*

Respectfully submitted,

Patricia Dynia
Recording Secretary

Cc: Town Clerk, Midstate Regional Planning Agency