

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING
JUNE 3, 2014**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Cameron, Sini, Cunningham, Olvany, DiDonna, Voigt

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat
Channel 79

GENERAL MEETING

Executive Session with Town Counsel to discuss pending litigation. (Will last until at least 8:30pm.)

The following motion was made: That the Commission go into Executive Session to discuss pending litigation with Town Counsel and Staff. The motion was made by Mr. Olvany, seconded by Mr. Voigt and unanimously approved.

During the Executive Session, no motions were made and no actions were taken until the following motion was made at 8:53 P.M.: That the Commission conclude the Executive Session and resume the regular meeting. A motion was made by Mr. Voigt, seconded by Mr. Sini and unanimously approved.

After a brief recess, Chairman Cameron read the following agenda item:

Discussion regarding procedures for submitting comments to the CT Siting Council regarding Ox Ridge Hunt Club/AT&T telecommunications tower.

Commission members noted that a public information session had been conducted in the Town Hall Auditorium on May 22nd. A copy of that recording had been distributed to P&Z members by Mr. Ginsberg. A site walk was conducted by the Commission on May 27th and three Commission members attended. Mr. Ginsberg said that the Board of Selectmen would be conducting a meeting on Monday night June 16th so that they could receive comments from the public.

Mr. DiDonna said that the public is asking why the Planning & Zoning Commission is not doing anything. The Commission does not have an application pending before it because the matter is in the jurisdiction of the Connecticut Siting Council, not the local Planning & Zoning Commission. Mr. DiDonna said that the community is used to having the Planning & Zoning Commission deal with matters such as this. Comments from the Planning & Zoning Commission can be submitted to the Siting Council by June 25th.

Mrs. Cameron said that the Siting Council will want to know what other alternatives would be available and such alternatives should be included in the comments to the Siting Council. She noted that one of the concerns from the public is that construction access to the proposed tower location

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would be through Saddle Ridge Road. It was suggested that the Planning & Zoning Commission members could attend the Board of Selectmen meeting and say anything that they wanted to as individual citizens and residents of the Community.

Mr. Ginsberg said that he would start to draft some comments that can be sent to the Siting Council from the Planning & Zoning Commission. Commission members with comments should contact Mr. Ginsberg directly.

Chairman Cameron then read the following agenda item:

Site Plan Application #284-A, Ox Ridge Elementary School, 394 Mansfield Avenue.
Request for generator for the school and relocation of the dumpster area.

Dumpsters will be relocated and a new generator will be installed. Mr. Olvany said that he visited the site and noted that the transformer cannot be relocated, but it would be necessary to make sure the fire truck access is preserved throughout the construction process. Mr. Ginsberg said that he still needs to get a response from the Fire Marshal regarding the proposed generator installation and dumpster relocation.

The following motion was made: That the Planning & Zoning Commission approve the relocating of the dumpsters and installing a new generator at the Elementary School subject to comments from the Fire Marshal regarding adequacy of emergency equipment access. The motion was made by Mr. Sini, seconded by Mr. Olvany and unanimously approved.

At about 9:10 p.m., Chairman Cameron then read the following agenda item:

Interpretation in response to May 30, 2014 letter from Wilder Gleason regarding Dr. LaTrenta skin care business.
Determination on whether the proposed use is retail, personal service, or medical office.

Attorney Wilder Gleason represented Dr. LaTrenta and noted that there were several typographical errors contained within the letter to the Commission. He apologized for those mistakes. He said that Dr. LaTrenta has been administering Botox in Darien for 20 years at first floor facilities within the Central Business District (CBD) Zone. He said that there have been advertisements for Botox treatment and for spas, including Williams & Warren, where Botox treatments have been administered by a doctor. Those activities never got approval from the Planning & Zoning Commission. He said that in other spa locations located on a second floor it seems that it is a personal service use, not a medical doctor's office.

Attorney Gleason said that any proposed use at 13 Grove Street will need Planning & Zoning Commission approval unless it is specifically a retail use allowed by the past approval. He said that there is a line between a medical procedure and a cosmetic treatment. He said that state law does not require that Botox be administered by a doctor. Mr. DiDonna asked about possible side effects or medical complications necessitating medical intervention.

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Dr. LaTrenta said that there are no medical complications from injection of Botox nor had there been possible long term impacts from getting repeated uses. He said the Botox is used for cosmetic use only and is in very small doses. He said it is an injection, not a medical procedure.

Commission members referred to the letter that they had received that refers to this as a medical procedure. Dr. LaTrenta said that it is not a medical procedure and it does not need to be performed at an accredited medical facility. In response to a question, he said that anyone who would perform the injections without medical malpractice insurance would be foolish, but such insurance is not mandated by the State. He said that Botox is a prescription substance and, in order to obtain it, there must be a prescription from a doctor, but to inject it, it only needs to be done by a certified trained person, not necessarily a doctor.

Mr. Voigt asked about the difference between getting a flu shot at CVS and the training necessary for a person to inject Botox. The doctor noted that to obtain the Botox, one needs a prescription, but one prescription would be enough for 4 of 5 clients to be injected with small amounts. He said that in his practice only he administers the Botox shots. Mr. DiDonna said that it sounds like a medical procedure that only the doctor performs rather than having assistants or staff members perform the injection.

Commission members questioned whether laser treatments or other medical treatments would be considered medical or a personal service. Mrs. Cameron said that making such a fine distinction would not be wise. She said that the Commission's approval for 13 Grove Street is to have a retail store that would have open windows and display of products for sale. She said that the proposed cosmetics sales at 13 Grove Street is fine, but the other uses that are discussed in the letter should not be allowed.

Mr. DiDonna said that the letter notes that the Botox injections are not done in a medical office and that they are not a cure or treatment for disease. Dr. LaTrenta said that the proposed business use would be about 50% retail and 50% service. He said that he is looking at another site at 1950 Boston Post Road which is a Protected Town Landmark.

Attorney Gleason said that the 1950 Boston Post Road site has about 13 chairs for a hair dresser business and that the proposed use by Dr. LaTrenta would be much less intense than the current hair dresser at that site. Mr. Ginsberg said that the two proposed buildings at 13 Grove Street and 1015 Boston Post Road each have three apartments on the second floor and each are approved for retail use on the ground floor. Each will have approximately 2,447 square feet of retail space on the ground floor. Dr. LaTrenta's proposed use would only take up about 1,000 square feet of 13 Grove Street. Mr. Ginsberg said the issue before the Commission is whether the proposed use is personal service which would require Special Permit approval from the Commission, a medical office which would not be allowed in the CBD Zone on the ground floor, or retail.

Mr. Sini said it seems to be a personal service business that will require a Special Permit approval. Mr. Voigt said that part of the business is proposed to be retail, but the other part seems to be a medical office or a personal service business. In response to questions, Dr. LaTrenta said that he would see 10 to 15 patients per day, but that he would only be at the site one day per week. Commission members did not reach a conclusion and will discuss the matter at the next meeting.

Chairman Cameron read the following agenda item:

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Discussion, deliberation ONLY on the following applications:

Land Filling & Regrading Application #323, DaCunha Builders, LLC, 8 Stanley Road.

Proposing to perform site grading associated with the construction of a new single-family residence; and to perform related site development activities.

Mr. Olvany said that the revised plan seems to be sufficient except for the professional engineer's error in calculations which need to be corrected. Mrs. Cameron said the Commission may need to change the Regulations in the future to prevent this practice. Mr. Ginsberg said that one possibility would just require the plan to be implemented and completed before the Commission hears a request to modify the site grading.

Mr. DiDonna departed the room when Chairman Cameron read the following agenda items which is for the Tokeneke Beach Club, both the bath house and the club house.

Special Permit Application #22-O/Site Plan, Coastal Site Plan Review #27-D, Flood Damage Prevention Application #20-D, Tokeneke Club, Inc., 4 Tokeneke Beach Drive/Butler's Island Road.

Proposal to expand the service drive; renovate substantial portions of the bathhouse; replace large lockers and changing areas with removable lockers; install HVAC equipment and a below ground propane tank; relocate electrical boxes, utilities, and pool heaters; and perform related site development activities within regulated areas.

Special Permit Application #22-P/Site Plan, Coastal Site Plan Review #27-E, Flood Damage Prevention Application #20-E, Land Filling & Regrading Application #325, Tokeneke Club, Inc., 4 Tokeneke Beach Drive/Butler's Island Road.

Proposal to raze the tennis house, administrative offices and portion of the old clubhouse; construct a new addition to the restaurant; install additional parking; install a pergola; install a new septic system; and install associated storm water management; and perform related site development activities within regulated areas.

Mrs. Cameron said that she watched the recording of the public hearing session that she had not been able to attend. She noted that many improvements had been made to the previously submitted plan.

Commission members said they felt that a list of the Special Events and activities when the parking might not be adequate on the site should be submitted to the Commission. This is similar to how other Special Permit uses in residential zones have been treated. They concurred that storm water volume is not an issue, but storm water quality must be properly managed. There should be detailed construction schedule limitations and make sure that there are no fumes or loud noises or outside activities during non-typical construction time periods.

Commission members believed that the roof design was okay, and that the spires above the three points of the roof should not be counted in the building height calculations because two of the three spires are functional in nature. Commission members also felt that that a cap of the number of members should be included per the discussions at the meeting. They also concluded that the mechanical and air conditioning equipment located within the bath house does not need to be lifted up onto the roof partly because the bath house is being divided into two structures.

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Commission members discussed the kiosks in the tennis area and agreed that they were adequate. Mr. Ginsberg will draft a resolution for Commission consideration at a future meeting.

Chairman Cameron read the following agenda item, and Mr. DiDonna returned to the meeting.

Subdivision Application #67-B, Land Filling & Regrading Application #327, Reilly Builders, 22 Gardiner Street. Proposing to subdivide the existing property into two building lots, construct two single-family residences; perform related regrading; and to perform related site development activities.

Commission members noted that the exact layout of the buildings is not subject to the Commission review. This application is for subdivision and some regrading of the property. The applicant indicated a willingness to consider “flipping” the building designs to respond to the concerns of the neighbor. A draft resolution will be created for consideration at a future meeting.

Chairman Cameron read the following agenda item:

Land Filling & Regrading Application #326, 79 West Avenue, LLC, 79 West Avenue. Proposing to excavate and regrade associated with the construction of a new single-family residence and driveway on West Avenue, and perform related site development activities.

Commission members felt that the proposed regrading would be adequate and did express some concern about the height of the utility wires over the proposed driveway on West Avenue. A draft Resolution will be created for consideration at a future meeting.

Chairman Cameron read the following agenda item:

Land Filling & Regrading Application #328, J. Baron Land Co., LLC, 465 Mansfield Avenue. Proposal to fill and regrade associated with the construction of a new single-family residence; and to install associated stormwater management; and perform related site development activities.

Commission members noted the request from the neighbors to have their own engineer carefully review the site development at its completion and prior to the Certificate of Zoning Compliance. They felt that the proposed rain garden was better than the original design and it still might need some sort of safety fencing. A draft resolution will be created for consideration at a future meeting.

Chairman Cameron then read the following agenda item:

Approval of Minutes

April 1, 2014 Public Hearing/General Meeting

After some discussion and modifications, the following motion was made: That the Commission approve the corrected minutes. The motion was made by Mr. DiDonna, seconded by Mr. Voigt. All voted in favor except Mr. Cunningham who abstained because he had not attended the meeting.

April 22, 2014 Public Hearing/General Meeting

Some corrections and clarifications were discussed and agreed upon. The following motion was made: That the Commission approve the corrected minutes. The motion was made by Mr. Sini,

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seconded by Mr. Olvany. All voted in favor except Mr. Voigt and Mr. Cunningham who abstained because they had not attended the meeting. The Minutes were adopted by a vote of 4 to 0 to 2.

May 13, 2014 Public Hearing/General Meeting

Consideration of the draft minutes from May 15th was postponed.

Any Other Business (Requires two-thirds vote of Commission)

The Commission considered two items under Other Business. They are 1) propane facility for Noroton Bay Neighborhood Snack Bar and 2) the proposed reuse of the Backstreet Restaurant on Center Street. The motion to go into Other Business to discuss those two items was made by Mr. Olvany, seconded by Mr. Sini and unanimously approved.

Noroton Bay Neighborhood Snack Bar. Mr. Ginsberg explained that the Noroton Bay Neighborhood Association has nearly completed the renovation of the snack bar that had been damaged in Hurricane Sandy. They had not included the necessary propane tank facility in their initial design. A new underground propane tank has been designed so that it will be strapped down to a special concrete anchor and the tank and the anchor will be located underground to the south of the snack bar area. The exact location will be subject to Building Code compliance. The following motion was made: To approve the proposed underground tank facility at the Noroton Bay Snack Bar area subject to Building Code compliance and upon completion of the installation, certification that the actual construction has been performed in compliance with the Flood Damage Prevention Regulations. The motion was made by Mr. DiDonna, seconded by Mr. Voigt and unanimously approved.

Proposed reuse of Backstreet Restaurant (most recently, Third Rail), Center Street. Tom Lynch proposes to reuse the former Back Street Restaurant as the new Center Street Public House. He is applying for a liquor license and would like to offer entertainment to his customers. He said that it will be upbeat, but not raucous and generally will be on Friday and Saturday evenings and Sunday brunch. It will be moderate in noise level. In response to questions, he said that the music would only be provided in doors, although the music might be audible outdoors on the patio. It would not be performed or broadcast outside.

Commission members expressed concern regarding the residential apartments located on the second floor directly above the restaurant. Mr. Lynch said that the landlord is okay with the proposed music activity and that new insulation has recently been installed in the apartments. He said that music has been provided at Ernie's which is in the same building. Hours of operation were discussed.

The following motion was made: That the Commission authorize the Amendment of the Special permit to allow some entertainment to take place within the building subject to the following conditions: The music will only be within the building and will be kept at a moderate audible level; hours of operation for any music or entertainment shall be during brunch and on Friday and Saturday evenings until no later than 10 PM and the operator must be cognizant of the adjacent residential users within the same building. The motion was made by Mr. Voigt, seconded by Mr. Olvany and unanimously approved.

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There being no further business, the following motion was made: That the Commission adjourn the meeting at 10:20 P.M. The motion was made by Mr. Voigt, seconded by Mr. Olvany and unanimously approved.

Respectfully submitted,

David J. Keating
Assistant Director of Planning

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