

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
JANUARY 10, 2012**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Cameron, Spain, Hutchison, Voigt, Cunningham

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

Chairman Conze called the meeting to order at 8:00 P.M. and read the first agenda item:

GENERAL MEETING

Amendment of Site Plan #273-A, Darien High School, 80 High School Lane.

Proposed establishment of an electric charging station to power electric vehicles.

Leon Strecker explained that he is a Department Head at the Darien High School and they have been working on a project to install a charging system for electrical vehicles. Justin Lee, a senior at the high school, explained that they have obtained a private donor to fund the power station that will be adjacent to the "F" Wing parking lot. The unit and the installation will cost the town nothing. The Board of Education has approved the installation and they will control the cost to the end user. The facility will occupy two parking spots in the faculty parking area. This site was selected due to a number of factors, including the ease of bringing power to the site, security and the ability to control access to the area. It will take the charging system approximately five to eight hours to fully charge a dead battery of a vehicle but in most cases the battery will only need 10% charging time. A swipe-card system will be used and the Board of Education will be able to control the hours of operation for the charging system. Security cameras already cover the area of the proposed re-charger.

Commission members discussed the situation and the following motion was made: That the Planning & Zoning Commission approve the installation of the electric vehicle re-charging facility proposed for two of the parking spaces at the Darien High School. The motion was made by Mr. Hutchison, seconded by Mrs. Cameron and unanimously approved.

Chairman Conze read the following agenda item:

Business Site Plan #33, Brian McKay, Flair Fitness, 551 Boston Post Road.

Formal discussion and review of the Commission's July 2011 decision to increase the class sizes at Flair Fitness and to allow a sublease.

Mr. Ginsberg reviewed the December 19, 2011 letter from Brian McKay, whose LLC owns the property in question. In July of 2011, the Planning & Zoning Commission approved a request by Flair Fitness to allow an increase in the class sizes during the day and to allow a sub-lease for a

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martial arts instruction within the same space as the dance/exercise studio. That approval by the Commission is valid for only six months and will expire in February 2012. Mr. McKay has noted that there are noise and parking concerns impacting other tenants that have been generated by the increased number of participants within the daytime classes.

Mr. McKay submitted copies of materials for the Planning & Zoning Commission files. He said that contrary to what the Commission had been told, the noise from the use is not under control and the parking issue is not resolved. He said that the lease to Flair Fitness specifically prohibits a sub-lease of the space. Mr. McKay said he has received numerous letters of complaints from other tenants within the building regarding parking and noise. He said that there is a civil eviction matter that is pending in the courts and that will be pursued separately from the Planning & Zoning issue.

Mr. Conze noted that the Commission's approval for increased number of people in the daytime classes will expire within a few weeks and it is possible that the operators of the business will re-apply to the Commission for an extension of that use. Mr. McKay asked if he would get notice of the re-application and Mr. Spain said that the Commission staff will make sure that Mr. McKay is notified if an application is submitted. Mr. Spain said that if a landlord has not approved the proposed use or activity, the Commission wants the landlord and tenant to work out their differences before the request is submitted to the Planning & Zoning Commission. It makes sense that landlord approval of the proposed use is needed.

Attorney Wilder Gleason represented the operators of Flair Fitness and said that Amy Shelton had received staff approval in July of 2010 for a maximum of 12 people for daytime classes and 40 in the evening. He said that the Darien Zoning Regulations do not specifically require landlord approval of a proposed use or activity; and there is case law that supports the tenant's right to apply for approvals and permits regardless of what the landlord thinks. He said that Flair Fitness has not sub-leased any space to Kempo Martial Arts Studio, but instead has hired an expert instructor in the martial arts.

Martha Baptista, an employee of Flair Fitness, said that the busiest time of the day is around ten in the morning. She is there at that time and said that there is no parking problem except following the winter snow storms when some of the parking spaces are blocked with plowed snow. She said that Flair Fitness has now staggered the end and start times of the classes to avoid an overlap of the clientele and they have lowered the volume of the music to make sure that it is under control. She said that the busiest time of the day is generally ten in the morning. She said that there is huge support for the use by the clientele and frequently those clients then visit other businesses on the property. She also said that a special floor was installed per the lease agreement.

Mr. McKay said that the Quest Diagnostic offices that are located directly underneath Flair Fitness and Nutmeg Associates have noted noise complaints.

A client of the tenant spoke in support of the Flair Fitness operation saying that she attends Zumba classes and also patronizes other businesses on the site. She said that the use is a good one for the residents of the town.

The Commission did not take any action on this agenda item.

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At about 8:30 p.m., Chairman Conze read the following agenda item:

Amendment of Special Permit #130-A/Site Plan, Darien Ice Rink, 55 Old King's Highway North.

Request to install six mechanical electric generator and HVAC units on a new concrete pad.

Matthew Perry explained that the ice rink proposes to install six natural gas fueled co-generation units on a concrete pad to be installed to the rear of the ice rink building. Each unit would create approximately 54 decibels of noise (he said that a new dishwasher generates approximately 58 decibels of noise). Each unit will burn natural gas and will generate electricity and heat. The heat is used in the ice rink operations and the electricity generated will provide approximately 40% of the energy load needed by the ice rink. In response to questions, he said that the gas company will extend the natural gas line from the Boston Post Road or the Goodwives Shopping Center area to the ice rink. He said that the natural gas burning generators also serves as an emergency generator; and they will reduce air pollution compared to the emissions from a coal fired electricity generating station. Also, they produce less emission than the rink's existing fuel oil fired heating unit, which will be removed. He said that the pay back will be approximately 2.3 years. Mr. Voigt was concerned about the cumulative noise level of having six units adjacent to each other. Mr. Perry said that this will not happen—there will be no cumulative impact. The proposed units will be located to the rear of the ice rink and far away from any other property users. Mr. Spain said that it is important to note that the purpose is to generate only some of the electricity needed by the ice rink and this is not a locally based generating plant that feeds significant amounts of power to the utility's electric grid. The Commission would be concerned if the purpose or result was to consistently generate more electricity than is used on site.

The following motion was made: The Planning & Zoning Commission approve the requested modification of the Site Plan and Special Permit to permit the installation of the six co-generation units in accordance with the submitted plans. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

Chairman Conze read the following agenda item:

Flood Damage Prevention Application #296, Tschbull, 8 Silver Lakes Drive.

Request for extension of time to implement project.

Mr. Ginsberg explained that the Planning & Zoning Commission had previously granted the Flood Damage Prevention approval for the elevator structure to be added to the building. Mr. Tschbull has not yet implemented that plan, and has requested an extension of time to commence construction. The Commission members noted that the six month extension would expire in July of 2012. They decided it would be appropriate to grant a one year extension.

The following motion was made: The Planning & Zoning Commission grant a one year extension to the existing Flood Damage Prevention approval so that the project must be completed by January 2013. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

Chairman Conze read the following agenda item:

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Business Site Plan #248, Day Street Development, LLC, 1015 Boston Post Road/13 Grove St.

Request for interpretation that extension of time to commence and implement project is not needed, or in the alternative, a request for an extension of time for one more year to December 31, 2012.

Mr. Ginsberg explained that Mr. Orlando had obtained Site Plan approval from the Planning & Zoning Commission for the re-development project at the corners of Grove Street and Day Street and Day Street and the Boston Post Road. The Connecticut General Statutes have been amended to extend such approvals in certain cases.

Attorney Wilder Gleason represented the applicant, and said that the Statute appears to automatically grant the extension for nine years, and that additional extensions are permitted beyond that. Mrs. Cameron said that she believed that the extensions were not automatic, but were still subject to the Planning & Zoning Commission's action. It was determined that Town Counsel would be asked to review the statutes and explain to the Commission exactly how the modified statutes are to be implemented. In the mean time, the following motion was made: The Planning & Zoning Commission authorize the extension of the Site Plan approval for the Day Street Development to commence construction activity by December 31, 2012. The motion was made by Mrs. Cameron, seconded by Mr. Cunningham, and was approved by a vote of 5-0, with Mr. Hutchison abstaining.

At about 8:55 p.m., Chairman Conze then read the following agenda item:

Amendment of Site Plan Application #251/Special Permit Application #246, Land Filling & Regrading Application #184, CL Darien Partners, LLC, Wakemore Street (possibly Kensett Lane).

Request to modify Condition I of the Adopted Resolution regarding drainage, and modify the Wakemore Street drainage system.

Attorney Bruce Hill explained that they are requesting two modifications of the Planning & Zoning Commission's approval. First, Condition I of the approval requires that the Wakemore Street drainage system improvements be completed prior to the issuance of any Zoning or Building Permits which would allow commencement of construction on the first units. They are currently asking the Planning & Zoning Commission to modify that requirement and to allow the Zoning and Building Permits to be issued so that construction of the first units can take place while the Wakemore Street drainage system is being installed. He added that the drainage system will be completed prior to the request for the Certificate of Occupancy of any units or building.

The second request is to modify the Wakemore Street drainage system. The approved plan calls for the drainage system on the easterly end of Wakemore Street to proceed north through approximately half of the development and then to direct the water to the center of the site and then to the northwest corner where it would be discharged. The requested modification is that the drainage from the easterly end of Wakemore Street be brought to the southerly end of the new development and then to be directed toward the central part of the site and then directed to the same northwest corner of the site to be discharged.

Denise Halstead, Project Engineer from GHD Associates, reviewed the approved plan and the revised plan. She said that she has submitted calculations to demonstrate that there is no increase in

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the flow totals. To accommodate the revised plan, the pipe sizes have been increased so that the pipes can be installed at a minimum slope and thus reduce the velocity of the storm water. It was noted that this storm water from Wakemore Street is just being passed through the site. A separate storm water detention system to accommodate the new internal roadways, roof areas and other impervious surfaces will be installed as the project is being built. The Wakemore Street drainage system is just to carry the storm water run-off that is already generated by the existing Wakemore Street development. The replacement system will carry the water through the site to the northwest portion of the project where it will be discharged.

Mr. Ginsberg was asked if the Public Works Department had any comments or concerns regarding the proposed modifications. He indicated that he knows of no such concerns or issues. Attorney Hill noted that all other conditions of the Planning & Zoning Commission's approval will remain valid and unchanged and the applicant will comply with all of the conditions.

The following motion was made: The Planning & Zoning Commission approve the requested modifications regarding the issuance of the Zoning and Building Permits prior to the completion of the Wakemore Street drainage system with the condition that the Wakemore Street drainage system be completed prior to any request for the Certificate of Occupancy and/or use of any building within the development. The second request regarding the realignment for the drainage pipe for the Wakemore Street drainage system is also approved. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

Chairman Conze read the following agenda item:

Business Site Plan #242-A/Special Permit, Robert L. Mazza d/b/a Sugar Bowl, 1033 Boston Post Road. Proposing to establish outdoor dining in front of the existing building (adjacent to Boston Post Road), with benches and potted plants on the side of the building facing Brook Street.

Robert Mazza explained that he had obtained approval from the Planning & Zoning Commission several years ago to have three tables and six chairs on the Boston Post Road sidewalk in front of his restaurant. That approval has expired. He has since revised the plan to include the three tables and six chairs plus some planters plus some benches. The benches and some of the landscaping would be located on the Brook Street side of the building. The plan encroaches slightly within the street right-of-way and therefore the request has been subject to review and action by the Darien Board of Selectman for the work within the town street right-of-way.

Mr. Ginsberg was asked if there would still be enough sidewalk area to accommodate pedestrians. Mr. Ginsberg said that the width of the remaining unencumbered sidewalk will certainly be wide enough for wheel chair access. Commission members asked if the outside tables and chairs would be dining only or if service would be provided? Mr. Mazza said that no waiter or waitress service will be provided. People could get their food inside the building and bring it to the tables and chairs outside.

Mr. Spain said that the Commission has had experience with the tables and chairs along the Boston Post Road but has no experience with the planters and benches on the Brook Street side of the project. He suggested that the Commission approve the request for a three year time period so the

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Commission can gain experience regarding the outdoor dining plus the street furniture on the Brook Street side.

The following motion was made: The Planning & Zoning Commission approve the request for outside street furniture including no more than three tables and six chairs against the building on the Boston Post Road sidewalk plus planters and benches on the Brook Street sidewalk in accordance with the submitted plans and that this Special Permit approval shall be valid for only three years and shall expire on January 10, 2015. The motion was made by Mrs. Cameron, seconded by Mr. Cunningham and unanimously approved.

Chairman Conze read the following agenda item:

Amendment of Special Permit #9-B, First Congregational Church, 14 Brookside Road.

Placement of construction trailer on a temporary basis, until August 31, 2012 for use by Hunter Gregory Realty Corporation.

Attorney Amy Zabetakis explained that the Hunter Gregory Realty project at 599 Boston Post Road is currently being implemented. Numerous people have made inquiries regarding the residential units that will become available at that site. Rather than have potential customers at the construction site, and rather than setting up a temporary sales trailer in the residential zone located to the rear of 599 Boston Post Road, the developer is proposing to set up a temporary marketing trailer within the parking lot owned and maintained by the First Congregational Church. This parking lot is diagonally across the intersection from the 599 Boston Post Road project. The marketing trailer would be temporarily located on the site until August 31, 2012. The Commission members noted that this low portion of the parking area occasionally floods. Mrs. Zabetakis said that the temporary marketing trailer will be elevated above the existing ground level, so that flooding will not be a problem. A question was raised about the basketball hoop in the area, and Mrs. Zabetakis said they will work around that potential obstruction.

The following motion was made: The Planning & Zoning Commission authorize the temporary installation of the marketing trailer in accordance with this submitted request. The approval should be valid until August 31, 2012. The motion was made Mr. Hutchison and seconded by Mrs. Cameron. All voted in favor except Mr. Voigt, who abstained. The motion was passed by a vote of 5-0-1.

At about 9:15 p.m., Chairman Conze then read the following agenda item:

Discussion only regarding:

Proposed Amendments to the Darien Zoning Regulations put forth by Christopher & Margaret Stefanoni (COZR #5-2011). Proposing to establish a new section of the Darien Zoning Regulations entitled, "Affordable Housing Floating Zone". This new section would establish a floating zone which could be automatically applied to any lot in Darien at the option of the property owner. It would allow CGS 8-30g affordable housing developments on any lot in Town as a Principal Use as-of-right. It would establish specific Area and Bulk requirements regarding setbacks, and allow structures to be up to three stories and forty feet in height, with a maximum density of thirty-five (35) units per acre. The proposed new regulations would also allow for legalization of existing "in-law" unit(s). The full text of the proposed zoning regulation

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amendments is on file and available in the Town Clerk's office and the Planning and Zoning Office for inspection. *HEARING CLOSED ON 11/22/2011. DECISION DEADLINE: JANUARY 26, 2012.*

Mr. Ginsberg explained that the hearing regarding this matter was concluded in November of 2011. There are two parts to the proposed amendments. The first would allow affordable housing in certain cases "as-of-right", without requiring Planning & Zoning Commission approval, and the second aspect would be to legalize existing "in-law apartments," if they were declared "affordable". He said that he hopes that the Planning & Zoning Commission members will provide him with input so that he can draft a resolution for consideration at a future meeting. He said that the proposed density allowed by the proposed regulation would be up to 35 units per acre, and that any projects that involved 35 units or less would not need to get Planning & Zoning Commission approval, just administrative Zoning and Building Permits.

Mr. Ginsberg said that the staff had submitted a memo to the Commission as part of the public hearing indicating that various aspects of the project are not consistent with the Town Plan of Conservation and Development. The Plan does indicate that the issue of accessory apartments should be studied, but does not support any specific proposal.

Mr. Conze said that he thinks that the staff memo is on target because the proposed amendments are not consistent with the Town Plan.

Mr. Hutchison said that there is nothing like this in any Town in the State of Connecticut.

Mrs. Cameron said that the Garden Homes Development was used as a reference for formulating the proposed draft, but the Garden Homes project was the reuse of an existing commercial building, and had very limited size units per the owner's specific request and design. It is not a general standard that the Commission established, it is just the reuse of a very site specific development at a very good location for multi-family housing. She also noted that a high percentage of impervious surfaces, including roof area and parking lot does degrade water quality. Creating new high density projects such as Garden Homes on lesser developed sites or vacant sites would result in water quality problems in the future.

Mr. Hutchison said that Section 8-30g of the Statutes already empowers the applicants to come before the Planning & Zoning Commission and the proposed Regulation would obviate the Zoning review process which is needed to sort through the various types of applications.

Mr. Spain said that it is important to note that Mrs. Stefanoni said that if ten percent of the dwelling units in the community were ever to become affordable units, then this provision of the Regulation could be removed or thereby become inoperable. He said this means that the proposed regulation is redundant to the existing statutory language under CGS Section 8-30g, but it does not make any recognition of a moratorium that is a very specific aspect of Section 8-30g.

Mr. Spain also noted the traffic safety needs to be reviewed by the Planning & Zoning Commission by each specific proposal. This is true of all types of development, not just affordable housing. He said that the Commission is obligated under CGS Section 8-2 to protect the public interest in all such matters and the proposed amendment would prevent the Commission from fulfilling that requirement.

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Mrs. Cameron said that it is important that some way of dealing with the existing accessory apartments should be looked into because in some cases, the units are not safe and if they become legalized, they will need to become safety compliant. She said the proposed language to legalize existing apartments has too many questions and needs considerable study and clarification to deal with the variety of issues involved.

Mr. Hutchison said that each type of development needs consideration on a case by case basis and some developments have impacts and some don't, but the process of the Planning & Zoning Commission review is important so that each proposed project gets a thorough review. He said that the legalization of in-law apartments does need a closer look before something could be adopted.

Mr. Ginsberg will draft a resolution for future review and action by the Commission at an upcoming meeting.

Approval of Minutes

November 15, 2011 General Meeting/Public Hearing

Suggested changes and clarifications to the minutes were reviewed. The following motion was made: That the Commission approve the minutes as per the reviewed revisions. The motion was made by Mr. Voigt, seconded by Mr. Spain and unanimously approved.

November 22, 2011 General Meeting/Public Hearing

Suggested modifications and clarifications were reviewed. The following motion was made: That the Commission approve the minutes as revised. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved.

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

No other business was discussed.

PUBLIC HEARING

Continuation of Public Hearing regarding Flood Damage Prevention Application #304, Land Filling & Regrading Application #268, Kim & Christa Mathew, 68 Buttonwood Lane. Proposing to fill in where the proposed residence is in the flood hazard area, and compensate by an excavation of equal area and volume in another part of the site; level the back yard; and perform related site development activities within a regulated area. The subject property is located on the south side of Buttonwood Lane, approximately 550 feet east of its intersection with Mansfield Avenue, and is shown on Assessor's Map #10 as Lot #50, in the R-1 Zone. *PUBLIC HEARING OPENED ON 11/22/2011.*

Lance Zimmerman, Project Architect, and Steve McAllister, McChord Engineering, reviewed the revised Drainage Plan that now includes a much larger rain garden in lieu of underground infiltrator units. This suggestion had been made by the Planning & Zoning Commission at the previous public hearing and the submitted plans reflect that suggestion.

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Mrs. Cameron said that using above-ground rain garden areas seems to be more appropriate. Mr. McAllister said that there has been a growing trend toward using the open air storm water storage area and that it is actually less expensive to install and maintain compared to the underground infiltrators.

There were no comments from the public regarding the public hearing or the modified plans. The following motion was made: That the Commission close the public hearing regarding this application. The motion was made by Mr. Hutchison, seconded by Mrs. Cameron and unanimously approved. This matter will be considered for action at a future meeting.

Land Filling & Regrading Application #267, Scott Leahy, 117 Leeuwarden Road. Proposing to fill, regrade, and construct associated retaining walls along the sides and rear of the property, and perform related site development activities. The subject property is located on the west side of Leeuwarden Road, approximately 800 feet south of its intersection with Old Oak Road, and is shown on Assessor's Map #29 as Lot #122, and is in the R-1/2 Zone.

Susan Cameron recused herself and left the meeting room to avoid any perception of a conflict of interest.

Doug St. John from Swimm Pools explained that the proposed regrading is part of an effort to create a level play yard in conjunction with the installation of a swimming pool on the portion of the back yard closest to the house. He showed photographs of the site, and explained that the retaining wall near the rear property line would be a maximum 6 feet in height. Approximately 450 cubic yards of fill material would be needed to regrade the site, but approximately 100 to 150 cubic yards of that material would come from the excavation of the swimming pool. He said that the proposed flat back yard would be held up by the proposed retaining wall and then a fence would be placed along the property line. The old stone wall near the rear lot line would remain in place.

Mr. Hutchison said that this amount of regrading is not typical and thought that there might be noticeable impacts on the neighbors that are downhill from the property.

Mr. Ginsberg said that this is the second or third version of the plan. This version has added landscaping and reduces the height of the retaining wall compared to the previous proposal. He said that a detailed storm water drainage plan will be needed as part of the swimming pool permit, but has not yet been created because the applicants want to know whether their regrading plan will be acceptable to the Commission.

Mr. Hutchison questioned whether and how this type of retaining wall can be practically constructed without having a drainage plan of its own and without adversely affecting the neighbors.

Mr. Spain indicated that it is possible that the wall and fill could be installed without the swimming pool being built and thus the drainage system for the swimming pool would not be installed. He said that the drainage system for the proposed retaining wall and fill needs to be part of this current application.

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John Forlivia of 131 Hoyt Street explained that he lives downhill from the subject property. He said that a few years ago the owners of 113 Leeuwarden Road regraded their property and caused drainage problems to be transferred to his downhill property on Hoyt Street. He said that the current application should not be allowed until a detailed storm drainage plan is created and can be properly judged to make sure that his property will not be adversely affected by concentration of storm water or any other resulting impact. He said that the hillside is not as heavily wooded as it appears to be from the top looking down. He said, from his lower vantage point, he would be looking up at a 6 foot high or greater retaining wall.

Mr. Spain said that the neighbor's concerns are the Commission's concerns.

Mr. Conze said that the plan does seem to be extreme and looks problematic. He said that the idea of creating some flat backyard might be okay, but that this plan seems to be too much given the slope of the site and the concerns about storm water runoff. Mr. Spain said that drainage is a very big concern.

The Commission members asked the applicant to rethink the scope of the project and to return with a much more detailed storm drainage plan. It was decided to continue the public hearing regarding this matter on February 7, 2012 in Room 206 at 8:00 P.M. Any revised plans and materials need to be submitted by January 30, 2012 so that Commission members and neighbors will have an opportunity to review those revised plans in preparation for the February 7th meeting.

There being no further business, the following motion was made: That the meeting be adjourned. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved. The meeting was adjourned at 10:00 p.m.

Respectfully submitted,

David J. Keating
Assistant Planning & Zoning Director

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