

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
September 8, 2009**

Place: Auditorium
Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Bigelow, Spain, Hutchison, Grimes, Riccardo

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat
FILMED: Channel 79

Chairman Conze read the following agenda item:

Special Permit Application #188-B/Site Plan, Darien Board of Education, Darien High School, 80 High School Lane. Proposing to utilize six (6) portable lights at the Darien High School Stadium Field for seasonal fall use by Darien High School fall sports teams. The subject property is located on the north side of High School Lane approximately 1,200 feet west of its intersection with Middlesex Road, and is shown on Assessor's Map #9 as Lots #80 and #81, R-2 Zone.

Mrs. Kim Westcott, Vice Chairman of the Board of Education, explained that the current proposal is to install temporary lights on the High School Stadium field for practice of High School teams during late October and early November of 2009. She explained that in 2008 a pilot program had been sanctioned by the Board of Education and approved by the Planning & Zoning Commission to allow the temporary use of 20 foot tall, diesel powered lights so that the football team could practice in preparation for the State Playoff Tournament. One of the issues in the 2008 experiment was with the droning noise created by the diesel generators and another issue was the reflected light from the windows of the school. A third issue was to make sure that the lights were not aimed at or directed toward the neighboring properties. They believe that the current proposal will address these concerns and allow the students to practice in a safe manner as dusk and early evening approaches.

Don Fital, Superintendent of Schools, said that there is another single light pole that uses a diesel generator and is "grandfathered" because it was previously used at the school site. He explained that the 2009 proposal is to have six (6) temporary light groups, each located on a 20 foot tall pole to operate between 4:00 P.M. and 6:00 P.M. on ten (10) evenings to allow the football team, girls field hockey team, boys soccer team, and girls soccer team to practice during the early evening hours. The school will turn off the lights by 6:00 P.M. and the lights will only be used on weekdays. The lights will be used for practice purposes only. There will be no games played under the lights. Instead of using diesel powered generators, the temporary lights will be modified to disconnect the generator and to plug the lights into the main school electrical system. The use of the lights in the early evening will allow the players to safely practice during the evening in preparation for tournament games that are sometimes required to be played under the lights at facilities at other schools. Instead of the lights only being used by only the football team, the lights could be used by the girls field hockey and girls soccer team in order to provide equity of access

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and compliance with Title IX. Mr. Fiftal explained that all of the lights will be located in a position so that they will be pointed away from the neighboring residences. He said that the 2009 proposal addresses the problems that were previously experienced during the 2008 experiment. They have eliminated the generators and the noise caused by the generators, they will position all the lights on the east side of the football field so that they will point away from the neighbors, and they will install shades on the exterior of the windows of the school building to reduce the potential for glare problems. Each set of lights will be raised a maximum of 20 feet above the ground. He said that this will still be a pilot program in 2009 and they are not asking for permanent approval. He said that the latest that any team would practice under the lights would be until December 4th, but that would only be if the team has moved forward through the league and State tournaments.

John Keleher, Director of Athletics for the Board of Education, explained that the girls field hockey tournament will extend no later than November 20th. The boys and girls soccer tournaments extend no later than November 20th and the boys football tournament extends no later than December 4th. He said that if all the teams make the playoffs and proceed to the finals, the lights will be utilized a total of 46 hours for practices. He noted that the Board of Education has adopted a series of usage guidelines. Those 12 point usage guidelines are included in the application materials submitted to the Planning & Zoning Commission. Mr. Fiftal said that part of the plan is to avoid disruption to the neighborhood and to allow the students to practice in a safe manner. Because they will not be conducting any games using the lights, there will be no increase in traffic and there are clearly defined time limits as to when the lights can be operated each day, each week and for the year.

Paul Engemann, Director of Facilities for the Darien Board of Education, said that each light unit comes with its own generator so that it can be self sufficient. Realizing that the drone of the generator engines was considered by some to be a disturbance to the neighbors last year, they will have each of the lighting units modified so that they will become plug-in units and the generators will be disabled so that they cannot be turned on. The plug-in, temporary light units will be located from the east side of the track around the football field. Although equipment of the units could allow the lights to be raised up higher than 20 feet, the Board of Education is limiting the maximum height of the light fixtures to be 20 feet above the ground. The lights will only be used during the fall season that can extend from November 2nd (just after Daylight Savings Time ends) until no later than December 4, 2009, just before the final football game if the Darien football team is in the State Tournament finals.

Mr. Conze noted that there are some other issues that the Commission will want to ask questions about, but because of the similarity of the Board of Education proposal and the Darien Junior Football League proposal, before he accepts comments from the public, he would like an explanation of the Darien Junior Football League proposal. He read the following agenda item:

Special Permit Application #188-C/Site Plan, Darien Junior Football League (DJFL), Darien High School, 80 High School Lane. Proposing to utilize six (6) portable lights at the Darien High School Stadium Field for seasonal fall use by Darien Junior Football League. The subject property is located on the north side of High School Lane approximately 1,200 feet west of its intersection with Middlesex Road, and is shown on Assessor's Map #9 as Lots #80 and #81, R-2 Zone.

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Guy Wisinski of 34 Scofield Farm Road explained that the Darien Junior Football League now has 550 participants and they practice in the late afternoon once the students have been dismissed from school and when the volunteer coaches are available. In order to safely practice during the month of November (after Daylight Savings Time has ended) they will need to use lights on their practice fields. Mr. Wisinski said that they have worked with the High School to arrange to have the Darien Junior Football League practice from 6:00 P.M. to 7:30 P.M. at the football stadium facility that would have the temporary lights (as discussed in the previous application). The Junior Football League would use the lights to practice from 6:00 P.M. to 7:30 P.M. from November 2nd until November 20, 2009. The height and position of the lights would not change and the lighting fixtures would continue to be operated on a plug-in basis rather than needing diesel generators to create electricity. He said that they are requesting permission to have 15 total days of practice utilizing the lights. This means that the lights would be used by the Darien Junior Football League for practice for a total of 22.5 hours. He said the practice actually concludes at 7:15 P.M. and everyone is off the field by 7:30 P.M. when the lights would be turned off.

John Sini spoke on behalf of Darien Junior Football League. He said that he is also a member of the RTM but, he is not speaking on behalf of the RTM. He said that he recognizes that lighting the athletic field is an emotional issue in Darien. He said that the Darien Town Plan is designed to meet the needs of all segments of the population within the community. He said that the Town Plan also encourages private/public partnerships, and that is exactly what the use of the portable lights by the Junior Football League is. He said that in the Parks & Recreation Section of the Town Plan, it refers to lighting key locations at dusk and/or evening to make the facilities more usable for the public. He said that it is important to recognize that there are two separate issues. One is Parks and the other is Recreation – the use of the school facility for practice by DJFL is a recreation use, not a park use. Mr. Sini referred to Section 405b of the Darien Zoning Regulations that allows lights by Special Permit, provided that the source of the light is concealed from surrounding properties. In this case, they are complying with the maximum 20' height limitation and positioning the lights so that they are directed away from the neighbors. He said that this temporary use of portable light fixtures is in compliance with Section 1005 of the Darien Zoning Regulations because it will be in harmony with the surrounding neighborhood. He noted that each light facility is only 20' tall, and is not permanent. He said that it would not hinder the use of the adjacent properties, and will not increase traffic or the risk to the safety of the public. There are no impacts to the natural environment.

Mr. Sini noted that Ox Ridge Hunt Club, Woodway Country Club and Country Club of Darien all have outside lighting of their paddle tennis courts, and that such lighting is frequently on until 10 p.m. Each of these clubs is located within a residential neighborhood.

Guy Wisinski displayed a satellite photograph of Woodway Country Club's paddle tennis courts and noted that they are right across the street from houses on Hoyt Street. He also displayed a photograph of Ox Ridge Hunt Club and noted that their facilities are directly across the street from houses. He showed a photograph of the Country Club of Darien and noted that their lighted facilities are also close to houses. He said that these lighted facilities are operating until 10 p.m. seven days a week for seven months a year. He said that the Darien Junior Football League has met on a number of occasions with the Board of Education and their staff, and have been willing to meet with the neighboring property owners to discuss any concerns or issues. He said that they have worked with the Parks & Recreation Commission regarding the possible experimental use of lights

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at the Town Hall practice field (Holahan Field) so that practice conditions would be safe for the participants. He said that between the time they start practice in the late summer until the time that practice is concluded at the end of the season, they lose three hours of daylight due to the earlier sunset and the switch from Daylight Savings Time.

Jeremy Ginsberg, Planning and Zoning Director, read aloud the provisions of Section 1005, which are the standards for Special Permit approval by the Planning and Zoning Commission. Mr. Conze asked the Commission if they had any questions regarding either the High School proposal or the Junior Football League proposal. Mr. Spain asked about the timing for the practices for the football team and three other High School teams. Mr. Keleher said that the regular season for the field hockey team and boys and girls soccer teams ends on November 8th. If the teams make the playoffs and proceed through the playoffs to the finals, their last practice would be on November 20th. In each case, the practices would extend no later than 6:00 p.m. on a weekday night.

In response to questions, Mr. Engemann said that the portable light facilities will still contain a generator, but that each generator will be disabled and a plug-in facility will be created so that each portable light will be plugged into a subpanel located near the field, and access to that subpanel will be locked. The subpanel will then feed into the main building and be controlled at that point. He said that each portable lighting unit has four 1000 watt light bulbs. There is a collar or shield around each light bulb so that it can be directed toward the playing field.

Mr. Hutchison asked Mr. Sini to clarify how he interpreted the Town Plan of Conservation & Development section on "Parks and Recreation", and its recommendations for enhancements, to include fields controlled by the Board of Education. Mr. Hutchison stated that the material supplied by Mr. Sini (specific excerpts from the Town Plan of C&D, "Parks and Recreation") mentions fields such as Holohan by name, which is controlled by the Parks and Recreation Department, but does not mention any fields controlled by the Board of Education. Mr. Sini said he could not explain this fact. Mr. Sini said that Section A-8-7 refers to the Town Hall site, which is under the control of the Town government not the Board of Education and controls its own facilities per State Statutes. He asked if anyone had any information to the contrary. Mr. Spain said that paddle tennis courts seem to be the only other example that have night lighting. The private tennis courts are much smaller than the football field. He asked if there are any other turf fields that have lighting for practice or use at night. Mr. Wisinski said that the 20' tall lights at the paddle tennis courts create a considerable amount of light spillage well beyond the courts themselves even though the playing surface of the paddle tennis courts is smaller than the football field.

Director of Planning Jeremy Ginsberg said he had copied the emails and letters that had been submitted by the public for the record in both matters, and had distributed copies of those to the Planning and Zoning Commission. He read the comments from Lieutenant Anderson of the Darien Police Department indicating that there were no traffic issues regarding the installation of the temporary lights at the High School.

Mr. Conze asked if there were comments from the public, and noted that most likely the Commission will continue the Public Hearing on a different night so that additional information could be received.

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Attorney Greg Cava of Roxbury, Connecticut said that he represented several of the neighboring property owners adjacent to Darien High School. He said that the fields at the Darien High School have never been treated as a park in the Town Plan because they are there to fulfill an educational mission of the school under the State Statutes. Mr. Cava said that he had previously served on the Planning and Zoning Commission and had been involved in the drafting and adopting of the Town Plan of Development during the 1990s. Mr. Cava displayed a large board that illustrated neighboring property owners who had opposed or expressed concerns about the 2006 lighting proposal at the High School. He said that the current neighbors had been subjected to pressures and even vandalism due to their opposition to the lighting. He said that this issue is best discussed and worked out by the Board of Education and the neighbors rather than becoming an emotional issue. He noted that nothing in the proposed application discusses the required buffer that is mandated under Section 944 of the Zoning Regulations. He said that by the time of the year that the lights are being utilized, the existing deciduous trees between the neighboring houses and the football field will have lost all their leaves and will not be providing any visual or noise buffer. Mr. Cava said that it is good that the generators have been eliminated but noted that the extension of practice into the evening hours means that the noise of the practice will be more noticeable to the neighbors because of the decrease in the background or ambient noise level. He said that DJFL practice being conducted at 7:00 P.M. will be more noticeable than the noise created by the practice at 5:00 P.M. He said that the Town Plan of Development does note that lighting could be considered at key locations of public parks around the community but further noted that the Plan requires that in each case, a careful analysis of each proposal and the impact of each proposal be weighed by the Planning & Zoning Commission. He said that the Town Plan is designed to protect the residential character of the community. Mr. Cava said that if the lights are permitted, then there needs to be a clear and simple enforcement action and clear and simple penalties if the lights are not used in compliance with the terms of approval.

Mr. Cava expressed concern that the High School considers at least one set of lights to be “grandfathered” just because it was used at the High School in years past. He said if it was used on a different field in a different location, the “supposedly grandfathered” portable lights cannot be moved to a different field because a non-conforming use cannot be moved or relocated without obtaining approval from the Commission or Zoning Board of Appeals. Mr. Cava said that the supposed precedent of lights at the paddle tennis courts at other sites is not related to any lighting at the football field or at the High School that has many residential neighbors in close proximity. He said that the fact that other towns have high schools that have lights are not a precedent because those facilities are not comparable to the Darien High School. He said that if there are six (6) light towers, each containing four (4) light bulbs, this translates into 24 light bulbs, with each displaying 1,000 watts of light. He said that this field is not surrounded by 40 foot tall evergreen trees that will provide an effective visual buffer.

Mr. Cava said that with respect to the Darien Junior Football League proposal, the fact that they are expanding and need to get coaches to volunteer to come to practice earlier is not a reason to impact the neighbors. He said that the Darien Junior Football League is a private recreation group, not a school function or team and they need to be treated significantly different than the school sanctioned teams.

Walter Raleigh said that there are no lights on any sports fields in Darien because there are no places where such lights would not be intrusive upon the neighbors. He claimed that the use of

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temporary and portable lights at the High School field for eleven (11) nights during 2008 diminished the value of the neighboring lots due to the noise and glare problems.

Mr. Van den Broek of 15 Linda Lane said that he is a former coach and his experience with the challenges of scheduling practices and finding appropriate facilities at which to practice. He said that the rules should not be bent to allow the lights as proposed because they would be detrimental to the neighbors.

Paul and Karen Clifford of 16 Linda Lane said that they are the closest neighbors to the football field and they are somewhat sympathetic to the proposal but said that a fair and equitable compromise solution must be reached. They said that illumination of the entire field is too strong for the whole area. They noted that the extensive wetlands located between the field at the high school and their house means that evergreen trees cannot be planted to provide a solid visual buffer.

Mr. Conze noted that there is need to continue the public hearing so that everyone else who wants to express their concerns can submit written comments and opinions. It is agreed by all that the public hearing regarding this matter will be continued on October 6, 2009 at 8:00 P.M. The meeting will be continued in either Room 206 or the Auditorium of the Darien Town Hall.

At about 10:15 P.M., Chairman Conze read the next agenda item:

Special Permit Application #11-P, Ox Ridge Hunt Club, 516 Middlesex Road. Proposing to install a fence along a portion of Middlesex Road and near the driveway entrance and perform related site activities. The subject property is located on the northeast corner of the intersection formed by Saddle Ridge Road and Middlesex Road, and is shown on Assessor's Map #6 as Lot #149, in the R-2 Zone.

Attorney Amy Zabetakis represented the Ox Ridge Hunt Club and explained that they have already started to install the privacy fence along a section of Middlesex Road extending north from Saddle Ridge Road to the entrance driveway into the Club. This is a chain linked fence that is six (6) feet tall and has a plastic hedge like insert placed into the slats of the chain link fence. A stockade type of wooden fence had been located in this general area but has been vandalized and been used for graffiti. She explained that the new fence shields the view of the buildings within the Club property from the street. She also noted that several large trees in the area had to be removed because they were dead or dying. Ms. Zabetakis said that some of the neighbors on Saddle Ridge Road have complained that the Club has not been maintaining its buildings, particularly the large barn needed to be painted. The Club has recently completed the painting of the large barn. Attorney Zabetakis opined that the Commission does not have jurisdiction over the design or style of the fence.

Director of Planning Jeremy Ginsberg noted that the installation of this fence along Middlesex Road is an amendment of the existing Special Permit and that the Planning & Zoning Commission under Section 1005 must make certain findings regarding the appropriateness of the fence size, location and design. Attorney Zabetakis said that the Club had looked into a number of alternatives instead of the chain link fence but eventually selected the 6 foot tall chain link fence with the green inserts. Typically, along a front property line only a 4 foot high fence is permitted but under a special provision of the Regulations, a Special Permit use or its immediate neighbor may have an 8 foot high fence.

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Mr. Spain said that this 6 foot high fence with the plastic inserts looks like Christmas decorations that did not work out. He asked if it could be softened by the installation of real landscape plantings. Ms. Zabetakis noted that Connecticut Light & Power cleared some of the trees in the area due to their interference with the overhead wires. She also noted that the neighbors on Middlesex Road are anxious to have the fence installation completed.

Mr. Bigelow asked if the fencing would be continued along Saddle Ridge Road. Attorney Zabetakis said that there is no intent to continue the 6 foot fence along Saddle Ridge Road. Mr. Conze said that he wants the Club to look into alternatives to the artificial insert slats. Mr. Spain noted that a security fence is one thing but this particular fence design needs to be improved. Attorney Zabetakis said that they could plant bushes at the base of the tree and plant ivy that would climb up the fence but these will take time to mature.

Jennifer Schwartz of 8 Saddle Ridge Road said that she supports the equestrian endeavors in general and the Ox Ridge Hunt Club. However, the 6 foot tall fence with AstroTurf type slats could still easily be spray painted and be used for graffiti. She also noted that there is a large gap under a portion of the fence and thus the fence does not provide security. She questioned why the fence had to be located right at the front property line instead of being located much closer to the buildings and providing a greater distance between the general public and this 6 foot high fence. She said that the use of artificial green garland material is not appropriate and that the use of a solid wooden fence with landscaping would be much better. She said that as it is presently configured and designed, this fence with the insert slats is not in keeping with the residential character of the neighborhood.

Leelee Klein said that she lives on the opposite corner of Saddle Ridge Road and Middlesex Road. She said that it is very difficult to look at this unusual fence because it is not in keeping with the neighborhood. She said that she cannot believe that the Club did not know that they needed permits and approvals for this fence because they are a Special Permit use in a residential zone. She said that she is thrilled that the barn finally was painted, but noted that this supposed "security fence" does not provide security at either end. She said another problem with the fence is that people on the outside cannot see what is going on within the site and thus kids or anyone else who wants to hide on the site could easily do so behind this new fence.

Helen Blase of 24 Saddle Ridge Road said she does not like the fence and felt that the Club should not have put up any part of the fence without first getting necessary approvals and permission from the Town.

Stephanie Geron of 10 Saddle Ridge Road said that this chain link fence with "Christmas decorations inserted into it" surprised her. She said that the planting of trees and hedges would be a much better way to screen the buildings from the street. She said that this fence does not provide security because there are many other access points into the site, even at both ends of this fence.

Leelee Klein spoke on behalf of her neighbor, Mrs. Bucholz of Saddle Ridge Road who is trying to sell her house. She said that Mrs. Bucholz feels that the lack of maintenance in the Ox Ridge property is a big reason why she has not received any offers on her property. Mrs. Klein said that Mrs. Bucholz and other neighbors are also opposed to the fence as it has been installed.

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Attorney Zabetakis said that no variance is needed for the fence and that the fence is located along the front property line like many other fences in the residential zone. She said that an eight foot high fence is allowed by Special Permit use of the site. Mr. Conze suggested that it would be helpful to keep the public hearing open so that the Club representatives could meet with the neighbors and try to resolve this matter. Attorney Zabetakis consulted with her clients and said that it did not seem necessary to keep the hearing open.

Mr. Spain said that he thinks the Club needs to make the fencing more acceptable and that if the Club could not do so, it might be a determination to the Commission that they remove the fence and return the conditions to the previous status. Attorney Zabetakis said that the residents along Saddle Ridge Road are unhappy about many other things and are using those other objections to argue about this fence. She said that the neighbors along Middlesex Road do not object to the fence. Mr. Bigelow asked about the previously installed wooden, stockade fence that was installed at the site. Attorney Zabetakis said that that fence was installed as a screening fence around some of the materials stored on the property. She also noted that the void under part of the chain link fence will be filled in with rocks so that it will not provide access into the site. Attorney Zabetakis said that the Club would be willing to plant ivy along the fence and would stipulate that the fence not be continued along Saddle Ridge Road. There being no other comments, the public hearing regarding this matter was closed.

GENERAL MEETING

At about 10:50 p.m., Chairman Conze read the following agenda item:

Discussion deliberation and possible decision on:

Special Permit Application #170-B/Site Plan, Tasti D-Lite, Noroton Heights Shopping Center, 380 Heights Road. Proposing to establish an ice cream shop within the northernmost space within the existing building and place two associated outdoor tables and eight outdoor chairs. The subject property is located on the north side of Heights Road approximately 185 feet east of its intersection with Hollow Tree Ridge Road, and is shown on Assessor's Map #75 as Lots #22, #23, #24, in the DC Zone. *PUBLIC HEARING CLOSED 9/1/2009. DECISION DEADLINE: 11/4/2009.*

The following motion was made: That the Commission waive the process of reading the entire draft Resolution aloud because each member has had an opportunity to review the draft prior to the meeting. The motion was made by Mr. Bigelow, seconded by Mrs. Grimes and unanimously approved.

The Commission discussed the draft resolution to approve the project with conditions and stipulations. They noted that it is important that the chairs and tables for this use remain in the area directly in front of this store and not be spread in front of other shops or stores. They resolution is to be modified to make this point more clear. The following motion was made: That the Commission adopt the following revised resolution to approve the application with conditions and stipulations. The motion was made by Mr. Bigelow, seconded by Mrs. Grimes and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 8, 2009**

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Application Number: Special Permit Application #170-B/Site Plan
Tasti D-Lite, Noroton Heights Shopping Center

Street Address: 380 Heights Road
Assessor's Map #75 Lots #22, #23, #24

Name and Address of Property Owner: Noroton Heights Shopping Center
264 Heights Road
Darien, CT 06820

Name and Address of Applicant &
Applicant's Representative: Aldo Criscuolo
c/o GA Treats LLC
45 Church Street
Stamford, CT 06906

Activity Being Applied For: Proposing to establish an ice cream shop within the northernmost space within the existing building and place two associated outdoor tables and eight outdoor chairs.

Property Location: The subject property is located on the north side of Heights Road approximately 185 feet east of its intersection with Hollow Tree Ridge Road.

Zone: DC Zone

Date of Public Hearing: September 1, 2009

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices
Dates: August 20 & 27, 2009 Newspaper: Darien News-Review

Date of Action: September 8, 2009 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News-Review
September 17, 2009

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 630, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted sketch, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application proposes to establish a Tasti-D-Lite, an ice cream type shop within the northernmost space within the existing building and place two associated outdoor tables and eight outdoor chairs. The location of the space is at the end of the shopping center building, adjacent to Tunick's (in the space formerly occupied by Ta-Da).
2. At the public hearing, it was noted that the hours of operation would be a maximum of 11 a.m. to 10 P.M. They would have four tables and eight seats indoors with two tables and eight chairs outdoors in front of the building. The applicant noted that the outdoor tables and chairs would be put into storage off-site "out-of-season" (late fall and winter).
3. For this proposed business, there is no cooking, thus, no special venting system has been proposed or is approved.
4. The location and size of the use, the nature of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
5. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
6. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
7. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.

NOW THEREFORE BE IT RESOLVED that Special Permit Application #170-B/Site Plan are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. The tenant location, space, and fit-out shall be in accordance with the following plan submitted to and reviewed by the Commission, and may be required to be modified:
 - Proposed tasti D – lite, Noroton Heights Shopping Center, undated plan.The Commission notes that the interior layout and design may be modified as needed by the Fire Marshal and/or the Darien Health Department. The Commission is approving the size and use of the tenant space and the location of the tenant space within the first floor.
- B. The outdoor tables and chairs shall be placed and maintained so as not to obstruct pedestrian access around the building, or block the nearby mailbox. The two tables and eight chairs

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outdoors shall be placed only in front of the ice cream type shop. Per the applicant's representations, they shall be stored off-site in the "out-of-season" months.

- C. The proposed use is for the sale of ice cream type and related products and beverages. It does not involve any cooking and therefore, no special ventilation system is needed. No cooking is permitted unless and until a revised Special Permit is obtained and the proper ventilation system is installed.
- D. As proposed by the applicant, the hours of operation of this business shall be a maximum of 11 am to 10 pm, seven days a week. The Commission also acknowledges that employees may be on premises before and after those hours of operation for preparation and clean-up. Any modification to these proposed hours of operation requires a modification of this Special Permit, and review and action by the Planning and Zoning Commission.
- E. Any change to the nature of the proposed use will also require a modification of this Special Permit, and review and action by the Planning and Zoning Commission. This would include, but not be limited to, the hours of operation, amount of indoor seating, or the nature of the restaurant use.
- F. No delivery vehicles shall use Heights Road for loading or unloading, nor to make deliveries to the site. It is the responsibility of the property owner and each of the tenants to inform delivery personnel that adequate delivery areas are provided in the rear or side of the building and to assure that only those designated areas are utilized for deliveries.
- G. All Dumpster areas shall be maintained in a neat and orderly fashion by this property owner. The Dumpster doors shall remain shut at all times that someone is not loading or unloading garbage. No new Dumpsters or Dumpster areas have been approved—the applicant noted that an existing on-site Dumpster will be used.
- H. Any exterior signage or façade changes will require review and action by the Architectural Review Board.
- I. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- J. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies. This includes, but is not limited to, approval from the Darien Health Department.
- K. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (September 7, 2010). This may be extended as per Sections 1009 and 1028.

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All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. All completed requirements and materials, including, but not limited to the filing of a Special Permit form in the Darien Land Records within 60 days of this action shall be completed or this approval shall become null and void.

The Commission members discussed the draft Resolution which is to approve the application subject to conditions and stipulations. They noted that the tables located in front of the ice cream store must remain in front of that store only. They cannot be spread out on other portions of the sidewalk in front of other stores. Mr. Ginsberg was instructed to modify the draft Resolution accordingly. The following motion was made: that the Commission adopt the revised Resolution to approve the project with conditions and stipulations. The motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

Mr. Conze read the following agenda item:

Beadz Boutique, 37-45 Tokeneke Road

Request to use second floor for birthday parties and designer workshops.

A two-page letter was received from Martha Strassberger requesting that they convert some of the office space on the second floor into a gathering room for birthday parties and designer workshops. The matter was referred to the Fire Marshal and Building Official who have no problem with that use provided that the entire building is occupied by one user. Other portions of the second floor will be used by Beadz Boutique so there will only be one user within the entire building.

The following motion was made: That the Commission approve the request for the use of part of the second floor for birthday parties and designer workshops in accordance with the letter dated September 2, 2009 from Martha Strassberger. A motion to approve was made by Mrs. Grimes, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze read the following agenda item:

Business Site Plan #249-A, Whole Foods Market, 150-152 Ledge Road

Update on status of project.

The Zoning Enforcement Officer David Keating said that the concrete wall on the back portion of the building has been completed and within the next few weeks they will start erecting the steel frame of the main building. He noted that the site work for the parking lot and drainage continues and within the next month there will be a considerable difference in the appearance of the project due to the installation of the steel framing. He also said that he has been informed that the work on the off-site roads, along Ledge Road and the off ramp from I-95, is likely to begin during the late fall/early winter of 2009 and will be completed in the spring of 2010. He said that the attorney for the applicant and the contractor had been reminded that all off-site improvements must be completed before the building can be occupied.

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Commission members appreciated the update. Mr. Conze said that Whole Foods Market should probably make a series of press releases available so that the general public understands what the construction status is and when the facilities will be operable.

Chairman Conze read the following agenda item:

Special Permit Application #257/Site Plan, Calvary Baptist Church, 988 Boston Post Road, CBD Zone.

Request to install handicap accessible ramp.

Mr. Ginsberg explained that the installation of a handicap ramp in the front of the property was discussed and the applicant was trying to get the materials together for submission to the Commission but was not able to do so. When the application materials are submitted, the matter will be placed on a future agenda.

This being a Special Meeting, no "Other Business" could be added to the agenda.

The meeting was adjourned at 11:05 P.M.

Respectfully submitted,

David Keating
Assistant Planning & Zoning Director