

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
November 24, 2009**

Place: Room 206
Town Hall

TIME: 8:00 P.M.

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

STAFF ATTENDING: Ginsberg
RECORDER: Syat
FILMED: Channel 79

PUBLIC HEARING

Vice Chairman Spain read the first agenda item:

Continuation of Public Hearing regarding Proposed Amendment to Zoning Regulations #5-2009, Affordable Housing Application under CGS 8-30g, Special Permit Application #256, Garden Homes, 397 Post Road apartments, 397 Boston Post Road. Proposing to modify the zoning regulations to allow conversion of certain buildings within the DB-2 zone as a Special Permit use; and application for a Special Permit to convert an existing office building at 397 Boston Post Road to 35 multi-family rental units; and perform related site development activities. The subject property is located on the northeast side of Boston Post Road approximately 475 feet southwest of its intersection with Birch Road, and is shown on Assessor's Map #14 as Lot #47, in the DB-2 Zone. *HEARING WAS ORIGINALLY OPENED ON SEPTEMBER 22, AND WAS CONTINUED TO OCTOBER 13 AND OCTOBER 27 AND NOVEMBER 24. DEADLINE TO CLOSE HEARING IS NOVEMBER 24, UNLESS EXTENSION IS GRANTED BY APPLICANT.*

Attorney Timothy Hollister of Shipman & Goodwin distributed a copy of the Site Plan prepared by Godfrey-Hoffman Associates, LLC last revised 11/23. He noted that the changes on this Site Plan were prepared in the response to comments received. He explained that in the Fire Marshal's November 17th memo, the Fire Marshal wanted an 8 inch water line and that is now shown on these revised site plans. The Fire Marshal also wanted clarification on emergency lighting. New fencing on the west side of the property is also shown on this revised Site Plan. Mr. Hollister also noted a correction, however, that the fence is to be 5 foot high aluminum, not a 6 foot high stockade fence. The dumpster has been moved, thus creating a total of 53 parking spaces.

Mr. Hollister explained that the traffic directional sign will note parking restrictions on it. The stockade fence in the rear of the property is now shown on the Site Plan. The other memo of October 27th, noting proposed conditions of approval has not changed. Mr. Hollister said that if the Planning & Zoning Commission believes that a waiver of the drainage provisions within the Darien Zoning Regulations is required, the applicant requests such a waiver. He explained that Note 11 on the submitted Site Plan revised to 11/23/2009 is the Professional Engineer's Certification regarding the drainage system. Mr. Spain asked if the drainage is now connected to the Boston Post Road storm drain line. Mr. Hollister responded that it is and there is no change to the existing storm sewer system.

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Mr. Hutchison then asked about the text of the proposed Zoning Regulation Amendment. Mr. Hollister replied that his preference is for the Commission to adopt the Amendment for the reasons discussed at the previous meeting. Mr. Spain asked whether the dumpster relocation is related to the parking. Mr. Hollister responded that the dumpster has been rotated and is 14' x 16' with a 6 foot high fence around it with privacy slats. They now have greater backing room for one of the parking spaces. Mr. Spain asked whether there would be trenching across Boston Post Road. No definite answer was given.

Attorney Wilder Gleason, of Gleason & Associates, was present on behalf of some of the neighbors. He then distributed a two page November 24, 2009 List of Concerns/Issues and Proposed Stipulations. He noted that CL&P and State of Connecticut DOT still have not approved this project. The Planning & Zoning Commission usually gets some assurance on their approvals. Mr. Gleason noted that the last parking space should not count as it has an insufficient back-up aisle, and that therefore it should not be counted. He noted that the proposed text amendment allows 1.25 spaces per bedroom. Mr. Hutchison asked whether the Commission needs a zoning text change here. Mr. Gleason replied that he concurs with Attorney Hollister on this matter so as not to create a non-conformity. He believes that it is in the applicant's best interest to have the text change. He believed, however, that the Planning & Zoning Commission should not require a minimum of 1.25 spaces per bedroom. He noted that this application would comply with the modified zoning and believed that the Commission should include both a per unit and per bedroom standard for parking. Mr. Hutchison believed that the site plan approval should be enough. Mr. Spain noted that this is a conversion of use. Mr. Hutchison said that the zone change could have unintended consequences. Mr. Gleason added that the Commission could modify the Zoning Regulation text amendment to include Section 8-30g requirement. He said that speaking from the applicant's perspective, the text change is probably desirable.

Mr. Gleason noted that the applicants are upgrading the sewer line and water line and that most of the parking lot will get ripped up. He believed that this is an opportunity to modify the existing parking lot to meet current parking requirements outlined in the Zoning Regulations. Mr. Gleason said that any proposal to increase the parking lot would shrink the green space. Mr. Gleason noted that handicap spaces are required to be 20 feet deep, and he has suggesting that the Commission make the handicapped spaces 20 feet and take up some of the sidewalk area in front of the building. He believed that it would be appropriate to ask for oil separators and particle removers as part of its approval, and he mentioned that the State of Connecticut DOT may require this regardless of whether the Commission does. He said that the Commission should require a revised site plan for a 20 foot long handicap parking space with a proper back-up aisle. Mr. Gleason also recommended that the proposed fence in the rear of the property go in about 20 feet in the rear or have it go all the way to the end of the property. This should be done if the applicant is unable to come to an agreement with the neighbor regarding the location of that fence. Mr. Hutchison noted that placing the fence along the western property line could save the plantings which now exist in the rear of the property. Mr. Gleason said that the area in the rear of the property should be kept as a buffer. He noted that Section 1025.6 of the Darien Zoning Regulations discusses lighting and that the emergency lighting should be shielded. This is very important in the back of the property. He said that any motion sensors should have a 5 minute restriction. Mr. Gleason pointed out the existing barren front landscaped area. He recommended a decent landscape plan be prepared, and for the applicant to work with the Planning & Zoning Director on such a plan. He cautioned, however, that

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the Commission needs to preserve sight lines and low-lying landscaping would be appropriate in the front of the property. Mr. Gleason continued by noting that all utilities should be underground. He recommended increasing the parking requirements to have a margin of safety. He explained that this is a long term concern and asked that the Commission require implementation of the sticker program immediately. Mr. Spain asked whether overnight parking is now a problem in the area as this could be a new concern.

Mr. Bob Montlick, who owns the property immediately to the west, explained that overnight parking in his lot does not occur too often. His only concern with the project is the need for more parking spaces per unit. Mr. Montlick explained when the office building on the subject property was constructed in the 1970s, the drainage was run under the sidewalk and ties into Oberlander Lane. He reiterated that his main concern is parking and asked whether they could do with fewer units. He noted that overnight parking generally has not been a big problem, but there is a liability concern. After asking his client, Mr. Gleason noted that Peter Grant said that there generally has been no problem with overnight parking. Peter Grant of 10 Oberlander Place then spoke, and explained that the entire parking lot of the subject property will be dug up. He said that the Planning & Zoning Commission needs to look at what is fair for this project. He asked that the Commission make sure there is enough parking for all the units and that all the vehicles stay on the subject property.

Mr. Spain then asked where the existing storm water connection goes, whether it goes across the Boston Post Road or in front of the Montlick property to the west. Mr. Hollister replied that he is unsure, but there is a manhole shown on the submitted site plan as STMMH in the bottom left corner of the plan. Mr. Spain asked whether Attorney Gleason is correct regarding the work in the existing parking lot. Mr. Hollister confirmed that Mr. Gleason is correct, that a new trench will be needed for both the new water line and the new sewer line. Mr. Hollister noted that not only will there be these two new trenches, but there will be other surface repair work in the parking lot. He said that the bollard lights, which are now in the lot, will stay. Mr. Spain asked whether requiring underground utilities would be inconsistent with applicant's plans. Mr. Hollister responded that his client is prepared to install the underground utilities. Mr. Spain asked about the plantings near the Boston Post Road. Mr. Hollister replied that the mature vegetation will be left in place, and noted that on the plans it shows that some junipers or equivalent will be added on the left side of the parking lot. Mr. Hollister added that if they need to add two feet to a parking area, they would add it on the inside of the parking lot and there is space to do that. Mr. Spain noted that the Commission does not allow parking overhangs currently to be counted in space size.

Mr. Hollister concluded by noting that he had given the Planning & Zoning Commission a memo on October 27, 2009 regarding conditions of approval, based upon a conversation he had with Wilder Gleason. He noted that Wilder Gleason also had three additional conditions. He believed that the October 27th document is sufficient. He specifically mentioned that the existing vegetated buffer in the rear of the property will remain as the rear buffer. Mr. Hollister explained that in reference to an earlier question that the whole approval process works better with a Zoning Regulation text change in place. He noted that a variance through the Zoning Board of Appeals is an express waiver and, for a whole development, Attorney Gleason and he agreed that new regulations are appropriate and the proposed regulation would be site specific. No other parcels in Town are envisioned for this Zoning Regulation Amendment.

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Richard Freedman, the subject property owner, noted that in informal meetings with the Commission in earlier 2009, Commission members asked that he contact the neighbors immediately surrounding the property relative to parking. He then read aloud that letter he sent to the neighbors dated August 17, 2009. He believed that they have ample parking for this project and mentioned that the Town's expert (Mr. Galante of F.P. Clark) agrees with his traffic and parking expert. Mr. Freedman confirmed that they are trenching within the parking lot and that the existing parking configuration does work. He cannot reconfigure the island within the middle of the parking lot without affecting the landscaping and big trees which now exist. He said that handicap spaces in front of the building can be longer, but this may affect an existing large tree. Mr. Spain asked about the possibility of assigning parking spots to tenants. Mr. Freedman replied that they assign parking spots when they do not have enough parking. When they do have sufficient parking, assigning spots creates management problems. Mr. Spain noted that if there is insufficient parking here, they may need to go to assigned parking in the future. He then asked whether each apartment would get one parking sticker. Mr. Freedman responded that they will give tenants two parking stickers each if there is no parking problem. Mr. Hollister summarized by stating that they are asking for an amendment to the Zoning Regulations and a Site Plan and Special Permit approval. He referenced the recommended conditions which had been given to the Commission in prior memos. Mr. Gleason noted that stipulations which were presented by Mr. Hollister in October were to outline the issues that were resolved.

There being no other further questions or comments from the Commission members or the general public, Mr. Hutchison made a motion to close the public hearing on this matter. That motion was seconded by Ms. Riccardo, and was unanimously approved.

At about 9:25 p.m., Mr. Spain read the next agenda item:

Continuation of Public Hearing regarding Land Filling & Regrading Application #231, VR Associates, LLC, 305-309 Middlesex Road. Proposing to raze the existing structures and construct a new single-family residence with associated filling, regrading, stormwater management and wetlands mitigation and perform related site development activities. The subject property is located on the north side of Middlesex Road, directly across from the intersection of Middlesex Road and Old Parish Road, and is shown on Assessor's Map #9 as Lots #71 & #72 in the R-1 Zone. *PUBLIC HEARING OPENED ON OCTOBER 6, 2009. DEADLINE TO CLOSE HEARING IS NOVEMBER 24, UNLESS EXTENSION IS GRANTED BY APPLICANT.*

Attorney Robert F. Maslan, Jr. was present on behalf of VR Associates, LLC. He then distributed the five-page resumé/Curriculum Vitae of Engineer, Todd Ritchie and a packet of site photographs. He noted that the prior public hearing was opened and immediately continued to tonight. Mr. Maslan said that the lot consists of two parcels. He showed the existing sewer easement, storm drain, and the existing house both on Alternate Site Plan #2, and in submitted photographs. Mr. Maslan explained that detention basin/wetland mitigation area proposed for the property will require a removal of 175 cubic yards of material. The filling between the proposed house and Middlesex Road for the Cultec system will require the placing of 75 cubic yards on the property. Therefore, there will be a net removal of 100 cubic yards of material from the property. Mr. Maslan emphasized that no fill will be brought to the site.

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Mr. Maslan continued by noting that Environmental Protection Commission (EPC) approval had been obtained and this plan before the Commission tonight is exactly what the EPC approved. He added that the EPC-retained professional engineer, Holt McChord of McChord Engineering Associates. Mr. McChord's seven-page report is Tab 3 of the submitted application. Mr. Maslan said that there was significant public input at the EPC public hearings and he mentioned that the site is not within the flood zone.

Mr. Hutchison asked about sump pumps. Professional Engineer, Todd Ritchie of Stearns & Wheler/GHD said that in this case, there is an existing house foundation and here in this location, sump pumps would not coincide with the peak discharge. Mr. Spain said that the EPC notes in its decision that no sump pump will be part of this project and that was a condition of approval. Mr. Maslan confirmed that the EPC conditions of approval were located in Tab 4 of his submittal. Mr. Maslan also noted that a conservation easement is proposed for the back of the property. Mr. Ginsberg confirmed that the conservation easement is the area north and west of the stone walls, and that there is no plan showing the exact location of the proposed conservation easement. Mr. Ritchie confirmed that there are no plans to modify the existing sanitary sewer easement which runs through the property. Mr. Ginsberg then referred to letters submitted by the adjoining neighbor, Mr. Robert Jordan of 301 Middlesex Road, as well as an email received earlier in the day from Cheryl Russell who lives on Holly Lane. He also mentioned that the EPC approval was submitted for the record by Mr. Maslan in Tab 3 and that Darren Oustafine, the Assistant Director of Public Works, had also commented on the application as well as on Mr. McChord's comments. Mr. Ritchie said that they have addressed Ms. Russell's issues and that Mr. Jordan's concerns were more regarding monitoring during the construction process. Mr. Spain noted that the Planning & Zoning Commission can condition their approval on Mr. Jordan's concerns being addressed. Mr. Maslan said that the EPC was concerned with the entire property not just the wetlands.

There being no further comments or questions from Commission members or the general public, Mr. Hutchison made a motion to close the public hearing on this matter. That motion was seconded by Ms. Grimes and unanimously approved.

At 9:45 p.m., Vice Chairman Spain asked for a 5 minute recess. At 9:50 p.m., Mr. Spain read aloud the next agenda item:

Business Site Plan #205-D/Special Permit, 205 Post Road Development Partners, LLC, 205 Boston Post Road. Proposing to modify the existing building and parking area and to establish a new drive-through only restaurant and perform related site development activities. The subject property is located on the north side of Boston Post Road at its northwest intersection with Richmond Drive and is shown on Assessor's Map #13 as Lot #6, in the SB-E Zone.

Attorney Wilder Gleason of Gleason & Associates was present representing the contract purchaser. He said that this property will be used as a proposed restaurant site – it is for healthy food, served quickly. The property is now owned by a bank that foreclosed on the property. Mr. Gleason then submitted a copy of the deed and a portion of the Assessor's map. He confirmed that the subject property is in the Service Business East Zone (SB-E). It is a corner lot and basically about 75' x 150'. It used to be the site of a drive-through dry cleaner pick-up and drop-off shop. No dry cleaning plant operated at the site.

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Mr. Gleason noted that in order for this project to proceed, they do need some variances from the Zoning Board of Appeals (ZBA). He mentioned that they want a drive-thru only restaurant. There will be no customer access except through the drive-up window. When exiting the drive-thru, it will be a right turn only onto the Boston Post Road. Mr. Gleason then showed photographs of the subject property. He mentioned that they propose to extend the roof line and move a window. An employee only, handicapped accessible ramp will be added to the property. An existing berm will be enhanced in the back of the property and a 5 foot fence placed atop this berm (which will be added to). He noted that the Darien Diner across the street also has an exit onto Richmond Drive.

Mr. Gleason mentioned that this is a small corner lot which requires a 30 foot front yard setback in this zone. The existing building is about 480 square feet. The subject property now has 5 parking spaces and they propose to change this to 4 parking spaces with an area for a necessary dumpster. The existing electric and telephone service is available from Richmond Drive. They may not need gas service, but it is available from Boston Post Road. The proposed cooking needs are small. Some of the items they will be preparing include sandwiches, wraps, soups, drinks and desserts. The concept is to assemble and reheat on site. There will be no customer seating; but, because there will be none, this requires a ZBA variance. He noted that the Darien Diner and Chipotle each have a variance for customer seating less than the Regulations allow. Mr. Gleason mentioned that the order box is about 36 feet from the property line and 70 feet from the nearest house with screening in between. They will be using the existing site lighting. Usually there will be two employees on site and sometimes a third. Deliveries will be at non-peak hours as will the dumpster pick-up. All deliveries will be by van, not by 18 wheelers. Mr. Gleason added that a pole sign is proposed which also requires a ZBA variance. They are not proposing a loading zone--the waiver of such will be requested from Planning & Zoning. The proposed hours of operation are 7:00 a.m. to 10:00 p.m. and the employees are expected to arrive at about 6:00 a.m. and leave no later than 11:00 p.m.

Ms. Gertrude Allen said that this will be healthy food. She described the potential menu offerings, most of which would be prepared off-site. Mr. Thomas Toepke said that the concept fits well here where a customer can see into the kitchen. The chimney on the roof will be the exhaust. They propose to comply with the typical exhaust requirements accepted by the Planning & Zoning Commission. He added that they are thinking of a touch screen order box. Ms. Allen said that the customers will be allowed to text and/or email orders in, and they envision the use of a loyalty card. They are currently looking at methods to improve the throughput. Mr. Toepke said that they have new gooseneck lighting and some recessed lighting proposed. He then showed the renderings of the proposed fence in the rear of the property and the increased planting. There will be no deep fryers on site. They anticipate two minutes from order to payment. Ms. Allen said that a warming cabinet will be used and that they will use "grab and go" for many items.

Mr. Gleason then said one of the obvious concerns is traffic, and he introduced John Canning of Adler Consulting to report on his findings. Mr. Canning said that he had submitted an October 20th and November 12th report. He said that they expect 38 customers an hour at the peak hour. He mentioned that the site can accommodate 40 customers per hour with up to 6 queuing. The applicant has committed to traffic control measures, if needed. Mr. Canning said that he had studied sight distances which comply with standards. He said that the project will not affect right turns out of Richmond Drive. Mr. Canning explained that he reviewed the Traffic Reports submitted as part of the Starbucks (now Chipotle) project at 71 Boston Post Road. Mr. Hutchison said that there is only enough room for two vehicles to stack from the speaker box back to the road. He added that they are

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not likely to have a queuing at the pick-up window due to the timing. He asked whether the order box could be moved closer to the pick-up window to optimize traffic flow. Mr. Canning responded that the operators could move the parking around and they can look at moving the order box which could improve the queuing.

Mr. Spain noted that there is space in the bypass lane and he asked Mr. Canning to think about variations in geometry which might allow pre-orders to by-pass the queue. He suggested that he and the applicants think this through some more in terms of customer flow. Mr. Hutchison suggested that maybe one fewer employee space could be needed. Mr. Gleason confirmed that they do need one handicapped accessible space and that the fourth parking space does help during shift changeovers. Mr. Hutchison asked whether they even need an order kiosk as only two vehicles can queue in the submitted plan.

Mr. Voigt then asked about the floor plan submitted, Sheet A1-1. Mr. Toepke responded that there is an error on that Sheet of the plans, as there will be no pick-up counter. Mr. Gleason noted that he is willing to give an extension of time to the Commission to keep this public hearing open until November, allowing him additional time to go before the Zoning Board of Appeals (ZBA) and receive the necessary variances.

The Commission then made a motion to continue this public hearing until January 12, 2010 at 8:00 P.M. in Room 206 of Town Hall.

At about 10:45 P.M., Mr. Spain read the following agenda item:

Coastal Site Plan Review #245, Flood Damage Prevention Application #278, Baywatch Partners, LLC, 4 Plymouth Road. Proposing to raze the existing residence and construct a new single-family residence and perform related site development activities within regulated areas. The subject property is located on the west side of Plymouth Road approximately 150 feet north of its southernmost intersection with Baywater Drive and is shown on Assessor's Map #55 as Lot #64, in the R-NBD Zone.

Chad Nehring of Nehring + Associates was present to describe the proposal to the Commission. He explained that the existing property is 8,117 square feet. The existing house is now at elevation 10.2, which is below the flood elevation. The existing house also does not meet current setbacks or the building coverage maximum. The proposed new replacement residence will conform to setbacks, the Flood Regulations, and building coverage. Mr. Nehring explained that they will have a crawl space and flood vents to allow water to flow freely in and out. The proposed garage will be at Elevation 9.2 to 9.4. The first floor of the house will be at Elevation 14, and all mechanical units will be at or above Elevation 13. The oil tanks will be strapped down to prevent flotation. Mr. Nehring confirmed that the existing structure will be demolished, and there will be some stockpiling of material on the site.

Mr. Dianis Virbickas of Artel Engineering then explained the drainage, grading and proposed elevations. He described the storm drainage system as shown on the grading and drainage plan. Mr. Spain asked about measures to minimize debris getting into the infiltrators. Mr. Virbickas said that maybe they could cap the gutters. He also noted there are clean-outs in the drainage system. He explained that the property is currently connected to public water and sewer, and the proposed house will have a crawl space.

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Mr. Voigt asked about the grass paver area proposed leading to the rear of the property. Mr. Nehring responded that this is to meet the Zoning Regulation requiring two parking spaces that meet both the front and side yard setbacks. Mr. Nehring also showed the proposed “hammerhead area” in front of this house for a vehicle to park. Mr. Ginsberg then explained the parking provisions in this zone. He noted that the applicant must have two parking spaces which conform to both the front and side yard setbacks. Mr. Ginsberg said that in the past, the Commission has on a rare occasion approved such a grass paver situation. He mentioned that it is not likely to be used often, and explained that it is more likely that the hammer head area in front of the house would be used. He suggested that this “hammerhead” area might be able to be pushed a little further back so that it doesn’t seem like any vehicles parked there would crowd the road. Mr. Nehring noted that many folks who don’t have basements, especially in this zone, use their garage for storage and park their vehicles outside. He also said that given these realities, applicants would be amenable to including some screening bushes to soften the visual impact of vehicles sitting close to the street and property line.

There being no further questions from Commission members, and no questions or comments from the general public, Ms. Grimes made a motion to close the Public Hearing on this matter. That motion was seconded by Mr. Hutchison and unanimously approved.

There being no other business, Ms. Grimes made a motion to adjourn the Public Hearing. That motion was seconded by Ms. Riccardo and unanimously approved. The meeting was adjourned at 11:04 P.M.

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director