

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
February 24, 2009**

Place: Auditorium
Town Hall

TIME: 8:00 P.M.

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

STAFF ATTENDING: Ginsberg
RECORDER: Syat

PUBLIC HEARING

Vice-Chairman Bigelow read the first public hearing agenda item:

Special Permit Application #172-D/Site Plan, Darien Diner (former Driftwood Diner), 171 Boston Post Road. Proposing to construct first floor additions to the front of the existing building, install a handicap access ramp, and perform related site development activities. *POSTPONED.*

Mr. Bigelow noted that this item has been postponed to March 24, 2009 at 8pm in room 206 of Town Hall. He then read the next agenda item:

Continuation of the Public Hearing regarding Proposed Amendments to the Darien Zoning Regulations put forth by the Darien Planning & Proposed Amendments to the Darien Zoning Regulations put forth by 333 West Avenue Associates, LLC. A proposal put forth by 333 West Avenue Associates LLC to amend the Darien Zoning Regulations. This proposal would add a new Section 1052 to define and allow "Single-Family Open Space Development" and amend the existing Subsection 404 to allow such use as a Principal Use requiring a Special Permit. *HEARING OPENED: 1/27/2009. DEADLINE TO CLOSE HEARING IS: 3/3/2009 UNLESS AN EXTENSION IS GRANTED BY APPLICANT.*

Craig Flaherty, of Redniss & Mead, was present on behalf of the applicant. He noted that there was an originally submitted text amendment shown at the last meeting which reviewed Options 1 and 2. He then reviewed the revisions dated 2-24-2009. Mr. Flaherty explained that they have added sentences in response to staff comments received. He then reviewed the changes. Change Number 3 was that they added to the Background and Purposes section. Change Number 4 was a paragraph added in response to Mr. Keating's concerns regarding Section 387 of the Darien Zoning Regulations. Change Number 5 was that it was clarified that wetlands include both inland and tidal wetlands. These are all in response to staff questions and concerns received.

Ms. Linda Saverine Santarella of 341 West Avenue Rear noted that she abuts the subject property. She explained that the January 27, 2009 public hearing on this matter was not televised, therefore she could not review it via television. She noted that new information has been submitted tonight. She wanted to remind the Planning & Zoning Commission of its responsibilities, and Ms. Santarella explained that she used to Chair the Planning, Zoning & Housing Committee of the RTM. Ms. Santarella noted the Planning & Zoning Commission must keep the best interests of the entire

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community in mind. She said that, in her opinion, this is spot zoning. The proposed houses are very large, and there will be eight of them. The other interesting thing from the January 27, 2009 minutes is the concerns that the EPC raised. She noted that P&Z members have a copy of that in the file. She then read aloud from part of the EPC comments. The Planning & Zoning Commission needs to keep these comments in mind. She asked why the Commission does not have a storm water management plan now up-front, as many local streets in this area flood, such as Moore Street. Mr. Hutchison asked whether a reference to storm water management should be in the zone change text. Ms. Santarella responded that Darien has antiquated infrastructure. She agreed that having a reference to storm water in the zoning change text would be a safeguard. Mr. Spain noted that at the January 27th meeting, it was explained that any project must fit into the existing neighborhood. Ms. Santarella said that people on Holmes Avenue are concerned about the possibility of this type of development on their street. She noted that people in this neighborhood have met twice with the developers and asked whether these are condominiums. Ms. Santarella mentioned that she took pictures of the site during the last rain storm, and there was a pond on the property. There is now a water problem. Some neighbors have pumps in their basement. Ms. Santarella stated that she is vehemently opposed to this application. She did not believe that it was in keeping with the residential character of the town, and she is relying on the Planning & Zoning Commission to deny the application. She added that she believes this is spot zoning. She was also worried how this would affect other neighborhoods in the future. She said that the property now owned by Mr. Charles Moran on Patton Drive was previously owned by Mr. Macchio. That back lot is designated as a playground, and she could submit the court case on that.

Mr. Hutchison asked how would this be considered spot zoning. Ms. Santarella responded that it is not fair that property owners have to fight this. The neighbors rely on the existing Darien Zoning Regulations. Mr. Hutchison noted that this concept could land anywhere, and if so, that would negate spot zoning. Ms. Santarella then referred to the Planning and Zoning Commission decision in the Cottle matter, where they denied a two-lot subdivision a few years ago. Mr. Hutchison asked specifically what Ms. Santarella's problems were with the application. Ms. Santarella responded that she is concerned about over-intensification and the text of the amendment – she does not like the change at all.

At about 8:20 p.m., Ms. Ruth Swetye of 325 West Avenue then spoke. She said that some residents had received letters from the developers. She was concerned about the language used in the letter. She believes that this proposal affects her and what she can develop on her property. Mr. Spain responded that this would not affect her lot, and that this is a broad change that would not apply just anywhere at this point. Mr. Spain said that this does not apply to property the applicant does not control. Ms. Swetye said that this seems sad. Mr. Bigelow said that Ms. Swetye's fear is that this would encourage a different type of redevelopment. Ms. Swetye responded that the change does not make sense. There are proposed to be eight houses and an association established for monetary gain. This is bullying. She is concerned about signage and lighting, and she believes that this is creating separate communities, not neighborhoods.

Mr. Hutchison asked whether Ms. Swetye would have a comfort level in terms of the higher review standards for aesthetics. Ms. Swetye responded that she just doubts their whole gameplan. Mr. Hutchison asked what else is troubling to her. Ms. Swetye said that she is concerned that the developers wrote the proposed Zoning Regulations. Mr. Spain added that if these regulations were adopted, there would be a second stage. At that time, drainage, traffic, signage, lighting would all

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need to be considered. He said that they cannot build more houses than underlying zoning. He sees this as an economic opportunity, like most developments. Ms. Swetye said that she would prefer that they not change the Zoning Regulations. Mr. Spain noted that the shape of their lots are deeper than typical lots in this zone. Ms. Swetye added that they knew what they bought when they bought it, and that these changes are not necessary. Mr. Spain said that the standard of review is not whether the proposal is necessary, but rather is it a positive, and does it impact the neighborhood or is it just something different. Ms. Swetye rhetorically asked how the change benefits her.

Ms. Maureen Meehan of 3 Oak Park Avenue noted that last July, the developers proposed to the Planning and Zoning Commission a text amendment. This is basically the same proposal with two changes – a) the site size; and b) the size of the houses. There is increased potential in house sizes. She noted that the eight houses are crammed into one part of the lot, which doesn't benefit anybody. She said that this is the second time they are here, and that these Regulations have been created to fit the developers needs. She notes that there is nothing in the Town Plan of Conservation and Development about single-family open space development. She said that this area of Town is still dealing with runoff from the Middlesex Middle School, and this an increase in density. She said that this only applies to R-1/3 and R-1/5 Zones and believed that the minimum lot sizes need to be higher. Mr. Spain asked whether Ms. Meehan believes that the amount of land needed should be larger. Ms. Meehan agreed with that. She said that under existing zoning, houses could not be so close to one another, and there would be less of them. Ms Meehan's concern is the increase in density, four houses on four lots versus eight homes on this combined, large one lot.

Mr. Hutchison asked what bothers Ms. Meehan more, proximity or density? Ms Meehan responded that density is a primary concern, but she also has concerns about flooding. The fact that the developers are writing their own Zoning Regulation Amendment makes her uncomfortable. Mr. Hutchison noted that overall, the proposal allows flexibility. Ms Meehan notes that the developers should not stress the existing Town infrastructure, and that there should be a larger minimum lot area. She believed that “this is too much on too small an area”—and that is her primary concern. This is not more than a certain deviation in the underlying zoning, and they maybe should get one extra house on an acre. Mr. Hutchison believed that there are certain aspects of this proposal that are beneficial. Ms Meehan asked where the open space would be, and how it would be used. She believed that using it all for drainage does not contribute to the neighborhood. She believed that overall, this is too much, too small, and it will not contribute to the needs of the Town.

At about 9:05 p.m., Mr. Flaherty said that he would like to clarify a few things. First was the issue of spot zoning. Mr. Flaherty believes that this is not spot zoning. He explained that this is a text amendment, and it is not a Zone Map Change. It affects any property in the R-1/3 and R-1/5 Zones meeting a certain size criterion. He said that Attorney Gleason covered this fact in his February 5, 2009 letter to Mr. Ginsberg. The second aspect to be considered is whether the proposal is in conformance with the Town Plan of Conservation and Development. The January 27, 2009 four page memorandum submitted last time addressed this concern. He then read aloud from a portion of that memo. On page 1 of it there are quotes from the Town Plan of Conservation and Development. He noted that a portion of the open space can be used for natural drainage. Under Section 1020 of the existing Zoning Regulations, the Planning and Zoning Commission may require an impact analysis. The proposed building separation is not closer than allowed in the existing zoning districts, R-1/3 or R-1/5. Mr. Flaherty noted that in fact, this will look more spread out than the other side of West Avenue. The overall idea was to space similar to the existing

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neighborhood. Mr. Flaherty confirmed that some parts of Town were divided prior to the establishment of zoning. In this Proposed Zoning Regulation Amendment, there are Special Permit controls that make these projects more complying with the Town Plan of Conservation and Development. Mr. Hutchison asked whether there was an abuse potential. Mr. Flaherty replied that the Special Permit process minimizes that likelihood. Mr. Hutchison asked Mr. Flaherty to address the issue of the “extra lots.” Mr. Flaherty noted that on this site there would be no need to create road frontage. This will not impact typical property owners in the R-1/3 and R-1/5 Zones.

Attorney Wilder Gleason was present on behalf of the applicant and wished to correct some misconceptions. The Floor Area Ratio (FAR) limits the size of houses. This proposal is a tool that the Planning and Zoning Commission does not now have. The proposal also limits impervious surface (Developed Site Area). Mr. Gleason noted that the Commission now has proposed drainage/stormwater regulations under consideration. He confirmed that the proposal is not spot zoning – it applies to many properties in Town, and complies with the Town Plan of Conservation and Development. Change Number 4 as discussed tonight is in response to concerns of the Planning and Zoning staff, although the developers do not believe that this change is necessary. He then distributed a one page copy of Section 387 of the existing Darien Zoning Regulations with some highlighting. He asked rhetorically whether this Regulation could be used to legalize apartments in Town. He did not believe so, unless those apartments are already legal. He said that is why Change Number 4 was drafted. He then confirmed that he did not think the Commission needs it, and the applicant’s preference would be to remove it from the proposal.

Mr. Gleason said that there is now no zoning district in Darien that requires 30% open space. He did confirm that part of the open space could have above-ground drainage structures. He noted that the proposal is not going from four houses to eight houses. It is going from four or five houses to eight houses. Mr. Spain asked whether he believed the Cottle decision was a precedent regarding spot zoning. Mr. Gleason noted that the facts in the Cottle matter were different. In that case, the Cottle property was bifurcated by two zone lines. The issue there was not the general flexibility in the neighborhood. Mr. Gleason noted that this proposal could apply to other properties, such as the Purdy Lane property, which is more than two acres in an R-1/3 Zone, or the Middlesex Club property, which is in the R-1/3 Zone with more than three acres. The Planning and Zoning Commission will ultimately make the decision on whether it applies on any other property. He believes that the proposal is a tool for flexibility to serve a real need. The proposal is for stand-alone single family houses.

Mr. Hutchison asked whether in Section 1052.4, a phrase should be added similar to “all infrastructure must be large enough to serve the development”. Mr. Flaherty believes that is already in the Regulations, and he did not wish to be redundant.

Mr. John Hertz, a partner of 333 West Avenue Associates, LLC, noted that he has been building houses in Darien for 26 years. He believes that this is a valuable alternative. He believes that the proposal is in keeping with the Town Plan of Development and fills a large unmet need. He believes that the proposal would be an asset to the Town.

There being no other comments or questions from Commission members or the general public, at 9:35 p.m., Mr. Spain made a motion to close the Public Hearing on this matter. That motion was seconded by Mr. Hutchison and unanimously approved.

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Mr. Bigelow then read the next agenda item:

Land Filling & Regrading Application #221, Robert & Kitty Lavin, 480 Middlesex Road.

Proposing to fill and regrade adjacent to an existing residence to create a flat yard area and to perform related site development activities. The subject property is located on the east side of Middlesex Road, approximately 350 feet south of its intersection with Saddle Ridge Road, and is shown on Assessor's Map #6 as Lot #158 in the R-2 Zone.

Mr. Bob Oley of Land-Tech Consultants was present on behalf of the applicant. He noted that the purpose of the application is to crease a flat area in the yard. The subject property now slopes east to west, and the driveway is at an 18% grade. Some water now flows to the south towards Middlesex Road. Some portions of the two Peach Hill Road properties, which are to the rear of the subject property, also flow onto this site.

Mr. Oley confirmed that some tree clearing occurred on the site in August 2008. There is now erosion occurring, and the property needs to be stabilized. They have shown the cutting and filling so that there is no material to be removed from the site. There will be a total of 4,600 cubic yards of cut and fill.

In the area of the 1:1 slope in the rear of the property (the eastern end of the property), they propose to install a turf reinforcement mat. Beyond that area is a 3:1 slope. There will be .6 acres of disturbance. Less area will runoff to the southern property. They will be slowing down the water by regrading. The velocity is not now impeded.

Mr. Bigelow asked if the existing drainage and erosion problem was self-inflicted, via the tree cutting done last year. Those trees may have minimized erosion. Mr. Oley noted that they could prepare a planting plan for the lower area. Mr. Spain said that such a plan could help stabilize the soil. Mr. Oley showed the proposed location of shrub plantings. He noted that they could consider adding other plantings. Mr. Bigelow added that it will be difficult to cut the lawn on the steeper areas of the property.

Mr. Oley explained that the property contains Paxton soils, which are hardpan. Those are wet soils which do not like releasing water. They propose to install two curtain drains. Mr. Oley said that he would recommend constructing a small swale near the property line to the south. He put that out for consideration by the Commission. Mr. Hutchison asked how he proposes to slow the water. Mr. Oley noted that the proposed flat lawn area will help slow water. Mr. Hutchison asked him to look at minimizing the velocity of the water. Mr. Oley responded that the installation of a turf reinforcement mat is a best management practice. This 1:1 area will be fifteen feet wide. A wildflower mix will be planted with it. Once the wildflower mix grows, you have a stable slope. He added that the flows from the neighboring properties on Peach Hill Road are not significant. He showed on page 2 of the plans, a walled alternative to the steep slope. Another option for the 1:1 area is stone riprap. Mr. Hutchison asked if the infiltrator would be better above ground. Mr. Oley responded that at the time of construction, they can analyze the soils. An infiltrator will likely need to be kept high, but not above the ground, though.

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Mr. Ginsberg noted that he had spoken with Mr. Oley earlier in the day. They discussed two items—the possible installation of hay bales to minimize sedimentation and erosion, and the need for this project to be sensitive to the time of year it is undertaken to minimize the likelihood of erosion. Mr. Oley agreed that having a row of staked hay bales would be beneficial to reinforce the proposed silt fence. He also agreed that they do not want to begin this work during the wet season. All plantings should be installed prior to June 15. The entire job should take about a week. Mr. Oley again confirmed that there will be no material leaving the site. This should be a condition of approval—that the work be done only during certain times of the year.

Mr. Bigelow asked if a supplemental planting plan will be submitted. Mr. Oley responded that he could use some time to submit additional information: plan revisions to include a swale, the aforementioned row of staked hay bales, and a supplemental planting plan. Mr. Hutchison asked if they can test the existing groundwater level to determine where to put the infiltrator. Mr. Lavin, the property owner, explained that erosion is now occurring on the property.

Ms. Jennifer Starr, of 460 Middlesex Road, then spoke. She explained that she has had drainage problems in the past. She wants additional time to review the plan.

Mr. Bigelow then suggested continuing the public hearing to allow for additional materials to be submitted by the applicant. Mr. Spain made a motion to continue the public hearing to March 24th at 8 pm in room 206 of Town Hall. That motion was seconded by Ms. Grimes and unanimously approved.

GENERAL MEETING

At 10:07 PM., Mr. Bigelow read the first General Meeting agenda item:

Flood Damage Prevention Application #269, Joan M. Collins, 45 Pear Tree Point Road

Request to construct alterations to the existing detached garage, located within a regulated area.

Mr. Ginsberg explained the proposal to modify the existing detached garage, which is now in the flood zone. Mr. Spain asked if CAM review was needed for this proposal. Mr. Ginsberg responded that it was not. Mr. Scott Connery was present on behalf of the applicant. He noted that the footprint/foundation will change, and they are filling in under the existing overhang. Mr. Bigelow asked if he would be bringing the existing garage up to the flood code. Mr. Connery confirmed that the garage will be designed to withstand flood forces. Mr. Spain asked if water will flow freely in and out. Mr. Connery confirmed that it would. Mr. Spain mentioned that there would be no displacement of floor waters. Mr. Bigelow noted that this is the same use on the same footprint. Mr. Connery mentioned that the garage footprint would be higher. Mr. Spain then made a motion to approve the application as submitted. That motion was seconded by Mr. Hutchison, and was approved by a vote of 4-0.

Mr. Bigelow then read the next agenda item:

Amendment of Special Permit Application #117-D, Noroton Presbyterian Church.

Modifications to existing Tot Drop program, allowing for a maximum of 46 children.

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Mr. Ginsberg explained the proposal. Mr. Bigelow asked if there were any other issues that the Commission would need to know about. Ms. Carol Scott, Director of the Tot Drop day care program, said that there is now ample parking. The Tot Drop program is on a different schedule than the Church's Nursery School. The optimum capacity is three rooms of twelve children each. They are now licensed for 32 children, and they will be going to 46. Ms. Scott confirmed that this is day care. Mr. Spain noted that there would be no change in the overall operations. Mr. Spain then made a motion to approve the request. That motion was seconded by Mr. Hutchison, and was approved by a 4-0 vote.

Approval of Minutes

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Mr. Bigelow had one comment on page 2 third paragraph of the draft. He had a suggested modification. Mr. Spain made a motion to approve the minutes with that one modification. Mr. Hutchison seconded that motion, which was approved by a vote of 4-0.

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

Mr. Bigelow asked if there was Any Other Business. Mr. Ginsberg replied that he had one matter regarding the January 27, 2009 meeting minutes. Commission members unanimously voted to go into other business to discuss that one matter.

Mr. Ginsberg suggested to the Commission to re-open the previously approved January 27, 2009 meeting minutes to modify one sentence. It was pointed out to him that the minutes should be clarified to note that although Ms. Santarella spoke at the meeting, she did not speak as a member of, or representing, the Board of Selectmen. Mr. Ginsberg suggested modifying one sentence on the first page of those minutes to read as follows:

“Chairman Conze explained that a resident would like to speak on this issue, but must go to a different meeting elsewhere in the Town Hall.”

A motion to re-open and modify the January 27, 2009 meeting minutes to change that one sentence was made by Mr. Spain, seconded by Ms. Grimes, and approved by a vote of 4-0.

There being no further business, the meeting was then adjourned at 10:22 P.M.

Respectfully submitted,

Jeremy B. Ginsberg
Director of Planning & Zoning