

**PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING/GENERAL MEETING  
JUNE 25, 2013**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Spain, Cameron, Cunningham, DiDonna, Voigt and Olvany

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

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Chairman Spain read the following agenda item:

**PUBLIC HEARING**

**Coastal Site Plan Review #287, Flood Damage Prevention Application #328, Land Filling & Regrading Application #306, Stephen Milman, 5 Pratt Island.** Proposal to install a retaining wall with associated fill, and perform related site activities within regulated areas. The subject property is located approximately 600 feet southwest of the intersection of Nearwater Lane and Baywater Drive, and is shown on Assessor's Map #55 as Lot #110 in the R-1 Zone.

Attorney John Ryan represented the applicant and said that due to comments received earlier in the day from the Connecticut Department of Energy and Environmental Protection (CT DEEP), they are requesting a continuation so that they will have time to research and respond to the comments from CT DEEP. Commission members agreed to continue the public hearing on July 23, 2013 at 8 P.M. in Room 206 of Town Hall.

Chairman Spain read the following agenda item:

**Special Permit Application #47-E/Site Plan, Darien Community Association, 274 Middlesex Road.** Proposing to install parking lot lighting, and a deer fence, and perform related site activities. The subject property is located on the south side of Middlesex Road, approximately 750 feet northeast of its intersection with Libby Lane, and is shown on Assessor's Map #20 as Lot #42 in the R-1 Zone. ***TO BE OPENED AND IMMEDIATELY CONTINUED TO JULY 9, 2013.***

It was noted that this item will be continued on July 9, 2013 at 8 P.M. in Room 206 of Town Hall.

Chairman Spain read the following agenda item:

**Continuation of Public Hearing regarding Amendment of Subdivision Application #544-A(7), Jaime & Christina Vicencio, 19 Morley Lane ("North Lot").** Request to modify previously approved single-family residence to be constructed on the now-vacant lot. The subject property is located on the west side of Morley Lane, approximately 1,000 feet north of its intersection with Redcoat Pass, and is shown on Assessor's Map #63 as Lot #55A, in the R-1 Zone. ***PUBLIC HEARING WAS OPENED ON 5/28/2013 AND IMMEDIATELY CONTINUED TO JUNE 11, 2013 AND JUNE 18, 2013. APPLICANT HAS AUTHORIZED A CONTINUATION OF THE PUBLIC HEARING TO TUESDAY, JULY 23, 2013.***

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This item will be continued on July 23, 2013 at 8 P.M. in Room 206 of Town Hall.

Chairman Spain read the following agenda item:

**Continuation of Public Hearing regarding Modification of Business Site Plan #258, Kleban Day Street LLC., 1015 Boston Post Road.** Proposing to: eliminate the previously approved basement; establish Massage Envy in a portion of both the first and second floor of the building now under construction at 1015 Boston Post Road; include a retail tenant in another portion of the first floor; reduce the number of second floor apartments to two; modify the location of doors and windows; and perform related site development activities. The subject property is located on the northwest corner formed by the intersection of Day Street and Boston Post Road, and shares a parking lot with 13 Grove Street, and is shown on Assessor's Map #73 as Lots #15 & #16 in the CBD Zone.

Mr. Ginsberg noted that the application has been withdrawn.

Chairman Spain read the following agenda item:

**Special Permit Application #277/Amendment of Site Plan #248, Day Street Development LLC./Nicholas Roberts Group, 13 Grove Street.** Proposing to establish a wine bar/restaurant and retail wine store in the first floor of the building now under construction at 13 Grove Street. The subject property is located on the southwest corner formed by the intersection of Day Street and Grove Street, and shares a parking lot with 1015 Boston Post Road, and is shown on Assessor's Map #73 as Lots #15 & #16 in the CBD Zone.

Peter Troilo, Managing Director, explained that they are proposing to establish a dining room with 21 tables for 38 diners within approximately 2,100 square feet of the first floor. There will also be a retail wine store of approximately 780 square feet on the first floor. He submitted a photograph and a parking study chart. He said that within 150 feet of the site there are an average of 25 parking spaces available. Mr. Troilo said that a Captiv-Aire brand air exhaust system is being designed. It will accommodate 3,220 cubic feet of air per minute. He said that he has not yet been in contact with the Health Department regarding details of the kitchen area. In response to questions, he said that the Google Maps photo that he submitted was not timed and it does show 13 parking spaces on the site that will become the two buildings on this site. Once the development is completed, there will be a parking lot for 12 parking spaces to be shared by the two buildings. Therefore, this building will have 6 parking spaces but some of those parking spaces will be for the second floor apartment tenants.

Mr. Troilo said that he will be the tenant on the first floor of the building and that the land is owned by Albert Orlando. Mr. Spain said that he understands that Mr. Orlando has condominiumized the property so that a different developer is building the structure at 1015 Boston Post Road and Mr. Orlando is building the structure at 13 Grove Street. Mr. Orlando explained that Day Street Development will own the building at 13 Grove Street and a 50% interest in the entire site. There will be a shared parking lot with 6 parking spaces per building. He confirmed that the project was owned and controlled by one property owner when it was approved by the Commission.

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Amy Dixon, a partner in the wine bar restaurant, said that the proposed restaurant will be a LEED Gold Certifiable use and it will have 100% sustainability. It will employ disabled persons, veterans and other employees. She said that she has been in the wine business for 23 years and that they are working on the premise that customers who try wine at the restaurant will then buy that wine at the retail store. She noted that the site has easy access from the train station and she expects that 95% of the staff will use public transportation as they arrive to the site (mostly from Westchester County). Mr. Troilo said that a large portion of the staff of his existing retail wine store will move to this new site.

Mr. DiDonna said that the report indicates that there will be as many as 23 people employed at the site on the weekends and wondered what would happen if those employees do not use public transportation due to scheduling issues. He said that parking on the site is critical. He suggested that the representation that 95% of the employees would use public transportation might be incorporated as a condition of approval by the Planning & Zoning Commission. What would happen if the employees do not abide by that representation? The use would then be in violation of the approval. Mr. Troilo agreed. Mrs. Dixon said there will be a lot of emphasis on lunch traffic.

Mr. Ginsberg said that a restaurant in any business district is a Special Permit use and the Commission must make positive findings under the standards of Section 1005 in order to approve a Special Permit use. Adequacy of parking is one of the requirements and it appears to be an issue in this particular case. Mr. DiDonna asked about the possibility of valet parking. Mr. Orlando said valet parking came up as part of the Massage Envy proposal (and he understands that request was withdrawn earlier in the evening). He said that the approved use is a retail store and now they are requesting a wine bar and restaurant use. He said that they will need a continuance of the public hearing in order to address the questions and comments of the Commission.

Mr. Spain said that the Commission must consider all the uses on the entire site and the adequacy of the on-site parking. The Adler parking report submitted as part of the original traffic study for the original application was based on retail uses and apartments, not a wine bar and restaurant use. He said that the Commission needs to consider that the Massage Envy application for the other part of the property might be revised and resubmitted. He said that it is important that the applicant realize that the Commission must be comprehensive in its analysis of the aggregate parking demand in all the uses in the site (within both buildings). Mr. Orlando confirmed that the detailed traffic study regarding the on-site traffic demand will be prepared and submitted.

Ms. Cameron said that the June 3, 2008 approval was very specific regarding the retail uses based on the traffic and parking study that had been submitted. That information was relied upon by the Commission and a completely different use that has a much higher traffic and parking demand is being submitted. Mr. Spain asked if there were two separate businesses being proposed here. Mr. Troilo confirmed that there will be two separate businesses with two separate entrances. He said that at his current wine store they occasionally have tasting events. At the proposed location, they will actually have two separate liquor licenses from the State.

Ms. Cameron raised a question about deliveries of food to the site. She said that they will need to have very well marked areas on the plans that are designated for off-loading of food on the site rather than parking on the street and having deliveries made by a vehicle parked on the street. Mr. Troilo said that the Grove Street area will be used for deliveries for the restaurant and the Day

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Street parking lot will be used for deliveries for the wine store. He said that deliveries are generally between 6 A.M. and 9 A.M. Mr. Spain said that this change of use would appear to block the narrow streets with delivery vehicles and early morning deliveries might disturb the residential neighbors on the site and in the vicinity. Another issue of concern was the disposal of waste. Ms. Diston said that all of the waste would be 100% recyclable and a special compact dumpster with odor control would be utilized. She said that the compost material would be ready within 48 hours.

There was some discussion about the fact that outside tables and 16 outside seats are included as part of the written application materials. Ms. Dixon said that City Harvest would also be collecting left over food. She described how storage would be on the walls of the kitchen and within the refrigerator and storage area designated on the plans. It was noted that there is no basement that is usable for storage. Mr. Troilo said that within the wine store, the office and storage area will be a combined space.

Mr. DiDonna said that he is very concerned about parking and deliveries for the entire site, not just the uses proposed within this application. Mr. Triolo asked if there were any other issues of concern. Mr. Spain said that traffic flow, customer flow, and agreement on the uses on the entire site, sharing of spaces, deliveries, odor control and trash are all issues that must be addressed. Ms. Dixon asked how valet parking might work. Mr. Troilo said that for his existing wine store, they only have 4 parking spaces and it seems to work adequately.

Commission members said that they are likely to continue the public hearing on this matter on July 23, 2013. Mr. Ginsberg noted that the Commission would need to get information at least a week prior to the hearing so that everyone can review the materials.

David Genovese, of Baywater Properties, said that he had been opposed to the Massage Envy due to its intense parking demand. He said that he is in favor of the concept of a wine bar and restaurant but is very concerned about the details of how it will function on the site and in conjunction with adjacent uses. He said that this might not be the right place to operate this type of proposed business. He said he is glad to hear that a proper traffic study and parking study will be performed by Mr. Orlando. Mr. Genovese asked about the pending litigation regarding Massage Envy. Mr. Ginsberg said that the mandamus action has been withdrawn from court but there is still a pending appeal regarding the Zoning Board of Appeals and a separate appeal from the Planning & Zoning Commission's decision. Mr. Genovese said that Massage Envy might still happen if the courts overturn the Town and it would create parking issues. He said that he is doing his own traffic and parking study of the area but has put that on hold for now. He said that the restaurant will cause congestion at lunch time in an already congested area.

Reese Hutchinson of 70 Hecker Avenue said that he cannot understand the form of ownership and parking allocation that is being described. Apparently each building will only have 6 parking spaces for 3 residential tenants and a large retail store. He said if the Commission goes back to the 2008 parking study submitted by the applicant, it would note that the proposed and approved use is retail use only, not a restaurant. He said that the concept of the wine bar is wonderful but not at this site due the very limited on-site parking. He said that valet parking will not work in this situation due to the narrow streets, some of which are one way only, and the difficulty of maneuvering vehicles to and from the site. He also noted that there is not a good drop off or pick up area or overflow area for cars that had been dropped off and have not yet been taking away by valet

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employees. He said that if the use is so intense that it mandates valet parking, then it is too intense for this site. He said that the old Stolfi Fairfield Electric site at Exit 11 was redone by Penny Glassmeyer and works due to the very unique tenants that were selected and a limited parking demand by the tenants on that very small site. He said that in this case if the two owners of the parking area are not working together then the parking and traffic problems will affect other property owners.

Commission agreed to continue the public hearing regarding this matter on July 23, 2013 at 8 P.M. in Room 206 of Town Hall.

Chairman Spain read the following agenda item:

**Special Permit Application #276, One Ten Post Road Partners, LLC, Post Modern Home, 110 Boston Post Road.** Proposal to establish Post Modern Home--a business specializing in refurbished, restored furniture which will also offer refinishing to the trade; to be located in the first floor space occupied by Goldenberry. The subject property is on the south side of Boston Post Road approximately 750 feet west of the Norwalk City Line, and is shown on Assessor's Map #32 as Lot #4-#6 in the SB-E Zone.

Andrew Clark explained that his new business, "A New New" in Norwalk is described in his April 19, 2013 and May 15, 2013 letters. It is a locally oriented home improvement center that specializes in furniture, cabinetry and other items that need to be refinished. He said that they take older items and modernize them for re-use. The actual refinishing is done at his facility in Norwalk, but would be taken in and sold from his Darien location. He has received support from many local businesses and residents. He said that under Section 672 of the Zoning Regulations this business requires an external use and activity and he noted that the large loading dock would be used for the furniture and cabinetry pick up and deliveries. He said under Section 674 it is a home improvement contractor and similar use. He said that he is more conforming to that description than the immediate previous uses which were Goldenberry and Tupperware. Mr. DiDonna asked if refinishing would be done at the store and Mr. Clark said that it would not be done at the Darien location but would be done at his Norwalk facility. He said that they do a lot of customized work for designers and clients who want to have built-in cabinets or furniture refinished for a specific project. Ms. Cameron said that it seems to be a good solution to the unusual situation.

There were no comments from the public regarding the application.

The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Ms. Cameron, seconded by Mr. Voigt and unanimously approved.

Chairman Spain read the following agenda item:

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**Subdivision Application #131-A, Coastal Site Plan Review #288, Flood Damage Prevention Application #329, Land Filling & Regrading Application #308, Margaret C. Hand, 25 Brush Island Road.** Proposal to resubdivide the existing property into two building lots and construct a single-family residence and swimming pools on each lot, and perform related site development activities within regulated areas. The subject property is located approximately 1,300 feet west of the intersection of Nearwater Lane and Brush Island Road, and is shown on Assessor's Map #56 as Lot #17 in the R-1 Zone.

Jeffrey McDougal, Land Surveyor from William W. Seymour & Associates, explained that the proposed division of the property complies with all the dimensional requirements of the one acre zone. A very conceptual development plan has been submitted so that the Commission can see that each of the two proposed lots can be developed in accordance with the Regulations. He said that this proposed subdivision is being done for marketing purposes as the family will be selling the property. In order to file the re-subdivision map on the Land Records, the property owner will need to demolish the existing house and tennis court. If a buyer wants to buy the entire property, they will not file the subdivision map and let the new buyer redevelop the property in whatever way they can obtain permits. Mr. McDougal said the proposed re-subdivision will allow redevelopment outside the 1% flood zone area on each parcel.

Mr. McDougal said that the Hand family has owned this property since 1954. The property at #27 Brush Island is not part of the subdivision and will stay unchanged. That property contains a house and a garage with a work studio. It is not part of the current application to subdivide the property at #25 Brush Island Road.

In response to questions, Mr. McDougal said that the driveway easement and the existing view easement are to the benefit of the owner at house #25 and those easements cover a portion of lot #27, because that is where the driveway is located. He said that the proposed front lot at #25 will not have any view easement across the proposed rear lot.

Tom Nelson of McChord Engineering said that they have provided a feasibility design for the development of each parcel of land. He said that the rear lot has a 90 foot setback from the proposed front lot. Each of the properties will be served by an on-site septic system and each will have access to public water supply. A drainage system will need to be designed for each house that gets developed. That drainage system would deal with water quality and treatment for the first inch of rainfall into the sandy gravel soil. The drainage system will not be designed for stormwater detention for a 50 year storm. Ms. Cameron mentioned that the best practice would call for above ground rain garden systems rather than below ground infiltrator type systems. Mr. Nelson said that any system that gets designed will need to be properly maintained and the price of installation of an above ground system and below ground system are comparable. He said that a rain garden would take up more room on the surface.

Mr. Ginsberg said that this is a request for a re-subdivision of the property to create two separate lots. The developer has shown the feasibility of development concept but the Commission would need to review any specific application for future development.

When asked why open space is not being provided, Mr. McDougal explained that since the property is less than three times the minimum lot size required by the zone, no open space is

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required by the Subdivision Regulations. He said that the development on the front lot will be easier because it is a greater distance from Holly Pond. The rear lot will have more scrutiny because it is adjacent to Holly Pond and contains Flood Hazard Area. He said approval from the Environmental Protection Commission might also be necessary, depending on the specifics of the actual development.

Mr. McDougal said that in order to file the subdivision map on the Land Records, they will need to remove or relocate the house on the front lot. The approved map would not be able to be filed on the Land Records until that structure is removed or relocated. He said that on the rear lot the 100 foot Coastal Area Management line and the Environmental Protection Commission review line divides the buildable area. Both of those lines establish the need for detailed review, but they are not setback lines that mandate that the structures be outside or more than 100 feet from the water. Mr. McDougal said that the purple lines on the map reflect the elevation 14 and the new flood zone lines. Mr. Nelson said that the Environmental Protection Commission has not formally acted upon the application or submitted specific comments. He said that there will be no problem with the front lot and when the rear lot is developed it will need approval of the actual site development but not of the subdivision. Mr. Voigt said that by subdividing the property they are most likely going to need to approve the development on the rear lot that would have construction activity within the sensitive CAM area.

Mr. Ginsberg read aloud the comments from the Connecticut Department of Energy and Environmental Protection indicating that there were no inconsistencies between the plans of the subdivision and the Coastal Area Management Act. He said that any future work proposed in the flood zone area and any work in that area within 100 feet of Holly Pond would need approval from the Planning & Zoning Commission. He also noted that the house and tennis court would need to be removed before any approved re-subdivision map is filed in the Land Records. He said that any action by the Commission with respect to the subdivision should be very specific about what is being approved and what would need to return to the Commission for additional permits.

Zoning Enforcement Officer David Keating raised a question about the interpretation of the 90 foot setback requirement on a rear lot. He said in this case the setback is being measured from the southeasterly property line when in fact it might be more appropriate to measure that 90 foot setback from the southwesterly property line, which is adjacent to a neighboring property owner. Commission members agreed that it would be appropriate to continue the public hearing so that any information from the Environmental Protection Commission could be received and the setback requirements could be better studied and analyzed.

There were no public comments regarding the application. The Commission agreed that it would continue the public hearing on this matter on July 9, 2013 at 8 P.M. in Room 206 of Town Hall.

Chairman Spain opened the general meeting and read the following agenda item:

**GENERAL MEETING**

**Amendment of Site Plan Application #246/Special Permit, Darien Library, 1441 Boston Post Road.**

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Request to install a full-sized generator to replace the existing emergency generator, and installation of new transformer in the location of the existing generator.

Alan Gray, Chief Administrative Officer of the Darien Library, explained the community need for the library facility has been thoroughly demonstrated in the recent storms and they need to upgrade their emergency generator capacity. Now they have a 60 kilowatt generator and are proposing to install at 400 watt generator in the back corner of the property. It would be at least 8 feet from away the property line and would be in the general vicinity of the Police Department's emergency generator. The library generator would be approximately two-thirds the size of the Police Department's generator. They will also need a new transfer switch that would have an automatic transfer feature. He said that the Zoning Board of Appeals has granted a variance of the setback requirement but since this is a Special Permit use, they need to obtain Planning & Zoning Commission approval.

Mr. Gray explained that this is a Class 3 noise attenuation has been incorporated into the design. It is a diesel generator and it will not be quiet when it is operating but the noise attenuation makes it acceptable. He said that the tank is located on the bottom of the generator system and has a 1,583 gallon capacity. The emergency generator will run at 75% load for up 3 days in an emergency without being refilled. He said that each week the engine will be tested for approximately 10 minutes. He said that he will work with the Police Department and the generator installer to make sure the air intake and the air exhaust are properly aligned so they do not conflict with the police generator.

There were no public comments regarding the proposed generator at the library. The following motion was made: That the Planning & Zoning Commission approve the proposed generator installation at the library facility at 1441 Boston Post Road. The motion was made by Mr. DiDonna, seconded by Mr. Olvany and unanimously approved.

Chairman Spain read the following agenda item:

**Amendment of Business Site Plan Application #24-S/Special Permit, Flair Fitness, Goodwives Shopping Center, 25 Old Kings Highway North.**

Request to occupy additional space within the Shopping Center, and to increase the maximum class size allowed.

The current approval for the Flair Fitness facility is that they can have a maximum of 30 people and 40 people in their 2 studios and that during lunch time they will have a maximum of 20 students in the entire facility. Amy Shelton said that they are reconfiguring the space and acquiring more floor space within the shopping center and are asking for modifications to now allow the new larger studio to accommodate up to 55 persons. She said that the peak operating hours are between 9 – 10:30 A.M. During the evenings, they generally have about 20 people in the 7 – 8 P.M. class. They are coordinating with the Walter Schalk School of Dance and would have a maximum of 55 people in the large studio. That might occur between 4 – 10 P.M. but many of the students would be children who would be dropped off at the site.

Ms. Shelton said that due to the other uses on the site, the separation of her use from the adjacent uses in the large parking area, there are no parking or noise problems. Mr. Spain confirmed that he

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noticed no parking or noise problems and the Town had not received any complaints regarding those matters.

The Commission members discussed the application. The following motion was made: That the Planning & Zoning Commission approve the requested modifications of Business Site Plan #24-S/Special Permit to increase the maximum capacity in the large studio room as requested. The motion was made by Ms. Cameron, seconded by Mr. Cunningham and unanimously approved.

The next meeting of the Commission will be on July 9, 2013.

The following motion was made: That the Planning & Zoning Commission adjourn the meeting. The motion was made by Mr. Voigt, seconded by Ms. Cameron and unanimously approved. The meeting was adjourned at 10:20 P.M.

Respectfully submitted,

David J. Keating  
Assistant Planning & Zoning Director

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