

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
FEBRUARY 28, 2012**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Cameron, Hutchison, Cunningham

STAFF ATTENDING: Ginsberg

RECORDER: Syat

Channel 79

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

PUBLIC HEARING

Continuation of Public Hearing regarding Coastal Site Plan Review #270, Flood Damage Prevention Application #306, Land Filling & Regrading Application #270, Paul & Amy Darrah, 11 Peabody Lane (aka 66 Salem Straits). Proposing to: raze the existing residence and construct a replacement single-family residence with garage and pool; connect to the Town sewer system and abandon the existing septic system(s); raze the existing second residence and detached garage on the property; and perform related site development activities within regulated areas. The subject property is on the east side of Peabody Lane approximately 1,000 feet northeast of its intersection with Hawthorne Road (Salem Straits), and is shown on Assessor's Map #62 as Lot #60, in the R-1 Zone. *HEARING OPENED ON 1/24/2012. PUBLIC HEARING TO BE CONTINUED TO MARCH 27, 2012 PURSUANT TO APPLICANT'S REQUEST.*

Mr. Conze noted that the Darrah item agenda will be continued to March 27, 2012.

Business Site Plan #146-C/Special Permit, Anthony's Coal Fired Pizza, 319 Boston Post Road. Proposal to install additional parking with related landscaping and stormwater management; to install outdoor dining on a proposed terrace in front of the existing restaurant; and to perform related site development activities. *PUBLIC HEARING POSTPONED TO 3/27/2012.*

Mr. Conze mentioned that the Anthony's Coal Fired Pizza public hearing agenda item had been postponed to March 13, 2012. He then read the next agenda item:

Continuation of Public Hearing regarding Land Filling & Regrading Application #267, Scott Leahy, 117 Leeuwarden Road. Proposing to fill, regrade, and construct associated retaining walls along the sides and rear of the property, and perform related site development activities. The subject property is located on the west side of Leeuwarden Road, approximately 800 feet south of its intersection with Old Oak Road, and is shown on Assessor's Map #29 as Lot #122, and is in the R-1/2 Zone. *PUBLIC HEARING OPENED ON 1/10/2012.*

Mr. Conze explained that this public hearing will be continued to March 13, 2012 at 8:00 p.m., in room 206 of Town Hall. He then read the next agenda item:

DARIEN PLANNING & ZONING COMMISSION
PUBLIC HEARING/GENERAL MEETING
MINUTES
FEBRUARY 28, 2012
PAGE 2 OF 5

Amendment of Business Site Plan #136-B/Special Permit, Dan Dolcetti, 2 Squab Lane, CBD Zone. Proposal to establish a law office on the 1st and 2nd floor of the existing 2 Squab Lane building. The establishment of a 1st floor professional office requires a Special Permit under Section 654d of the Darien Zoning Regulations. The subject property is located on the northeast corner formed by the intersection of Grove Street and Day Street, and is shown on Assessor's Map #73 as Lot #34, in the CBD Zone.

Mr. Conze said that the public hearing on this matter will be opened tonight and immediately continued to March 13, 2012 at 8:00 p.m. in room 206 of Town Hall. He then read the first general meeting agenda item:

GENERAL MEETING

Amendment of Business Site Plan #164-B, Normandy Darien Holdings, Darien Green, 320-330 Boston Post Road, OB Zone. Request to up to four doctors and a total of twelve employees as part of an optometrist's office who specializes in developmental therapy for vision issues.

Mr. Michael Cottle was present to discuss the request. He noted that the Commission approved this space for a doctor's office on November 22, 2011. At that time, it was expected that there would be two doctors in the practice. He reviewed his February 24, 2012 letter by noting that they are requesting that the practice be allowed to have up to four doctors and twelve employees. He said that it was highly likely that not all of the doctors would be present at once, since many of them would also have other practices elsewhere. Mr. Hutchison explained that he went to visit the site, and there appeared to be sufficient parking. Mr. Hutchison made a motion to approve the request to allow up to four doctors and twelve employees. That motion was seconded by Mr. Cunningham, and was approved by a vote of 4-0.

At about 8:07 p.m., Mr. Conze read the following agenda item:

Business Site Plan #33-B, Flair Fitness Studios, LLC, 551 Boston Post Road—2nd floor, DB-2 Zone.

Request for extension of approval of class size of 20 during daytime hours, and up to 40 students after business hours.

Attorney Wilder Gleason was present on behalf of Flair Fitness. They now offer classes not only at 551 Boston Post Road, but also at the gym at Town Hall, and at schools (for teachers and students). He noted that the existing lease expires in July 2013. He is asking to allow for increased class sizes until the end of the lease, rather than for another six months. Mr. Gleason said that he had spoken with David Knauf of the Darien Health Department. The Darien Health Department went out to the site in response to two complaints in September 2011. The Health Department has not issued a nuisance order. Mr. Gleason said that there is no nuisance here. Mr. Gleason emphasized that this is a "landlord-tenant dispute". Mr. Gleason then submitted a copy of a complaint previously submitted to the Darien Health Department. He then read aloud from the January 2012 letter from tenant Dr. Birskey, who is on the first floor of the building. Mr. Gleason said that he had also checked the Board of Selectmen's office for complaints, and there were none. He said that in response to concerns, Flair Fitness has reduced the volume of the music; moved the speakers within the space; encouraged clients not to park in the front of the building; moved larger classes off-site;

DARIEN PLANNING & ZONING COMMISSION
PUBLIC HEARING/GENERAL MEETING
MINUTES
FEBRUARY 28, 2012
PAGE 3 OF 5

instituted a 15 minute gap between classes held during the day; and installed air conditioning units and fans. He mentioned that Flair Fitness has been trying to find new space within Darien. They are requesting that classes be allowed to expand to 20 during the day and 40 after “business hours”. He confirmed that Quest Diagnostics, the tenant right below the Flair Fitness space, is open from 7 a.m. to 2 p.m.

Mr. Conze asked whether the Fire Marshal had any objections. He referred to Item #8 in the submitted lease. Mrs. Cameron noted that she had made several site visits to the property recently. She said that what makes the noise is not the actual music, but rather, the bass. She said that she heard the bass from inside Quest Diagnostics. Parking was not a problem when she was there. Mr. Gleason mentioned that Barry Bogle of the Darien Health Department was not aware of any formal complaints from Quest Diagnostics.

Mr. Conze noted that it is up to the tenant to adjust the bass. Mr. Gleason said that he is requesting an extension of class size increase until July 31, 2013—for 17 months—until the existing lease is up.

Mr. Brian McKay, the landlord, then approached the podium to speak. Mr. Conze asked why the ongoing dispute is the Commission’s problem. Mr. McKay responded that a Commission approval will change the “balance of power”. He agreed that it is a landlord-tenant dispute. Mr. McKay acknowledged that the complaints have been temporarily remediated, as other tenants in the building are now paying less rent. Mr. Conze said that all the Commission is reviewing is whether to extend the expansion of class sizes for another six months. The Commission is primarily concerned about parking. Mr. Hutchison added that Mr. McKay selected the tenant mix, and that according to the lease, Mr. McKay was responsible for soundproofing the structure. Mr. McKay responded that the rider was not part of the lease. He said that the use of 20 spaces by Flair Fitness during the day impacts other businesses within the building. Mr. Hutchison asked whether the Commission should impose itself within this matter, as it appears to be a civil matter.

Amy Shelton, the owner/operator of Flair Fitness, confirmed that this is a landlord-tenant dispute. She said that the number of 40 clients per class after hours on weekdays and on weekends, came from the Darien Fire Marshal. She said that 40 clients at a time would not work in the daytime for parking reasons. Mr. Gleason said that the noise does not get affected by the number of clients present. The noise now in Quest Diagnostics is greater than the noise in Brian McKay’s first floor office. Mr. Gleason mentioned that the Flair Fitness business will die if forced to revert to 12 people per class. He confirmed that he is asking for a 17 month approval.

The teacher of the most popular class at Flair Fitness then spoke. She said that for her classes, parking is always available. She confirmed that it is the music that generates the noise, not the number of people.

Mr. Gleason summarized by suggesting that the Commission approve the project with the following: A maximum of 20 customers per class weekdays before 5:00 p.m.; a maximum of 40 customers per class after 5:00 p.m. weekdays and all day on weekends; the windows shall be closed when music is being played; and a 15 minute gap between classes on weekdays during business hours.

DARIEN PLANNING & ZONING COMMISSION
PUBLIC HEARING/GENERAL MEETING
MINUTES
FEBRUARY 28, 2012
PAGE 4 OF 5

Mrs. Cameron suggested that Flair Fitness work with Quest Diagnostics, and that Flair Fitness be more proactive in resolving the situation. Mr. Cunningham suggest on-line scheduling. Mr. McKay noted that he would like to bring in the other tenants to an upcoming meeting. Mr. Conze encouraged him to resolve the issue with Flair Fitness. Mr. Cunningham mentioned that he had visited the property many times. Mrs. Cameron added that she, too, had been there many times, and she works across the street at Swimm Pools. Mr. Conze encouraged the Commission to review the on-site parking between now and the next meeting.

Mr. Hutchison then made a motion to allow the class sizes to remain at 20 before 5:00 p.m. weekdays and 40 on weekends, until the next meeting, or until finally adjudicated by the Planning & Zoning Commission. That motion was seconded by Mrs. Cameron, and was approved by a vote of 4-0.

At about 8:43 p.m., Mr. Conze then read the next agenda item:

Amendment of Zoning Map #4-2008, Amendment of Zoning Regulations #8-2008, Site Plan Application #268, Special Permit Application #122-A, Land Filling & Regrading Application #219, lot line revision, Allen O'Neill, Noroton Avenue, Elm Street, and West Avenue

Request to modify March 10, 2009 Adopted Resolution Condition #11 regarding open space monumentation prior to filing of map in the Darien Land Records.

Mr. Ginsberg summarized the February 21, 2012 letter submitted by Kathy Molgano of the Darien Housing Authority. It requests a modification of Condition #11 in the 2009 Resolution. He explained that since much of the site will be under construction, it did not make sense to monument the open space when chances were good that such monumentation would be disturbed during the construction process. Commission members agreed that monumenting before construction did not make sense. They believed that monumenting the open space prior to the completion of each phase makes more sense.

Mr. Hutchison made a motion to approve the request put forth by the Darien Housing Authority. That motion was seconded by Mrs. Cameron, and was approved by a vote of 4-0.

Special Permit #66-I, Darien YMCA, 2420 Boston Post Road.

Review and action on 2012 Special Events Schedule.

Mr. Ginsberg explained the Commission's requirement for an annual Special Events Schedule from the Darien YMCA. He noted that the proposed 2012 schedule is very similar to those submitted in past years, although there are some changes due to the ongoing construction. He mentioned that one new Special Event this year will be the Grand Opening, which is scheduled for early September. Mrs. Cameron made a motion to approve the Special Events schedule as submitted. That motion was seconded by Mr. Hutchison, and was approved by a vote of 4-0.

Special Permit #188-B/Site Plan, Board of Education, High School Lane.

Special Permit #188-B/Site Plan, Special Permit #125-D(2), DJFL, Holahan Field and Darien High School.

Receipt of reports on temporary, portable lights at the High School and Holahan Field.

DARIEN PLANNING & ZONING COMMISSION
PUBLIC HEARING/GENERAL MEETING
MINUTES
FEBRUARY 28, 2012
PAGE 5 OF 5

Mr. Ginsberg explained that the Commission required the submittal of reports on the portable, temporary lighting used at the high school and Holahan field for fall sports.

Mr. John Sini was present on behalf of DJFL. He noted that the Board of Education has planted about 75 trees on the north side of the high school. He mentioned that a number of recommendations are included in the report. Mr. Sini said that measurements were taken when the lights were at a 30 foot height for part of one night last fall. Mr. Hutchison added that he lives near Holahan Field, and DJFL has done a great job in minimizing impacts to neighbors and being diligent about complying with the Commission's conditions of approval, and he appreciated that.

Approval of Minutes

February 7, 2012

Public Hearing/General Meeting

Mrs. Cameron made a motion to approve the minutes with two typographical corrections. That motion was seconded by Mr. Hutchison. Mrs. Cameron, Mr. Hutchison and Mr. Cunningham each noted that they had each recused themselves on one item at that meeting, and were not present for those portions of the meeting, but were comfortable with the minutes of the remainder of the meeting. The minutes were approved by a vote of 4-0.

There being no other business, the meeting was adjourned at 8:55 p.m.

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director

02.28.2012.min