

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
NOVEMBER 20, 2012**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Cameron, Voigt, Cunningham

STAFF ATTENDING: Ginsberg, Keating

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 #138-D, Flood Damage Prevention Application #140-D, Land Filling & Regrading Application #283, Gavin & Melissa Baiera, 26 Shipway Road. Proposing to construct a pool, and related pool terrace; install pool equipment and rain garden, and perform related site development activities within regulated areas. The subject property is located at the north side of Shipway Road, approximately 300 feet east of its intersection with Plymouth Road, and is shown on Assessor's Map #57 as Lot #43, in the R-1 Zone. *HEARING OPENED 10/23/2012 AND WAS IMMEDIATELY CONTINUED TO 11/20/2012. HEARING TO BE CONTINUED TO 1/8/2013 AT APPLICANT'S REQUEST.*

Mr. Conze announced that this matter will be continued to January 8, 2013.

Chairman Conze then read the following agenda item:

Business Site Plan #24-T/Special Permit, JoyRide Darien, LLC, 25 Old King's Highway North. Proposing to establish an indoor recreational use/exercise facility in a portion of the space formerly occupied by Darien YMCA gymnastics program within the Goodwives Shopping Center, and to add a fence and perimeter landscaping. The space is located within Goodwives Shopping Center, which is located on the south side of Old Kings Highway North, approximately 150 feet southwest of its intersection with Brookside Road and is shown on Assessor's Map #71 as Lot #19, in the DC Zone.

Attorney Robert Maslan represented the applicant and explained that the proposed activity will take place in the northeast corner within the Goodwives Shopping Center. This is a portion of the space formerly occupied by the Darien YMCA Gymnastics Program. It does not have store frontage along the main portion of the Shopping Center. He referred to the submitted photographs of the site. He submitted a copy of the Darien YMCA 1996 approval for the use of this portion of the Shopping Center for the gymnastics program. He referred to Map # 4526 of the Darien Land Records showing the entire Goodwives Shopping Center and also pointed to aerial photographs of the site.

Attorney Maslan said that the landlord will stripe additional parking spaces in the back of the building, making sure that the driveway area is kept clean and clear of obstruction and has adequate aisle width.

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Mr. Maslan said that they are currently applying to the Architectural Review Board and the Zoning Board of Appeals for additional signage on the front part of the main building (facing the main parking area) as well as for signs near the entrance door and a blade sign that would be perpendicular to the wall of the building.

Project Architect Rick Williams explained that they are proposing to use approximately 4,000+/- square feet of the former YMCA space. There will be a main studio that will be tiered or stepped to accommodate a series of stationary bicycles. There will also be a smaller studio area that will allow for a greater variety of exercise and training activities. A nice entry lobby and office space will be provided. Showers and restrooms will also be provided.

Amy Hochhauser explained that she operates JoyRide Westport which is a similar size (approximately 4,000+/- square foot). They offer 56 class sessions per week and the busiest time of the day is from 8:30 to 11:30 A.M. At those times, they are close to full capacity which is 40 to 50 people. At many other times during the day, they only have 20 clients at the site. She said even at full capacity, they never have a parking issue due to the fact that their peak parking time is in the A.M. and general shopping peak time is in the afternoon. She said that showers are provided for the clients, but it is typically only the early morning clients (before 8:30 A.M.) that take advantage of the showers before they go to work. During the rest of the day, most clients do not use the showers. Mr. Voigt noted that if clients shower after the workout, it will create an overlap of clients within the facility that were there for an earlier class with clients for a later class. Amy responded that they typically stagger the classes leaving approximately 15 minutes between the end of one class and the start of the next class.

Attorney Maslan said that there are approximately 486 on-site customer parking spaces within Goodwives Shopping Center and parking will not be a problem. He said that there is some landscaping screening between this proposed use and the adjacent office building to the northeast. He noted that the ARB and ZBA applications are only for signage and it would be appropriate if the Planning & Zoning Commission can make the Special Permit findings regarding the proposed use even before the questions regarding signage are resolved.

Mr. Ginsberg said that in some of the discussion about the application, it had been mentioned of a possible stockade fence. The Fire Marshal has indicated that he is concerned because he does not want the fire access to the fire hydrant to be blocked by any sort of fence. Mr. Maslan said that they do not need this stockade fence or want the stockade fence. Apparently, the landlord had discussed the possibility, but it is not something his client wants to pursue and therefore, the stockade fence was withdrawn from the application.

There were no further questions from the Commission members. There were no comments from the public. The public hearing regarding this matter was closed and a decision will be reached at a future date.

At about 8:20 p.m., Chairman Conze read the following agenda item:

Flood Damage Prevention Application #309, Bill & Lynn Hamlen, 7 Davis Lane. Proposing to relocate an existing storage shed from the west side of the property to the east side of the property, and to perform related site development activities within a regulated area. The subject property is

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located on the south side of Davis Lane approximately 250 feet west of its intersection with Five Mile River Road, and is shown on Assessor's Map #67 as Lot #25, R-1 and R-1/2 Zones.

Mr. Ginsberg recommended that the public hearing on this matter be continued until November 27, 2012. The Commission members agreed to the continuation.

Chairman Conze read the following agenda item:

Amendment of Subdivision Application #602, Nastro/Blair, 360, 362, 366 Brookside Road.

Public Hearing regarding the Commission's October 2, 2012 approval of a proposed modification of previously approved subdivision, by eliminating a shared driveway; and the subsequent October 6, 2012 letter from Attorney Robert F. Maslan, Jr. on behalf of the Lowmans.

Attorney Amy Zabetakis represented the applicants and explained that the original subdivision had been approved with one common driveway along the southerly property line serving two rear lots. Each of the rear lots includes a strip of land from Brookside Road to the rear lot, but instead of there being two driveways right next to each other, one common driveway was created. The property owners now wish to modify the original plan so that the existing driveway along the southerly property line will serve only one rear lot. Property boundary lines will be adjusted and a new, separate driveway will be located approximately 200 feet to the north and will serve the second rear lot. She explained that the Planning & Zoning Commission had reviewed and approved this proposal during their October 2, 2012 General Meeting. Subsequent to that, a letter of objection from a neighboring property owner was submitted. That letter of objection has resulted in the pending request and the public hearing. She said that the Nastro family owns two of the five lots involved in the original subdivision, and the Blair family owns a third lot. The Lowman family objects to the new driveway and the remaining property owner in the subdivision has submitted a letter indicating they have no objection to the driveway. Attorney Zabetakis explained that the proposed modification eliminates the shared aspect driveway from the street to the two rear lots, and each rear lot would have its own separate driveway. She said this would improve safety, because it would eliminate a hairpin turn in the common driveway and noted that one of the families is expecting another child in the near future.

Project Engineer Holt McChord said that the location of the new driveway is on level property. Some of the existing driveway will be removed and the net increase in total driveway was about 1,500 square feet. A swale has been provided along the proposed new driveway to collect water and direct it to an on-site stormwater retention facility. He submitted two more copies of the Drainage Report that was previously submitted and approved by the Planning and Zoning Commission. He said that the new driveway will require a curb cut approval within the street right-of-way of Brookside Road. He said that the proposed new driveway will be pitched away from the neighbor to the north (Lowman), so that none of the storm water from the driveway would impact the neighbor.

Amy Zabetakis reviewed the October 6, 2012 letter from Attorney Robert Maslan (on behalf of the Lowmans) objecting to the proposed new driveway. She categorized his concerns as being the drainage (which, she said, we now know will slope away from the neighbor and therefore there will be no impact due to drainage); and a private agreement or limitation, which he said is not subject to the Planning & Zoning Commission discussion or decision. She said that they met in October to try to resolve the matter, but no resolution was reached. She submitted photographs of landscaping and

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screening along the boundary line that will separate the new driveway from the Lowman property to the north.

Attorney Robert Maslan represented the Lowmans and explained that the Lowmans had subdivided the property ten years ago and deliberately designed the subdivision to avoid having the driveway directly to the south of the Lowman residence. He said there are two restrictive covenants that apply, one is the general Subdivision approval by the Planning & Zoning Commission that indicates how the property will be developed, and the other is a more specific restriction that was created when the Lowmans sold the two rear lots and the lot to the south of the Lowman house. Attorney Maslan said that during the original public hearing in 2002, the neighbors complained about the number of curb cuts and the result was a shared common driveway on the southerly portion of the property which serves the two rear lots. That resulting layout was approved by the Commission and implemented. He said that the new location of the driveway would result in the loss of screening and would depreciate the value of the Lowman house and property.

Mr. Conze said that it seems that the private restriction that Mr. Maslan mentioned is not a matter for the Planning & Zoning Commission to decide. Attorney Zabetakis said that the private restriction was not part of the subdivision approval and the Planning & Zoning Commission is only to rule on the valid planning issue, which is whether the revised layout complies with the Subdivision Regulations. Mr. Ginsberg mentioned that the Planning & Zoning Commission previously reviewed and approved the revised plan on October 2, 2012. Mr. Voigt noted that there was no restriction in the subdivision approval, thus the private restriction is outside the Commission's purview. Attorney Zabetakis said that the restrictions were placed on the three lots when they were sold in 2003 (which was long after the subdivision was approved by the Commission) and they ran from Mary Lowman, the seller, to the developer who built the houses.

Attorney Maslan read from Paragraph 1 of the 2002 approval granted by the Planning & Zoning Commission in which it refers to the one common driveway to serve the two rear lots and the purpose included the preservation of the trees on the south side of the property. He said that the two driveway design was an integral part of the approval granted by the Planning & Zoning Commission.

Mr. Voigt asked if the trees mentioned in the 2002 approval would be impacted due to the proposed modifications. Ms. Zabetakis said there would be no impact to those trees because the driveway near the southerly property line would remain the same except that it will provide access to only one lot, and will no longer provide access to two lots. A new driveway would be placed far away from the trees in question.

Mr. Maslan mentioned that the private restriction runs with the land and it is not just between Mary Lowman and the original builder.

Mr. Cunningham asked if the Nastro family could put a driveway on the north side of their vacant building lot which fronts on Brookside Road. This would be the same location that the proposed driveway to the rear lot is proposed. Attorney Maslan said that the Nastro's would have the ability to install the driveway along the northerly portion of their property.

Chairman Conze said that he wants to talk to Town Counsel about this question of the private restriction. He asked about possible dates for continuation of the hearing. Mr. Ginsberg said that the

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Commission could discuss the matter on Tuesday, November 27th, or subject to the granting of an extension by the applicant, the discussion could be continued in January 2013. Attorney Zabetakis said that her client would grant the request of the extension with the understanding that she would have an opportunity to review Town Counsel's opinion prior to the meeting. After reviewing schedules, it was agreed that the public hearing regarding this matter would be continued on January 15, 2013.

Chairman Conze read the following agenda item:

Amendment of Subdivision Application #471-B, Michael Scott & Suzanne Welsh, 1 Musket Lane. Request to modify the previously approved 90 foot building setback along the southerly property line as shown on Map #3671 in the Darien Land Records for the property at 1 Musket Lane. The subject property is located at the southeastern corner formed by the intersection of Raymond Street and Musket Lane, and is shown on Assessor's Map #33 as Lot #5-12 in the R-1/2 Zone.

Attorney Robert Maslan represented the Welsh family and referred to materials that were previously submitted, including the February 1972 minutes, a 2006 map of an addition to the residence, a 1972 approval, and Subdivision Map. He said that the Welsh property on the corner of Raymond Street and Musket Lane has an unusually large setback from the southerly property line. He said that by definition, the southerly property boundary is a rear lot and thus should have a 25 foot rear setback, instead of the 90 foot setback specified on the filed Subdivision Map. He said that, despite his research, he can find no explicit reason for the extra-large setback requirement being specified on the Map. He theorizes that it might be to protect an area reserved for a septic system or might have something to do with a private restrictive covenant that would have expired in the mid-1990s. It does not seem that this 90 foot setback was required by the Planning & Zoning Commission or any specific Regulation. He said that the 1972 approval by the Planning & Zoning Commission says that the building areas are the maximum allowed by the Zoning Regulations for zoning purposes. Yet, this 90 foot setback from the southerly property line is not a requirement of the Zoning Regulations and is not specified any place other than the map.

Mr. Ginsberg said that he has reviewed some of the records and he has found no specific reason for the extra-large setback. Attorney Maslan said that some of the properties within the subdivision have larger than normal setbacks, but those are for valid reasons such as the minimum width or minimum depth requirement or the fact that they are rear lots and rear lots require a special front setback that is 50 foot larger than the normal setback requirement.

Attorney Richard Roina represented the Costanzo family, the owner of Lot 13 which is to the south of the Welsh property at 1 Musket Lane (Lot 12 on the subdivision map). He said that in the Resolution of Approval from the Planning & Zoning Commission Stipulation 3-B refers to septic systems on certain lots, but Lots 12, 13 and 14 are not on that list of lots where septic system issues were a concern, yet these are the three lots that have a 90 foot special setback requirement. He said that he believes that the purpose of the special 90 foot setback requirement was to preserve the openness of the subdivision. He concurred that the private deed restrictions and covenants expired in the mid-1990s, but they did not have anything to do with the 90 foot setback requirement on Lots 12, 13 or 14. He said Lot 13, his client's property, is one of the few lots that only faces on Raymond Street, and not on a side street. He said that the deeds to the Costanzo property are found in Volume 1079 Page 791 and Volume 341 Page 216. Both refer to Map 3671 which clearly shows

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Lot 13 and the adjacent properties with extra-large setbacks. He said that the extra-large setbacks on Lots 12 and 14 were created to create a large expansive space to show off the model house on Lot 13. He said the extra-large setback requirements were proposed by the developer and approved by the Planning & Zoning Commission. He said that it is not a mistake or coincidence that the extra-large setbacks were created and his clients object to the removal of those extra-large setbacks which were specifically created and relied upon by his clients. He said that Mr. Costanzo would like the setbacks to remain as per the originally approved plan and not to be reduced.

Joan Gallagher said that she is the listing broker for the Welsh property and said that in 2006, an addition was constructed and a survey was approved by the Town which shows a 25 foot setback from the southerly property line, not the 90 foot setback. She believes that the 90 foot setback was a mistake to begin with, and to have this “extra-large” setback limits the value of the Welsh property.

Mr. Conze said it appears that the developer established the setbacks specifically to create an openness and that it does not appear to be a mistake on the part of the developer who created these extra-large setback requirements.

Attorney Maslan said that all we have is a recorded subdivision, not the original submitted or draft Map. He said that the 90 foot setback on the Welsh property is not a requirement of the Zoning Regulations. He said that the privacy restriction that allowed the builder to reserve the right to review and approve construction plans has expired.

Mr. Voigt said the deed to the Welsh property includes the reference to the Map and the Map clearly shows the 90 foot setback requirement.

Attorney Rick Roina said that the two deeds to Lot 12 clearly restrict it as a 90 foot setback. The fact that the attorney for the property owner cannot find a reason today or a specific reason mentioned in the old approval is no justification to modify what has come to be relied upon. He said that in this subdivision of 60 lots there were many issues that the Commission dealt with and the fact that the developer chose to create an extra-large setback was not a problem or concern for the Commission.

Michael Welsh said that if he had known about this unusual restrictive setback, he would have made decisions differently about the investment in his property.

There being no further questions or comments, the Commission closed the public hearing regarding this application and will render a decision at a future meeting.

GENERAL MEETING

Chairman Conze read the following agenda item:

Amendment of Special Permit #42-H/Site Plan, Parklands Office Park, LLC, 3 Parklands Drive

Request for reconsideration of Stipulations G AND H. Request to: 1) move the dumpster enclosure; and 2) to extend the deadline for the “as-built” survey to December 4, 2012.

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Attorney Gleason requested two modifications in his letter of October 19, 2012. The first is with respect to the location of the dumpster and the second is an extension of time. The Commission members said the dumpster issue has not been clarified. The following motion was made: That the Commission grant the requested extension of time, but is not yet making a decision about the dumpster location. The motion was made by Mrs. Cameron, seconded by Mr. Cunningham and unanimously approved.

Chairman Conze then read the following agenda item:

Business Site Plan #205-D/Special Permit, 205 Post Road Development Partners, LLC, 205 Boston Post Road.

Request for extension of time to commence project.

Commission members discussed the fact that the applicant has requested another extension of time to implement the project. After some discussion, the following motion was made: That the Commission grant the requested extension of time until June of 2013. The motion was made by Mr. Voigt, seconded by Mr. Cunningham and unanimously approved.

Chairman Conze read the following agenda item:

Discussion, deliberation and possible decision on the following, if the public hearing has been closed:

Amendment of Subdivision Application #602, Nastro/Blair, 360, 362, 366 Brookside Road.

Public Hearing regarding the Commission's October 2, 2012 approval of a proposed modification of previously approved subdivision, by eliminating a shared driveway; and the subsequent October 6, 2012 letter from Attorney Robert F. Maslan, Jr. on behalf of the Lowmans.

The hearing is continued, and thus, no deliberations can yet be held.

Chairman Conze read the following agenda item:

Amendment of Subdivision Application #471-B, Michael Scott & Suzanne Welsh, 1 Musket Lane.

Request to modify the previously approved 90 foot building setback along the southerly property line as shown on Map #3671 in the Darien Land Records for the property at 1 Musket Lane. The subject property is located at the southeastern corner formed by the intersection of Raymond Street and Musket Lane, and is shown on Assessor's Map #33 as Lot #5-12 in the R-1/2 Zone.

Commission members felt that the builder had a good reason to establish the extra-large setback requirements and did not see any good reason at this point to modify the subdivision approval or eliminate the extra-large setback requirements that people have come to rely upon. The staff was asked to draft a Resolution for consideration at a future meeting.

Approval of Minutes

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The Commission decided to postpone action on the draft Minutes.

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

The following motion was made: that the Planning & Zoning Commission consider the request regarding 1015 Boston Post Road. The motion was made by Mr. Cunningham, seconded by Mr. Voigt and unanimously approved.

Mr. Ginsberg reviewed the letter from the developer of 1015 Boston Post Road. The Planning & Zoning Commission had approved retail use on the ground floor of each of the proposed buildings. The applicant is proposing to have a business called "Massage Envy" located on the first floor. They would have approximately 8 to 12 employees and clients would spend approximately 50 minutes at the site. Commission members were concerned with the very limited on-site parking and the potential impact that such a business would have on the available parking in the vicinity. "Massage Envy" does not appear to be a typical retail use. Commission members will ponder this matter and will discuss it at a future meeting.

There being no further business, the following motion was made: That the Commission adjourn the meeting. The motion was made by Mrs. Cameron and seconded by Mr. Cunningham. The meeting was unanimously adjourned at 10:00 p.m.

Respectfully submitted,

David J. Keating
Assistant Planning & Zoning Director

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