

**DARIEN PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING/GENERAL MEETING  
NOVEMBER 1, 2011**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:  
Conze, Riccardo, Cameron, Spain, Hutchison, Voigt (arrived at 9:40 p.m.)

STAFF ATTENDING: Ginsberg, Keating  
RECORDER: Syat  
Channel 79

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

**GENERAL MEETING**

**Amendment of Special Permit #66-L/Site Plan, Darien YMCA, 2420 Boston Post Road**  
Requested amendments to the previously approved nursery school building.

Mr. Ginsberg explained that the YMCA is now proceeding with construction of Phase 1, which is the new gymnastics building that will temporarily house the nursery school while the nursery school portion of the building is demolished and the replacement nursery school is constructed. The nursery school construction is Phase 2 of the project. When the Zoning and Building Permit application drawings of Phase 2 were submitted, it was noted that the plans included a number of modifications and changes that were different when compared to the plans that the Commission had approved. Some of the changes were required by code, some are due to construction considerations and others were architectural or cosmetic modifications.

Architect Chris McCagg explained that he is the project architect and reviewed the requested modifications and changes. He noted that the shape of the second floor addition above the nursery school is expanded in one direction and contracted in another. This resulted in modifications to the interior spaces and the windows. Upper windows on the front and side and rear facades needed to be modified. The new front entry to the YMCA is slightly taller in order to make proper connection between the old building and the new building. He also noted that larger windows are proposed above the front entry door to relate better to the large gymnastics structure to the left. He said that the windows on the top of the entry façade were not related to the size of the windows on the lower portion of that entry façade because of the trellis. Mr. McCagg noted that the mezzanine above the gymnastics area has been modified by deletion of one stairway. A skylight has been articulated and more detail is now shown in the area above the nursery school hallway. It is now properly shown as being a slope that connects the two-story portion with the one-story portion of the building. He said that, as with all windows in the addition, light control devices and systems will be incorporated so that the neighbors will not be bothered by any glare problem.

Mr. McCagg said that the “younger” classrooms within the nursery school were slightly relocated and this resulted in the toddler rooms being located on the west side of the building. State Code requires that each toddler room have an emergency egress door. These doors would face the

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neighbors to the west (the previously approved plans did not have any doors on the westerly side of the nursery school building). He also noted that a door has been added on the west side on the lounge portion of the lobby (closest to Holly Pond). He said that this was a refinement of the previous exit that would have required that people walk from the lobby through the stairway and then out of the door that faced south. He emphasized that added outside activities or foot traffic will take place on the west side of the building. Mr. McCagg reviewed the minor modifications with respect to window sizes and shapes and locations.

At 8:30 p.m., Mr. Conze had to step out of the meeting. Mr. Spain served as temporary Chairman.

Mr. Ginsberg said that there had been some discussion about changing the parking lot layout or adding additional lights within the parking lot and walkway areas. Those changes have not been included in the modification request submitted to the Commission.

Mr. Hutchison believed that none of the architectural changes were substantive and did not require a public hearing because they would not affect the neighbors. Mr. Spain noted that it is very important that even with these changes, that the applicant adhere to the conditions and stipulations of the original approval concerning indoor and outdoor uses and activities. The following motion was made: That the Commission authorize the architectural changes and modifications as discussed and presented. Motion was made by Mr. Hutchison, seconded by Mrs. Cameron and unanimously approved.

Mr. Spain read the following agenda item:

**PUBLIC HEARING**

**Business Site Plan #110-F/Special Permit, H&L Chevrolet, 1416 Boston Post Road.** Proposing to construct a one-story addition to the rear of the existing building and perform related site development activities. The subject property is located on the south (east) side of Boston Post Road, directly across its intersection with Hecker Avenue, and is shown on Assessor's Map #63 as Lots #15, #16, #17, in the SB Zone. *POSTPONED.*

Mr. Ginsberg noted that the matter has been postponed and will probably be rescheduled for early January. Mr. Spain then read the next agenda item:

**Continuation of Public Hearing regarding Land Filling & Regrading Application #264, Lot Line Adjustment/Amendment of Subdivision #370-B, William Storrs Morehouse, 21 Morehouse Drive.** Proposing to fill and regrade in association with a new residence and driveway, install associated stormwater management, adjust a shared lot line with Lot #12 (15 Morehouse Drive) and perform related site development activities. The subject property is on the northeast side of Morehouse Drive, approximately 525 feet north of its intersection with Prospect Avenue, shown on Assessor's Map #15 as Lot #11 in the R-1/2 Zone. *PUBLIC HEARING OPENED ON 9/27/2011. DEADLINE TO CLOSE PUBLIC HEARING IS 11/1/2011, UNLESS EXTENSION OF TIME IS GRANTED BY APPLICANT.*

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Ted Milone, Professional Engineer from Redniss & Mead, submitted revised plans for the proposed filling, regrading and development of the property on the northeast end of Morehouse Drive. Mr. Ginsberg noted that the Environmental Protection Commission has not yet acted on the application but a report has been submitted indicating that they are likely to approve the application. He said that the Zoning Board of Appeals has granted a variance and a copy of that letter was included in the packets that were distributed to the Commission. Also in the packets was a letter that the town had received from a neighbor, Mr. Bogie, expressing his concerns regarding the proposed development of the site.

Mr. Milone explained that this lot was created prior to local jurisdiction over Inland Wetlands. Although the property does contain a substantial amount of wetlands, it is still a building lot and they have obtained a variance from the Zoning Board of Appeals to allow the building to be closer to the street. The total amount of impervious ground cover (roof, patio, driveway, walkways, etc) will be approximately 2,700 square feet. The house and garage will cover approximately 1,540 of that square footage. Mr. Milone explained that a large rain garden and drainage structure system will be installed on the south portion of the house to accommodate the additional run-off from the impervious areas. By his calculations, the rate of run-off (how much water flows from the property at any given moment) will actually be reduced somewhat because of the detention capacity of the drainage systems. He said that the revised plans submitted to the Commission incorporate the property line adjustment that had been approved by the Zoning Board of Appeals.

Mr. Milone said that the drainage from this site flows in a southerly direction, not easterly toward the neighbors on Granaston Lane. He said that there is a stone wall adjacent to the east portion of the site. He also noted that there is a slight swale on the eastern portion of this site so that storm water from this site flows southerly toward the rear portion of the property at 15 Morehouse Lane. Water then flows through that property and into an inlet pipe on an adjacent property to the south.

Mrs. Cameron said that the spot elevations on the map indicates that it looks like storm water would flow toward the Bogie property to the east. Mr. Spain asked how the proposed development could be tailored to avoid any drainage flow towards the neighbors to the east. He also asked if a maintenance plan would be needed and submitted. Mr. Milone said he anticipates that the Environmental Protection Commission will approve the project and that they will likely require a conservation easement on the easterly portion of the property and a maintenance plan agreement to make sure that future owners know that it is their responsibility to maintain the storm water drainage system. He said that the run-off from the roof of the proposed building will be piped to the storm water infiltrators and the other impervious surfaces will flow in to the rain garden structure.

Mr. Ginsberg said that it is expected that the Environmental Protection Commission will approve the application subject to the normal conditions and stipulations. Mr. Milone responded to a question that indicated that the proposed house would contain four bedrooms and a one-car garage and it will be served by public sanitary sewer and public water. The homeowner will have a very small back yard lawn area. This is due to the extensive wetlands on the eastern portion of the property. There will be a clear demarcation between the lawn and the wetland area.

James Bogie of Granaston Lane referred to his letter of September 16, 2011. He asked if the Commission members had received it, and they confirmed that they had received and reviewed his

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letter. He said that he wants to have an independent soil scientist review the soil conditions on the subject property because he feels that the applicant's soil scientist made a very favorable determination. Mr. Bogie claimed that runoff from the site does flow toward the east, onto his property on Granaston Lane. Mr. Hutchison said that Connecticut wetlands are defined by soil type, not by the actual water condition on the property. He said that his experience with dealing with Otto Theall, the soil scientist hired by the applicant, has been very good, and that Mr. Theall's determinations seem to be consistently accurate. Mr. Bogie questioned how many rain gardens have been installed and how effective they have been and how well they would be maintained. He noted that the stormwater drainage plan calls for a gravel driveway; but he felt sure that it would, at some point, be paved by a future owner. Paving the driveway would increase the amount of storm water runoff directed into the drainage system and that might flow easterly towards his property. Mr. Spain said that rain gardens do require maintenance just as any drainage system will. He said that a detailed storm water maintenance plan is typically submitted or is a condition of approval.

Mrs. Cameron noted that the property is an approved subdivision lot and the property owner has the right to build on the site. In this case, a substantial conservation easement is being proposed to assure that the easterly portion of the subject property (the area closest to Mr. Bogie) will not be developed. Mr. Spain said that the owner has the right to develop a house on the lot and that with no development there would be the existing drainage problem that Mr. Bogie claims to exist. He said that the engineer has indicated that if the property is developed with a house it will not make the drainage situation any worse and in fact will slightly reduce the rate of run-off. Mr. Bogie said that the environment is paramount, and past decisions and approvals have been wrong. He wondered why we must all suffer now because of those past flawed decisions. He said that there should be some set-back requirement from the storm water basin to the property line and from the building to the storm water basins.

Mr. Ginsberg noted that the Zoning Board of Appeals had denied a plan for a big "barn like" house very close to the street. The plans had to be revised to incorporate a more modest size house.

Mrs. Patty Bogie said that she is very concerned about the implementation of the project. She said that it is not unusual for the actual construction to be different from what the neighbors and Commissions were told and what gets approved. She said that if the project is approved, it must be properly implemented and the edge of disturbance needs to be clearly defined and delineated.

Mr. Bogie claimed that throughout the process, the applicant and their representatives have been misleading about the extent of the proposed development and the number of trees to be removed and the area of the house and the set-backs of the structure.

There being no further comments, the following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Hutchison, seconded by Mrs. Cameron and unanimously approved.

At 9:30 p.m., Chairman Conze returned to the meeting, and read the following agenda item:

## **GENERAL MEETING**

*Deliberations ONLY on the following, and on any public hearing closed on November 1, 2011.*

**Proposed: Amendments to the Darien Zoning Regulations (COZR #6-2011); Amendment of the Darien Zoning Map (COZM #1-2011); Site Plan Application #280; Special Permit Application #268; Land Filling & Regrading Application #265, Baywater 745 BPR, LLC, 745 Boston Post Road.** Proposing to replace the existing building at 745 Boston Post Road with a new mixed use building and perform related site development activities. Zoning Regulation amendments are proposed to Sections 585, 614, 615 and 616 to permit the development as proposed. Proposed amendment of the Zoning Map would make the entire property in the DB-1 Zone. The full text of the proposed zoning regulation amendments is on file and available in the Town Clerk's office and the Planning and Zoning Office for inspection. *PUBLIC HEARING CLOSED ON 10/18/2011. DECISION DEADLINE: DECEMBER 22, 2011.*

Mr. Ginsberg said that the Commission needs to discuss the various aspects of the project. They include: a) the proposed amendment to the Zoning Map; b) the proposed amendments to the Zoning Regulations; c) the Special Permit and Site Plan aspects of the development; and d) how the Commission might want to address and implement the Inclusionary Housing requirement. He said that the proposed Zoning Map and Regulation amendments need to be analyzed at the outset to determine if they are consistent with the Town Plan of Conservation & Development.

Mr. Spain said that the change in the zone map line is done on a case-by-case basis, and an analysis of whether the proposed modification would make sense in that particular instance. He said that in this case, the two properties are generally used as one site with parking in the rear that services the residential and business use. There was some concern whether amending the zoning map would set a precedent, and Mr. Ginsberg indicated that the precedent would be that the Commission carefully analyzes whether each proposed amendment makes sense. Mr. Spain said that right now, the zone boundary line is very close to the property line. Mr. Hutchison said that this is a very unique situation and amending the map did seem appropriate for this parcel.

It was noted that the three-story brick building across the street and also the three-story bank and office building at 777 Boston Post Road were constructed in accordance with the regulations in effect many years ago. Following those projects, the Commission changed the regulations to prohibit three-story buildings, and encouraged the preservation of smaller existing two-story residential style structures in this DB-1 Zone. Those types of structures should be preserved and converted to business use. On the subject property there is a modern style, two-story office building that was built as an addition to an old residential style structure. The current DB-1 regulations encourage smaller parcels with renovated structures and discourage the assemblage of large parcels and the construction of large modern style buildings. This is consistent with the DB-1 Zone being a transitional zone allowing business uses, but with less intense development than the Central Business District.

Mr. Conze said that he was very interested in the Inclusionary Zoning portion of the development and thought that the mixed-use of having an office on the ground floor and the residential units on the upper floors would work well. Mr. Spain said that such a combination of uses seemed to be good for this zone because it is a transition zone between the Central Business District and the other

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commercial properties along the Boston Post Road. He said that he is generally in favor of this proposed development but is not in favor of changing the regulations throughout the zone to allow for more intense development within the DB-1 Zone.

Mr. Voigt arrived at approximately 9:40 p.m.

Mr. Spain believed that the Commission should not change the general rules and zoning regulations with respect to the front yard of a corner lot. Mr. Conze noted that this is an old style building and will have an open area or plaza created adjacent to the side street (Academy Street). Mr. Hutchison said that this proposed design would be okay, and acknowledged that the DB-1 is a transitional zone. Mr. Spain mentioned that everyone agrees that the buildings in a DB-1 Zone should not be as big or massive as those that are permitted downtown, nor should they be as close to any street as would be permitted in the downtown area. Mr. Conze referred to the plaza and the shape of the proposed building with its angles and projecting and recessing surfaces. Although the plaza would not be subject to a public easement, it would be accessible to the public and give a feeling of openness to the Academy Street side of the building.

Mr. Spain said that the proposed amendments to the regulations with respect to garages, would be a change for the entire district and it will affect other properties to some extent. He said that if a garage is permitted that close to the neighboring property lines, it should be specified that it is only allowed to be a one-story garage structure. Mr. Conze noted that the garage being that close to the property line would only be allowed by Special Permit approval by the Planning and Zoning Commission.

Commission members discussed the height of the proposed building, and noted that the current inclusionary incentives only refer to a maximum number of stories. The proposed amendment would allow the building to be up to 35 feet in height as part of the exemption and incentives. Mr. Spain said that a building that high seems to be too high for this transitional zone because it is virtually as high as the tallest allowed in the CBD Zone. The limit in DB-1 should be significantly lower. Mrs. Cameron suggested the ceiling heights be reduced from 9 feet to 8 feet, and that the overall height of the building be reduced.

Commission members discussed the current limitation of only six dwelling units per property within the DB-1 Zone. The proposed amendment would allow that number to increase based on every additional 10,000 square feet of land in the parcel. Another way to amend the regulations would be to change the maximum allowed on any property from 6 to 7.

Mr. Spain said that there is some confusion regarding the floor area ratio (FAR) permitted in this zone and the building coverage limitation of most other zones. He said the floor area regulation was adopted to encourage the re-use of existing smaller buildings without need of a variance. He noted that even through the proposed regulations would allow the building coverage to increase, it would only be by Special Permit approval from the Planning and Zoning Commission. He also was concerned about the steepness of the driveway leading up from Academy Street into the proposed parking area.

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Commission members discussed the Inclusionary Zoning Regulations that require that the affordable and moderately priced dwelling units be located (a) on the site of development, (b) on a different site, or (c) that a payment in lieu of actually building the units be submitted to the Commission for use in other affordable housing projects. It was up to the Commission to determine which. Mr. Spain said that he felt it would be more appropriate to have an actual unit built on this site rather than the other options. He said that it is more likely that the development would be constructed as a rental complex and that the Commission can be confident that the applicant developer will properly maintain and administer the affordable housing unit. He said that it might be possible to have one unit created and have the difference between the one unit and actual number of required units be submitted as a payment in lieu of the remaining fraction of a unit. Mrs. Cameron said in 40 years someone will get a windfall profit as the affordable housing limitation expires. Mr. Conze said that it would be better to get a substantial payment to put into an affordable housing development fund so that the money could leverage a higher number of affordable housing units. Mr. Hutchison said that he agrees with Mr. Conze. Mrs. Riccardo said that it would be better to get at least one unit of affordable housing actually created, whether it is at this site or some other location.

The Commission members agreed that they would discuss this matter at a future meeting in November. Chairman Conze then read the following agenda item:

**Discussion regarding temporary seasonal ice rinks.**

The Commission members discussed the issue of whether temporary seasonal ice rinks would require Special Permit approval, like a tennis court, or whether they would not be regulated. The consensus was that if an ice rink was as simple as no lights, no chilling machine, no boards above six inches high, and the ice rink was in the back yard, then it would not require P&Z Commission approval. If the temporary ice rink is more elaborate than those limitations, then it would require Special Permit approval from the Commission.

Chairman Conze read the following agenda item:

*Discussion, deliberation and possible decision on:*

**Special Permit Application #269, Graham & Jennifer Foster, 36 Crooked Mile Road.**

Proposing to construct an outdoor recreation court (“sports court”) in the northern portion of the yard and perform related site development activities.

The following motion was made: That the Commission waive the process of reading each draft resolution aloud because each member has had an opportunity to review the drafts prior to the meeting. The motion was made by Mrs. Cameron, seconded by Mr. Spain and unanimously approved.

Commission members discussed the draft resolution regarding the 36 Crooked Mile Road property. The following motion was made: That the Commission adopt the resolution to approve the project subject to the conditions and stipulations as noted. Motion was made by Mrs. Cameron, seconded by Mr. Hutchison and unanimously approved. The resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
November 1, 2011**

Application Number: Special Permit Application #269

Street Address: 36 Crooked Mile Road  
Assessors Map #3, Lot #49

Name and Address of Property Owner:       Graham & Jennifer Foster  
36 Crooked Mile Road  
Darien, CT 06820

Name and Address of Applicant &:  
Applicant's Representative:                 Robert F. Maslan, Jr., Esq.  
Maslan Associates, PC  
3 Parklands Drive  
Darien, CT 06820

Activity Being Applied For: Proposing to construct an outdoor recreation court ("sports court") in the northern portion of the yard and perform related site development activities.

Property Location: The subject property is located on the south side of Crooked Mile Road approximately 1,500 feet southwest of its intersection with Hollow Tree Ridge Road.

Zone: R-2

Date of Public Hearing: October 18, 2011

Time and Place: 8:00 P.M.    Room 119        Town Hall

Publication of Hearing Notices  
Dates: October 7 & 14, 2011                 Newspaper: Darien News

Date of Action: November 1, 2011            Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:   Newspaper: Darien News  
November 11, 2011

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plan, and the statements of the property owners/applicant

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whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.

- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to construct an outdoor recreation court (“sports court”) in the northern portion of the yard and perform related site development activities at 36 Crooked Mile Road. The subject property is 2.38+/- acres. The proposed multi-purpose seasonal sports court is an accessory use requiring a Special Permit under Section 405b of the Darien Zoning Regulations. It was noted that the court area would be about 60’ x 35’ in size, and constructed of an “asphalt-like” surface.
2. The plan last revised 10-18-11 specifically shows all proposed work at least 35 feet from the north property line and more than 50 feet from the wetlands in the rear of the property. The property is served by an on-site septic system, and the Darien Health Department has reviewed this application, and noted it has no objections or concerns with the submitted plans.
3. As part of the subject application materials, the applicant submitted a Stormwater Management Report from Redniss & Mead. The submitted plans show a proposed underground detention system with proposed stone swale, curtain drain, and level spreader.
4. The Commission notes with respect to the drainage system around the court, the need for the applicants to file a Notice of Drainage Maintenance Plan outlining the protocol for maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
5. At the public hearing, the applicant noted that there will continue to be landscaping on two sides of the proposed sport court. A combination of spruce and hemlock exist between the proposed court and the northerly property line, and one spruce exists to the south of the sport court. These existing trees will provide some screening between the neighbors and the area of the proposed multi-purpose seasonal sports court.
6. The multi-purpose seasonal sports court, as designed, complies with all yard setbacks and building coverage maximums in the Zoning Regulations. No members of the general public submitted comments for the record or commented at the public hearing.
7. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
8. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the

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site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.

9. The location and nature of the proposed use are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
10. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
11. With the specific conditions outlined herein, the proposal conforms to the standards for approval as specified in Section 1005(a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE, BE IT RESOLVED that Special Permit Application #269 is hereby modified and granted subject to the foregoing and following stipulations, conditions, modifications and understandings:

- A. Construction of the proposed multi-purpose seasonal sports court and related drainage work shall be in accordance with the following plan and materials submitted to the Commission.
  - Sport Court Site Plan depicting 36 Crooked Mile Road, prepared for Graham & Jennifer Foster, by Redniss & Mead, last revised 10/18/11, Drawing No. SE-1.
- B. The proposed court construction does not involve the installation of any lights and no lighting is approved.
- C. The approved plans show the protection of the hemlock and spruces to the north of the proposed sport court, as well as a spruce tree to the south of the proposed sport court. It is the responsibility of the owner to maintain that landscaping to the north and south of the court in good condition, and replace any landscaping that is dead, dying, or diseased with the same landscaping species and sizes. The goal of the landscaping is to provide visual screening of the multi-purpose seasonal sports court from the adjacent property to the north (from 34 Crooked Mile Road) to a lesser extent, to minimize the noise from people playing on the court.
- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans and any additional measures as may be necessary due to site conditions, including the tree protection filling as mentioned above. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. The plan submitted with the application includes the installation of a drainage system to manage the additional runoff to be created by the impervious surface. This drainage system must be

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installed prior to the completion of the project and/or use of the multi-purpose seasonal sports court.

- F. By December 31, 2011 (within the next 60 days) a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 36 Crooked Mile Road to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well, within the next 60 days of this approval and prior to the start of any filling or regrading work around the house.
- G. The applicant shall install the drainage system as shown on the submitted plans. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- H. A final “as-built” survey is hereby required to certify that the drainage and sports court construction are in compliance with the approved plans. A Professional Engineer shall certify in writing prior to the issuance of a Certificate of Zoning Compliance and/or use of the sports court, that the drainage work has been properly completed in accordance with the approved plans.
- I. In evaluating this application, the Planning & Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- J. The granting of this Special Permit does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. Zoning and Building Permits are required prior to the construction of the multi-purpose seasonal sports court.
- K. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action by (November 1, 2012). This may be extended as per Sections 858 and 1009.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. Within sixty days of this action, a Special Permit form and Notice of Drainage Maintenance Plan both must be filed in the Darien Land Records or this approval shall become null and void.

Chairman Conze read the following agenda item:

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**Land Filling & Regrading Application #266, John & Christa McNamara, 69 St. Nicholas Road.** Proposing to establish an additional driveway curb cut on the subject property and perform related site development activities.

Commission members reviewed the draft resolution and said that this seemed to be a well thought out project. The following motion was made: That the Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motions was made by Mr. Hutchison and seconded by Mr. Spain. All voted in favor of the motion except Mrs. Riccardo and Mrs. Cameron, who both abstained, because they had not attended the public hearing regarding this matter. The resolution was adopted by a vote of 4-0-2. The resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
November 1, 2011**

Application Number: Land Filling & Regrading Application #266

Street Address: 69 St. Nicholas Road  
Assessor's Map #6 Lot #91

Name and Address of Property Owner                      John & Christa McNamara  
181 Leroy Avenue  
Darien, CT 06820

Name and Address of Applicant & Applicant's Representative:      Allan Broadbent, LEED AP  
The Laurelrock Company  
969 Danbury Road  
Wilton, CT 06897

Activity Being Applied For: Proposing to establish an additional driveway curb cut on the subject property and perform related site development activities.

Property Location: The subject property is on the northwest side of St. Nicholas Road approximately 2,300 feet west of its intersection with Mansfield Avenue.

Zone: R-2 Zone

Date of Public Hearing: October 25, 2011

Time and Place: 8:00 P.M.      Room 206      Town Hall

Publication of Hearing Notices  
Dates: October 7 & 14, 2011

Newspaper: Darien News

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Date of Action: November 1, 2011

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:  
November 11, 2011

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plan, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to establish an additional driveway curb cut on the subject property and perform related site development activities. The subject property is served by public sewer. This will allow for a circular driveway. As the applicant explained at the public hearing, the driveway is at the end of St. Nicholas Road.
2. Stormwater management has been proposed as part of the application. A drainage narrative with associated report was prepared by J. Edwards & Associates, LLC. The proposed drainage system is shown on the submitted "Proposed Driveway Improvement Plan". The applicant's representative noted that the system is designed to handle two 50-year storms back-to-back. The Commission finds that the subject application complies with Section 880 of the Zoning Regulations—Stormwater Management.
3. The changes to the driveway will reduce the slope of the existing driveway. Tree removal will "open the property up", and other ornamental trees will be added by the property owner.
4. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
5. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #266 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

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- A. Land filling, excavation, and regrading work shall be in accordance with the following plan submitted to and reviewed by the Commission:
- McNamara Residence Proposed Driveway Improvement Plan, 69 St. Nicholas Road, by the Laurelrock Company, dated 9/22/2011, Sheet No. L01.
- B. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond. However, because this project is immediately adjacent to the public street and does require a permit from the Department of Public Works for the activities within the public right of way, and because of the steep slopes involved, the Commission hereby requires that a professional engineer hired by the McNamaras closely monitor and inspect the site at least once a week and submit a detailed weekly report to the Planning and Zoning Department. This report shall include the status of the sediment and erosion controls, an update on the work completed, progress on disturbed area stabilization and a report on whether all work is proceeding in full compliance with this approval.
- C. During the excavation, regrading and site work, the applicant shall utilize the sediment and erosion controls illustrated on the plan referred to in Item A above, and any additional measures as may be necessary due to site conditions, including tree protection as may be necessary. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. By December 31, 2011 (within the next 60 days) a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 69 St. Nicholas Road to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well, within the next 60 days of this approval and prior to the start of any filling or regrading work around the house.
- E. The applicant shall install the drainage system as shown on the submitted plans. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the street or adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- F. A final "as-built" survey is hereby required to certify that the drainage and driveway construction are in compliance with the approved plans. A Professional Engineer shall certify in

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writing prior to the issuance of a Certificate of Zoning Compliance that the drainage work has been properly completed in accordance with the approved plans.

- G. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- H. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This would include a Street Opening Permit from the Darien Public Works Department.
- I. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (November 1, 2012). This may be extended as per Sections 858 and 1009.

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and shall be filed in the Darien Land Records within 60 days of this action and prior to the start of any filling, excavation or regrading work proposed as part of this application, or this approval shall become null and void.

Chairman Conze read the following agenda item:

**Amendment of Special Permit #245, Infinity Fitness, LLC, 264 Heights Road.** Proposing to establish a new Indoor Recreational Facility (fitness studio) use in the ground floor space underneath Palmer's Market, in the space formerly occupied by Darien Physical Therapy Center.

Commission members reviewed the draft resolution. The following motion was made: That the Commission adopt the resolution to approve the project as noted in the conditions and stipulations. The motion was made by Mr. Spain and seconded Mr. Hutchison. All voted in favor except Mrs. Riccardo and Mrs. Cameron, who abstained because they had not attended the public hearing regarding this matter. The motion was passed by vote of 4-0-2. The adopted resolution read as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
November 1, 2011**

Application Number: Amendment of Special Permit #245  
Infinity Fitness, LLC

Street Address: 264 Heights Road  
Assessor's Map #75 Lot #27

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Name and Address of Applicant: David Peterson  
& Applicant's Representative: c/o Infinity Fitness, LLC  
80 County Street, 7A  
Norwalk, CT 06851

Name and Address of: Noroton Heights Shopping Center  
Property Owner: 264 Heights Road  
Darien, CT 06820

Activity Being Applied For: Proposing to establish a new Indoor Recreational Facility (fitness studio) use in the ground floor space underneath Palmer's Market, in the space formerly occupied by Darien Physical Therapy Center.

Property Location: The subject property is located on the north side of Heights Road approximately 625 feet east of its intersection with Hollow Tree Ridge Road.

Zone: DC

Date of Public Hearing: October 25, 2011

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices  
Dates: October 14 & 21, 2011

Newspaper: Darien News

Date of Action: November 1, 2011 Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action: Newspaper: Darien News  
November 11, 2011

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 630 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted application materials, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

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1. The proposal is to establish a new Indoor Recreational Facility (fitness studio) use in the ground floor space underneath Palmer's Market, in a portion of the space formerly occupied by Darien Physical Therapy Center. Infinity Fitness proposes to use 3,300+/- square feet, and Darien Physical Therapy Center, which used to occupy the entire ground floor, would only occupy a portion of the ground floor—about ½, and Infinity Fitness would occupy about ½.
2. It is expected that there would be up to five employees in the facility during certain times. There would be group classes, and as noted within the application, a maximum of twenty-five clients would be in the facility at once.
3. As described by the applicant at the public hearing, there will be a sound system with background music.
4. Infinity Fitness is considered a Special Permit use under Section 634f of the Darien Zoning Regulations, which allows Indoor Recreation Facilities via Special Permit.
5. Mailed notification of the public hearing was sent to property owners within 100 feet of the subject property. Nobody from the general public sent in comments regarding the application, or commented on the application at the public hearing.
6. The location and size of the use, the nature of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
7. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
8. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
9. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.

NOW THEREFORE BE IT RESOLVED that Amendment of Special Permit #245 is hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. The Commission hereby approves the proposed indoor recreational facility use as described in the September 19, 2011 letter from David Peterson, and the representations made at the Public

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Hearing on October 25, 2011. This includes the limitation of no more than 25 clients at any time, including those that are in a class and those that are training individually. Any final floor plans and use of the space must be consistent with representations made at the public hearing by the applicant, and this resolution.

- B. Because of the nature of the business, and the unique location of the Noroton Heights Shopping Center, there are no restrictions on the hours of operation.
- C. Due to the fact that there is no change in impervious surface proposed as part of this application, the Commission hereby waives the requirement for Stormwater Management under Section 880 of the Darien Zoning Regulations.
- D. If needed, the applicant shall use the trash area and dumpsters located behind the building. If used by this tenant, the tenant shall work with others to keep it neat and orderly.
- E. In order to minimize any impacts to other tenants within the building, the Commission requires that the sound system be used shall be for background music only, and shall be at a volume so as not to be audible outside the building or in the adjacent tenant spaces.
- F. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- G. The granting of this Special Permit does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. The applicant and property owner shall coordinate an application to the Architectural Review Board for any desired signage (wall sign and/or hanging sign).
- H. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (November 1, 2012). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations, the signing of the final approved plans by the Chairman, and filing of the Special Permit form in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

Chairman Conze read the following agenda item:

**Approval of Minutes**

*October 18, 2011 Public Hearing/General Meeting*

The following motion was made: That the Commission adopt the minutes as submitted. The motion was made by Mrs. Cameron, second by Mr. Spain and unanimously approved.

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

Chairman Conze asked if there was any new business to be discussed. Mr. Ginsberg said that he would like to briefly discuss the installation of proposed gas lines. The following motion was made: That the Commission discuss the installation of gas lines under other business. The motion was made by Mrs. Riccardo, seconded by Mr. Spain and unanimously approved.

Mr. Ginsberg explained that the gas line will be extended from Thorndal Circle to the back of the Police Headquarters rather than being installed in Hecker Avenue. He also noted that a gas line from the Boston Post Road to the Town Hall building will be installed parallel to Renshaw Road. He said that this work will travel through the Stony Brook corridor and will require approval from the Environmental Protection Commission. Although the Stony Brook corridor is a flood hazard area, there will be no change to the finished grades and the pipe will be in a water-tight installation. Commission members thanked Mr. Ginsberg for the update.

Chairman Conze noted that this would be the last Planning and Zoning Commission meeting for Mrs. Riccardo. He thanked her for her service to the Commission, and noted that the Commission will miss her insights and attention to detail.

There being no further business, the meeting was adjourned at 10:45 p.m.

Respectfully submitted,

David J. Keating  
Assistant Planning & Zoning Director

*11012011min*