

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
July 13, 2010**

Place: Auditorium, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Spain, Cameron, Hutchison, Riccardo, Voigt

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

FILMED BY: Channel 79

PUBLIC HEARING

Chairman Conze read the following agenda item:

Continuation of Public Hearing regarding Proposed Amendment to Zoning Map (COZM #1-2010) and Proposed Amendment to Zoning Regulations (COZR #2-2010), Thomas E. Golden Realty, Co., 169 Noroton Avenue LLC, & Noroton Heights Shopping Center Inc., 22 through 346 Heights Road; 72 Edgerton Street, and Edgerton Street (Map #75 Lot #30); and 273 West Avenue. Proposing to amend the Zoning Regulations to establish a new overlay zone—the Noroton Heights Mixed Use (NHMU) Zone and to amend the Zoning Map by “landing” that Overlay zone on the subject properties; and to create a new Section of the Zoning Regulations entitled, “Noroton Heights Mixed Use Zone (NHMU)” and to modify existing Sections 311 (Zone Classifications), 905 (Joint Parking) and 907 (Parking Structures) of the Zoning Regulations. The subject properties are located on the north side of Heights Road, consisting of approximately 18 acres, and are shown on Assessor’s Map #74 as Lots #8 through #20; and Assessor’s Map #75 as Lots #1-#4 and #22-30, all now within the DC (commercial) Zone. *PUBLIC HEARING OPENED ON JUNE 15, 2010. DEADLINE TO CLOSE PUBLIC HEARING IS JULY 20, UNLESS EXTENSION OF TIME IS GRANTED BY APPLICANT.*

It was noted that the Public Hearing was started on June 15th and was continued so that more people would have an opportunity to speak.

Bruce Hill recapped the discussion of the previous Public Hearing, and said that the proposal to amend the text of the Zoning Regulations and the Zoning Map designation are only the first step in the redevelopment process. He said that this will allow the Planning & Zoning Commission to establish policies and regulations to implement the modifications that will take place at the sites by the private property owners in the years to come. The proposed amendments to the Regulations would give greater flexibility to allow a greater mix of various retail uses, office uses and residential uses in the zone. At present, the Designed Commercial (DC) Zone limits the types of uses permitted. The Regulations would also give greater flexibility with respect to the height of buildings, the building coverage, setbacks, and required on-site parking. Mr. Hill said that the Planning & Zoning Commission would need to evaluate each and every proposed redevelopment plan and project before it could be implemented. He said that this is a big picture approach to the situation, rather than looking at an individual parcel. He also noted that there are no specific plans for any particular buildings or structures yet, because applicants cannot be expected to expend great

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sums for detailed plans if the Commission would not be able to approve those plans under the current Regulations.

Mr. Conze said that he has had an opportunity to review the recording of the first night of the Public Hearing and has reviewed a copy of the slides and other presentation materials. He said that he does not want the Commission to review redevelopment proposals on a building by building basis until a general depiction of community goals has been clearly established. He said that the Planning & Zoning Commission had suggested to Mr. Golden to take a big picture look at the situation rather than only looking at the redevelopment of Mr. Golden's property. He also said that it is important to coordinate and assure consistency of design and that it is helpful to have the design criteria incorporated into the Regulations. Mr. Hill said that he and his client have been trying to coordinate with other property owners and he said that it might be possible for the Architectural Review Board (ARB) to draft design standards for this particular zone and neighborhood. Mr. Ginsberg said that the Architectural Review Board has, within the past year, adopted a set of Commercial Design guidelines consisting of approximately 21 pages. He also said that the redevelopment of the Noroton Heights area would happen over an extended period of time, not all at once. The proposed regulations do allow for shared parking or parking structures, but each of these would then require Special Permit approval from the Planning & Zoning Commission.

Mr. Hill said that the Commission would have more latitude and also more authority and clout to guide developers along the process to obtain their approvals and still achieve the goals of the Town Plan. He said that applicants will need to work with the staff and with the Architectural Review Board and other community organizations before they get to the Planning & Zoning Commission for final review. He said that the overlay zone concept has been proposed because it will not take away any existing property rights, yet it will give property owners who want to achieve more development an opportunity to do so, but only if their design advances Town goals and they satisfy the Special Permit requirements. He said that the overlay zone also avoids creating non-conforming situations. Mr. Spain asked if Mr. Hill was suggesting that the Architectural Review Board be given more authority or a more proactive role. He also questioned why the overlay zone concept was being proposed. Mr. Hill responded that the Town must be careful about expansion of the Architectural Review Board authority since they are only advisory to the Planning & Zoning Commission, but he said that the advice and recommendations from the Architectural Review Board are given high regard and reliance by the Commission. He said that the overlay zone keeps the existing Designed Commercial zoning in place so that no property becomes more non-conforming, and no property owners have any rights or opportunities taken away. The new overlay zone does give property owners greater flexibility in what they can propose, but only if they go through the Special Permit process.

Mr. Hutchison said that there is some possible confusion with regard to the required setbacks and buffer area against residential zones and residential uses. He said that it is very important to maintain the buffers and to protect the residential neighbors. Mr. Hill said that he tried to have the proposed Regulations stick with the existing zone boundaries and noted that within 50 feet of the adjacent single family residential uses, the setback requirements and height requirements of the overlay zone would be the same as the residential zone. The use could be commercial, but the size and mass of the buildings could not exceed that which is permitted in the nearby residential zone. Mr. Hill said that the proposed regulations were designed to not be very specific on a parcel by

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parcel basis, but they do recognize some of the unique features of some parcels due to topography or adjacent neighbors' and then they provide some flexibility for those situations. He said that the standard, strict horizontally-measured 25 foot wide buffer extending from a residential zone boundary line does not always work well and, in some cases, may not be enough. In other cases, it is more than enough.

Mr. Conze said that it would be helpful to have some input from the Architectural Review Board. Mr. Ginsberg said that the Architectural Review Board meets next on July 20th and that the public hearing could be continued until after that date if the applicant is willing to grant an extension. Speaking on behalf of the applicant, Mr. Hill said that they would grant the extension, but advised that the Planning & Zoning Commission should define what input they want from the Architectural Review Board because there are no specific drawings or plans for them to review. He said that they might be able to give guidelines or general advice, but they will not be able to review specific building designs.

Mr. Ginsberg read aloud the comments from the Connecticut Department of Environmental Protection (DEP) as noted in a June 11, 2010 e-mail. Those comments are that the proposed Regulations are not inconsistent with the Coastal Area Management Act. He also read aloud the comments from the Southwestern Regional Planning Agency (SWRPA) in their letter dated June 7, 2010. SWRPA noted that none of the proposed activities are within 500 feet of any municipal boundary and that the proposed Regulations do encourage mass transit use and discourage automobile use. They note that parking on a shared or joint basis might affect adjacent sites. They also noted that structural parking would have no immediate inter-municipal impacts, but if the use of structural parking was expanded in the future, it may impact adjacent communities. Mr. Ginsberg said that there were several letters from the neighbors which have been copied and distributed to the Commission.

Mr. Nicholas Jordan of 260 West Avenue said that he lives across the street from the Stop & Shop grocery store. He said that it is a busy, commercial area that has had a number of violations over time. One of the problems is that garbage collection takes place at 3:00 in the morning because it is in a commercial area, yet it is immediately across the street from his residential property. He said trucks frequently idle all night long and the trees behind the building have either never been installed or have not been properly maintained and replaced. He said that there are smells from the commercial uses. Mr. Jordan said that if the proposed Regulations are adopted, the Commission must put a stop to the misuse of the commercial properties because it impacts the residential properties. Mr. Jordan also said that there are some wetlands on his property that are piped under West Avenue and the Stop & Shop parking lot. He said that at some point in the past, excavation to install a 48 inch diameter pipe resulted in at least two machines being stuck in the mud. He knows that there is a high ground water level in the area and is concerned that any use of structural parking or below ground-level parking, will not be practical or workable. Mr. Jordan said that the lights, noise and other aspects of a more intense, commercial development will impact the neighboring residential area and that the neighbors will lose value because of more development within a commercial zone. He said that this is a residential area and the subject district should not be allowed to have apartment buildings or other overly intense development.

Mr. Vladimir Kushnir of 264 West Avenue expressed concern about the two houses built in 2001 and 2002 on the north side of West Avenue as developed by Mr. Golden. He said that in heavy

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rain, the basement of at least one of those houses has filled with rain and now the property owners rely on large pumps within their basements. He confirmed that there is a very high water table in the area. He said that if below ground level parking were constructed on the south side of West Avenue, which is lower than the properties on the north side of West Avenue, the parking in the basement level garages would get flooded frequently. He also said that since housing would be permitted, some of that housing would have to be affordable housing and he questioned what the effect would be on the adjacent residential property values.

Ken Byrne of 250 West Avenue said it sounds to him like the Planning & Zoning Commission is predisposed to approving the requested changes, but he questioned what the change would be in the value of the commercial sites. He said that the commercial values might increase, but the residential values across the street would be lowered. He said that more people and more traffic and higher density within the commercial zone would lower neighboring values. He questioned what the impact of the more intense development, including lower income housing, would be upon the school system and on the more intense use of McGuane field which is a green, open recreational area located very close to the north side of West Avenue. He said if there are more people, then the children of the area will need more protection. The neighbors also would experience more flooding if the commercial property is more intensely developed. Mr. Byrne questioned why more specific plans were not developed and submitted for review. He wondered how there could be any continuity of design or of use, if specific plans are not submitted.

Sally Bohrer of 60 Dubois Street said that the proposed storm water retention basins would be located underground and this will accommodate flooding that has been experienced in the area. She expressed positive support for the proposal and said that the redevelopment of this old commercial area is needed. She said that it is better to have this collaboration of private property owners and the Town to address the storm drainage problems and flooding rather than cutting down 300 trees in Baker Woods and trying to make a surface level storm water retention basin in that area. She said that she is absolutely in favor of a new replacement shopping plaza in Noroton Heights.

Matt Forsythe of 252 West Avenue said he is concerned that there are no specifics, just loose renderings. He said that he has many questions about traffic impacts, congestion, health and safety, and property values of residential neighbors. He said that having more input and more detailed information would be better than the current proposal. He believed that the applicant needs to address these types of issues before the Commission can reach a conclusion.

Maureen Meehan of 3 Oak Park Avenue said that Mr. Golden had an informational meeting and there was discussion of the retention basin, but it sounds to her that it is a done deal. She said that there is a problem with the scale of the proposed redevelopment because there would be significant increases in density in close proximity to single family residential homes. She said that all proposed uses would contribute to traffic congestion just as Avalon, Allen O'Neill, the expansion of Middlesex School and the train station already have increased traffic. She said that three story buildings are too large for this area and said that the backs of the first floor commercial uses are really visible from many of the West Avenue homes. If three story buildings are allowed, then the residential neighbors would see three story buildings. She said that the submitted artist renderings do not very accurately depict the development that would be allowed by the proposed Regulations. She believed that the infrastructure (such as existing utilities, storm drainage, roads, etc.) is not

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adequate to accommodate more intense redevelopment. She said that the Town needs to meet the needs of the people that already live in the area. She said that new residents would have cars and will add to the traffic congestion and will require significant amounts of on-site parking. They will need their own parking spaces and will not abandon those spaces during the daytime when the businesses will need parking spaces. New residents would also impact schools such as the Middlesex Middle School and the High School, that are already crowded. She said that children from the AvalonBay development already need to go to the Tokeneke School due to the overcrowding experienced at Holmes Elementary School. She objected to the proposal, saying that it was the proposed density of development that would be too great. She said that the residents and neighbors do not want parking structures or parking garages. She said such structures are not for the benefit of the community and that the proposed development would be oversized and therefore the proposed Regulations need to be rewritten. She agreed that some redevelopment is necessary, but the primary responsibility of the Commission should be to protect the residential neighborhood, not to accommodate the developers. She said that the neighbors would be stuck trying to deal with the consequences of the extensive redevelopment.

Mr. Conze said that stormwater management and drainage are key issues that must be dealt with as part of any new application or any proposed redevelopment of the site. He said that infrastructure (utilities and roads) must also be discussed and dealt with. He said that it would be best if the Commission continues the public hearing to get more input from the Architectural Review Board and others. Mr. Spain said that some of the questions that should be addressed next time would include how the proposed redevelopment will relate with the Central Business District (CBD) and how it would function. He said that there is also a letter from Mr. Barbour that raises good points such as limiting residential units to sale versus rental units. Mr. Hill said that he would address these types of issues at the next meeting. Mr. Ginsberg said that the next available meeting date for the Commission would be on July 27th and that the Commission would need an extension from the applicant to continue the hearing on that night. Speaking on behalf of the applicant, Attorney Hill granted the extension so that the Commission could continue the public hearing on July 27th. The following motion was made: that the Planning & Zoning Commission recess the public hearing regarding this matter and continue the public hearing on July 27, 2010 at 8:00 P.M. in a room to be determined within the Town Hall. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved.

At about 9:25 p.m., Chairman Conze then read the following agenda item:

Special Permit Application #262, Darien Land Management LLC, (tenant: Trorient), 76 Tokeneke Road (formerly known as 70 Tokeneke Road). Proposing a commodity trading office use in a portion of the existing first floor space. The subject property is located on the northeast side of Tokeneke Road, directly across from the I-95 Exit 12 on-ramp (southbound), and is shown on Assessor's Map #38 as Lot #2, and is in the DC Zone.

Attorney Michael Murray explained that a Special Permit is requested by the applicant to use a portion of the first floor as a board room and conference room and kitchenette and bathroom in conjunction with the previously approved office use of the second floor. He said that there would be no change to the exterior of the building and that the facilities on approximately one-third to one-half of the first floor would be used in conjunction with the second floor office use which was approved in May of 2010. He said that the incoming tenants are financial advisors, that the subject

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offices have no trading floor, nor are these tenants brokers. He said that there will be no change of the parking need and no extra employees because of the boardroom and other facilities on the first floor. He also noted that this first floor office use would not have any impact on neighboring property owners.

Mr. Ginsberg explained that this property is located in a Designed Commercial (DC) Zone like the Goodwives Shopping Center or Noroton Heights business area. It is not within the Central Business District that has more stringent requirements for office uses on the ground floor. He said that a portion of the first floor would still be available for a retail business type of use and that the amount of on-site parking would appear to be sufficient to accommodate the proposed use and most potential retail uses on the ground floor. Mr. Spain asked about the viability of a retail use on the remaining portion of the first floor. Attorney Murray said that the owners of the property are seeking an appropriate retail use that will complement their office use on the second floor. He said that there are only 7 or 8 employees in the offices on the second floor and that there will be more than enough on-site parking to accommodate a retail use on the ground floor.

There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and make a decision regarding this matter at a future meeting. The motion was made by Ms. Cameron, seconded by Mrs. Riccardo and unanimously approved.

At about 9:30 p.m., Chairman Conze then read the following agenda item:

Special Permit Application #263, Janet Resino, 80 West Avenue. Proposing to establish a home occupation within a portion of the existing residence. The subject property is located on the north side of West Avenue approximately 700 feet west of its intersection with Leroy Avenue, and is shown on Assessor's Map #18 as Lot #5, and is in the R-1/2 Zone.

Janet Resino explained that she has had considerable personal and professional experience dealing with elderly care issues such as health care, living accommodations, financial matters and government services, etc. She proposes to open a consulting business in her house to assist other people with these types of issues. She said that much of consulting work is conducted via computer and telephone and through other resources. She now has this type of office use in New York and Stamford, but since she has moved to Darien, she wants to be able to do this consulting work from her house as well. She said most of the time, she meets with the clients at their residences (not at her office) and that when she has to meet with other professionals to arrange for services for her clients, she frequently does so at those other offices. She said that an 11' x 15' room would be dedicated for the office and it would be an informal space for her and an occasional client to talk and work out strategies. She said that there will be no exterior changes to the building, and that visitations to the property by clients or associates would happen very seldom. There are no products or inventory being dispensed from the site and that there is sufficient on-site parking within the driveway turnaround area to accommodate the occasional business visitor. She said that this is a professional service business, not a sales facility.

In response to questions, Mrs. Resino said that her elderly clients would not visit her. It would be more likely that a family member or caretaker would come to this home office rather than the actual elderly client. She said that there is no need to make the existing residential structure compliant

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with the Americans with Disabilities Act. She said that if a client or family member does require some accommodation, they would meet at a different location. Mr. Ginsberg said that for this type of home occupation with very few visits by clients or customers, there are seldom any requirements by the Fire Marshal or Building Official because they still consider it primarily a residential use. The applicant said that because there is a turnaround in her driveway, visitors will not have to back out onto West Avenue.

There were no comments from neighbors or any other persons. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter, and will make a decision at a future meeting. That motion was seconded, and unanimously approved.

At about 9:45 p.m., Chairman Conze then read the following agenda item:

Land Filling & Regrading Application #243, Robert & Natalie MacDonald, 3 Lakeside Avenue. Proposing to fill and regrade and to install an associated curb along a portion of Lakeside Avenue and to perform related site activities. The subject property is located on the northwest corner formed by the intersection of West Avenue and Lakeside Avenue, and is shown on Assessor's Map #17 as Lot #102, and is in the R-1/5 Zone.

Steve McAllister, Professional Engineer of McChord Engineering, explained that the grade at the south end of the site is relatively low, and that several inches of water must accumulate in a large puddle before that water flows into catch basins on West Avenue or Lakeside Avenue. The proposal is to slightly regrade the property so that the water is channeled out into the catch basin in the street. He said that the Public Works Department does not want a direct new pipe into the catch basin in the street. Mr. McAllister said that the proposed fill would reduce the area of puddling in the lawn before it is able to flow offsite into the catch basin. Mr. Spain said that he has passed by this site many times on his way to and from the train station, and noted that the ground water in the area is probably very high due to the proximity of Tilley Pond.

Natalie MacDonald said that occasionally Tilley Pond does overflow through the drainage system and that at times the Town has had to install sandbags before some storms to avoid the water topping the banks of Tilley Pond. She said that the Town should consider lowering the pond level before a storm occurs, so that it is less likely that these banks of the pond are overtopped.

There were no other comments from the Commission or the general public. The following motion was made: That the Commission close the public hearing regarding this matter and make a decision at a future meeting. The motion was made by Mrs. Cameron, seconded by Mr. Spain and unanimously approved.

There being no further business, the meeting was adjourned at 9:55 P.M.

Respectfully submitted,

David J. Keating
Assistant Director