

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
SEPTEMBER 9, 2008**

Place: Auditorium
Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Spain, Finke, Hutchison, Grimes, Bigelow

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

PUBLIC HEARING

Mr. Conze read the second agenda item first:

Continuation of Public Hearing regarding Coastal Site Plan Review #235, Land Filling & Regrading Application #206, Bad Penny LLC (represented by Mark Alex Maidique), Raymond Street. Proposal to raze the existing structure and construct two new single-family residences with associated filling and regrading and perform related site development activities within a regulated area. The subject properties are accessed via an access from the north side of Raymond Street, approximately 425 feet east of its intersection with Cliff Avenue and are shown on Assessor's Map #36 as Lots #107 & #108 in the R-1/5 Zone. *PUBLIC HEARING OPENED ON 6/24/2008.*

Mr. Ginsberg explained that the application is still pending before the Environmental Protection Commission, and they have not yet rendered a decision on the matter. He confirmed that a Zoning Board of Appeals variance had been obtained. Mr. Ginsberg said that he understood that the applicant might be withdrawing the application. The applicant was not present. The Commission noted that there was no one to speak regarding the application. The following motion was made: That the Public Hearing regarding this matter be closed. The motion was made by Mr. Finke, seconded by Mr. Bigelow and unanimously approved.

Mr. Conze then read the following agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #238, Land Filling & Regrading Application #210, Glazer Construction, 135 Five Mile River Road. Proposal to raze the existing residence and construct a new single-family residence; abandon existing septic system; relocate existing stone walls; install drainage facilities; construct a pool and spa with associated filling and regrading; and perform related site development activities within a regulated area. The subject property is located on the east side of Five Mile River Road, approximately 1,100 feet south of its intersection with Davis Lane and is shown on Assessor's Map #67 as Lot #4 in the R-1/2 Zone. *PUBLIC HEARING OPENED ON 7/29/2008 AND WAS IMMEDIATELY CONTINUED TO 9/9/2008. DEADLINE TO CLOSE PUBLIC HEARING IS 9/9/2008, UNLESS EXTENSION GRANTED BY APPLICANT.*

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Tom Ryder of Land-Tech represented the applicant and explained that the property contains 0.72 acres of land, and is located between Five Mile River Road (to the west) and the Five Mile River (to the east). He said that plan is to demolish the existing house and to abandon the existing septic system. A new house will be constructed to comply with all side yard setback requirements, and the new house will be connected to the sanitary sewer line that has recently been installed in the street. The driveway will be relocated to the south. Mr. Ryder said that the topography on the property is rather steep. The grade rises from the street to the house location, and then from the house location the grade falls off sharply toward the river. There are two retaining walls located between the house and the river. There are two sheds located down near the water (the river), and they will be removed. The "boat house" structure near the river will be preserved and will tie into the sanitary sewer. In order to accommodate the proposed new house and the proposed new swimming pool to the east of the house, they will need to relocate a retaining wall 15 feet closer to the river. Mr. Ryder said that the storm water runoff will be directed into a gallery system so that it can infiltrate into the ground. He said there are two staircases from the developed portion of the site down toward the water. They propose to have lawn in the area between the seawall and the first retaining wall. He said that they will use only organic fertilizers and pesticides in that area. He said that 20% is the maximum allowable building coverage, and their proposed development including the boathouse, the new house and the swimming pool will be 19.36% of the lot area.

Mr. Glazer said that he has spoken to the neighboring property owners, and that he has designed the house to fit into the unique characteristics of the site. He noted that blasting will be needed for the foundation of the house.

Mr. Ryder said that the impervious area within 100 feet of mean high water will increase by only 90 square feet. He said that they will also be using a diatomaceous earth filter to minimize the potential for chlorine-like chemicals getting into the Five Mile River environment.

Mr. Ginsberg said that the Environmental Protection Commission has reviewed the plan, and they have approved the permit application. He said that the application was referred to the Connecticut Department of Environmental Protection. They responded with a letter dated 7/31/2008. That letter caused numerous revisions to the plans, and they have now received a revised plan. Mr. Ginsberg said that he understands that Mr. Glazer is trying to work with the Connecticut DEP to address their concerns.

Mr. Bigelow asked if it was necessary to keep the Public Hearing regarding this matter open. Mr. Ginsberg said he did not think it was necessary. There were no comments regarding the application. The following motion was made: That the Commission close the Public Hearing regarding this matter. The motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

At about 8:15 P.M., Mr. Conze then read the following agenda item:

Proposed Amendment to the Darien Zoning Map and Zoning Regulations, Affordable Housing Application, Site Plan Application #262, Land Filling & Regrading Application #211, Amendment to the Town Plan of Conservation & Development, Christopher & Cynthia Hamer, 26 Oak Crest. Proposing to construct 10 residential condominium units (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in two new buildings with associated parking, and to perform related site development activities. The

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applicant is requesting the establishment of a new HOD zoning district; an amendment to the zoning map rezoning the property to HOD; and corresponding changes to the Town Plan. The subject property is located on the southwest side of Oak Crest approximately 1,000 feet east of its intersection with Mansfield Avenue, and is shown on Assessor's Map #15 as Lot #101 and Parcels X-1 and X-2, in the R-1/2 Zone.

Matthew Ranelli of Shipman & Goodwin said that the notice letters to neighbors and proof of mailing were previously submitted. He noted that a series of correspondence regarding storm water management had been generated during the Environmental Protection Commission review of this matter. These were between Spath-Bjorkland Associates and Tighe and Bond, from July 14 to August 26. Those have been added to the Planning and Zoning Commission record, and they have been distributed to the Commission members. He said that the subject property at 26 Oak Crest is 1.185 acres in size. They propose to remove the existing dwelling and construct 10 units on the site. Thirty percent of the units will be set aside as affordable housing in accordance with Section 8-30g of the Connecticut General Statutes. He said that Section 8-30g allows this type of application. The application is 1) a zoning text amendment; 2) a zoning map amendment; 3) an amendment of the Darien Town Plan of Conservation and Development as needed; and 4) a site plan for the development of the property. He said that Section 8-30g has different standards than would normal applications processed by the Commission. He said that public health and safety issues must be balanced with the need for affordable housing in Darien. He said that if the health and safety concerns outweigh the need for affordable housing in Darien, then the Commission can amend and modify the plan, or approve it with conditional changes only to the extent necessary to address the health and safety concerns. He said that Section 8-30g creates a collaborative aspect in that the applicant can then return to the Planning and Zoning Commission as necessary. He said that Darien has an unmet need for affordable housing as do many other towns in the area.

Mr. Ranelli submitted a packet of information dated June 17, 2008.

Mr. William Golden said that he is an adjacent property owner that has become an intervener in the Environmental Protection Commission process. He said that he assumes that he will have similar intervener status with the Planning and Zoning Commission. He said there are two fundamental questions that haven't been addressed yet. Mr. Conze indicated that it would be necessary to allow the applicant to make the presentation first, then Mr. Golden can raise his concerns after the Commission members ask their questions.

Mr. Ranelli said that the need for affordable housing in Darien is noted in Tab 12 of the submitted materials. He said that there are only 122 affordable housing units in Darien that he knows of. There are approximately 7,000 dwelling units in Town. He said that Darien housing is very expensive. Even the condominiums cost an average of \$690,000. Mr. Ranelli reviewed the booklet of information that he submitted. He reviewed the affordability plan and noted that some of the affordable housing units would be available for people that qualify because they only have 60% or less of the median State income. The other units would be available to people who have 80% or less of the median State income. There is a possible issue as to whether one or two units will be available at the 60% median income range. He said that some of the units will have a third bedroom (those are the units that do not have an attached garage). He said that two of the affordable units will contain three bedrooms, and one of the affordable units will contain two bedrooms. Mr. Ranelli said that the people that have an income of \$44,334 or less for a family of

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four would qualify as having an income of 60% or less of the State median income. They would be able to buy a unit for \$134,282. People that have an income of \$59,112 for a family of four would qualify because they have an income that's 80% or less of the State median income. They would be able to buy a unit for \$194,536. In response to a question, Mr. Ranelli noted that the market rate of the units would be in the \$600,000 - \$700,000 range. He said that all the units will be of high quality construction and finishes. This will include the affordable housing units that will be comparable to the standard units in the rest of the development.

Mr. Ranelli said that his experience is that there will be no drop-off in the market value of the seven units due to the three affordable housing units in the project. He said that he does not expect any impact on the value of surrounding properties. He said that all the units will be obligated to pay taxes, and all will be properly maintained. He said that this is a high-quality neighborhood, and there are high property values in the area. There are good transportation facilities near the property, and this is one of many "infill" opportunities where affordable housing could and should be built.

Mr. Spain said that on Page 4 Tab 2 of the submission, it indicates that the State Plan of Conservation & Development identifies the surrounding area as "neighborhood conservation." He asked Mr. Ranelli to explain. Mr. Ranelli said that the State Plan of Conservation and Development includes a map and a detailed narrative with color-coded designations and written summary for various categories of land use. He said that he will provide a map that designates the extent of the neighborhood conservation district around the subject property.

Mr. Ranelli referred to Tab 10 of the Report, which is an engineering report. He said that he provided a summary for each Commission member and has provided a much thicker appendix of the engineering materials for the application file. He said that Tab 13 refers to water company information indicating that they have service available in the area and will serve the site with public water.

Mr. Ranelli said that the site is within walking distance of the downtown and transportation facilities (Tab 14). Mr. Spain said that apparently the calculation of distance was done on a straight line rather than on actual sidewalks or street distances that is how people would actually walk. Mr. Ranelli said that he will let the written materials stand as is because it is a general sense of the distance from the downtown and transportation facilities, and compared to much of the rest of Darien, this site is relatively close to those facilities.

Bill Carboni, PE, of Spath-Bjorklund Associates Inc., Engineers and Surveyors, explained that the property is on the east end of Oak Crest and has 75 feet from the project to the Goodwives River. A sanitary sewer pipe and a drainage pipe travel through the property, and there are approximately 61 square feet of wetlands on the subject property. He said that the four-unit building will cover approximately 2,670 square feet of ground, and the six-unit building will cover approximately 3,200 square feet of ground. Each building will be served by public sanitary sewer and public water. He said that there would be 14 garage spaces and 10 outside parking spaces. They would be accessed through a 24 foot wide driveway to allow traffic flow in each direction. There are 2.4 parking spaces per dwelling unit. Mr. Carboni said that the drainage system has been designed to maintain the peak rate of storm water runoff leaving the site in all designed storms ranging from a two-year to a one hundred year storm. Part of the drainage system will be connecting into the drainage system within Granaston Lane. He said that storm water detention basins will drain out so that they

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will be functional if rain events happen on consecutive days. In order to preserve the quality of storm water being discharged from the site, they will be installing deep sumps, hooded outlets and catch basins. He said that 80% or more of the total suspended solids from the first inch of rainfall will be captured by the water quality aspects of the drainage system. The storm water would then travel to a series of buried underground rain tanks, then to an above ground storm water detention system. The detention basin will have a metered outlet approximately 2.5 feet above ground level to control the outflow of water from the site. He said that the rain tanks are not designed to allow water to percolate out, but are designed to hold water in place to minimize a peak discharge of runoff. He said the maintenance schedule has been provided for all parts of the storm drainage system. He said that questions were raised concerning the plowing of snow. He said that snow would generally be plowed from the upper portion of the site near Oak Crest toward the lower portion of the site. It can be stored uphill in the storm water detention basin so that when it melts it will melt into the detention basin. They will be using salt to melt the snow instead of sand wherever possible. This will minimize the need for maintenance of the storm drainage system. The maintenance plan calls for the removal of any accumulated sand on a periodic basis. He said that the storm drainage system design meets the quality and quantity standards established by the State of Connecticut.

At about 9:15 P.M., Matthew Ranelli then introduced Alan Mess to discuss traffic. Mr. Mess explained that he is Vice President of Milone & MacBroom, and that he is a professional engineer and a member of the Institute of Traffic Engineers. He said that he has studied the proposed development and the surrounding area, Tab 11 in the submitted report. He noted that Oak Crest is a dead end street with no turn around. He estimates that the proposed 10 condominium units would each generate approximately 10 vehicle trips per unit per day. During the peak hour, approximately 10 new vehicle trips would be generated. This would be in addition to the existing 17 trips generated during the peak hour by the existing houses on Oak Crest. He said that his experience indicates that the proposed 2.4 parking spaces per unit will work well. He believed that this will be sufficient on-site parking.

Mr. Bigelow said that if 10 more families are added to Oak Crest, it might be necessary for the school system to add a bus stop at the Mansfield Avenue end of the street, or to have the school buses enter into Oak Crest. The fact that there is no turn around at the end of Oak Crest would create a problem.

Mr. Mess responded that a typical residential street like Oak Crest can accommodate the added vehicles and types of vehicles that would be expected from the proposed ten condominium units. He said that the additional traffic would not require widening or changing the street. He explained that emergency vehicles will be able to access the site and then back up into the turn around area to be constructed. They would then be able to leave the site while driving forward rather than having to back out into the existing paved portion of Oak Crest.

Mr. Bigelow noted that multi-family buildings often need more flexibility for emergency access and more space for fire apparatus so a fire does not spread from one unit to an adjacent unit. He also said that a school bus turnaround may be necessary. Mr. Mess replied that the proposed development would not cause any undue risk to pedestrians on the street due to the incremental increase in volume. He stated that there would be an increased risk due to more traffic, but it would not be an undue risk.

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Jeremy Ginsberg, Director of Planning, read aloud the August 5, 2008 comments received from Robert Buch, Fire Marshal. Mr. Buch commented that access to Oak Crest is difficult at present. Mr. Ranelli said that a complete and detailed response will be provided to address all the concerns and comments that have been raised. Mr. Mess said that there will be some marginal increase in the volume of traffic on Oak Crest, and a small increase in the number of children at the bus stop, but he does not envision any traffic or safety problem.

Mr. Spain noted that Tab 11 of the submitted material indicates that there are no reported accidents on Oak Crest itself, but he wonders whether there have been accidents at or near the intersection of Oak Crest and Mansfield Avenue. Mr. Mess responded that none have been reported to him by the police, but he noted that accidents that are reported are oftentimes based on whether there were injuries to persons, or whether the dollar value of damage to property exceeds a certain threshold. He said that he will try to get more information about any accidents on Mansfield Avenue or near the intersection of Mansfield Avenue and Oak Crest in preparation for the next meeting.

Mr. Conze noted that traffic studies were conducted at various times during various days. He said that apparently peak traffic count was between 4:45 p.m. and 5:45 p.m., but this does not account for school buses in the area nor for the train station traffic. These often occur before 7:30 a.m. when many staff members are going to the nearby Royle School, and when many people are going to the train. Mr. Spain noted that there is a much greater concentration of people leaving the train station after 6:00 p.m., and that the study might have missed that peak hour. He said that the traffic count needs to be expanded to look at a wider variety of times. Mr. Mess mentioned that he will investigate those concerns.

Mr. Conze said that he understands that the Town has an easement for a turn around at the end of the street. Mr. Ranelli replied that the Town does not have an easement, but does have the right to acquire a portion of the subject property and make it into a turn around. He said that his client owns the land now, and nothing in the deed prevents his client from using or developing the property unless or until the Town acquires the land. He added that the property in question is the means of access from Oak Crest into the site. He said that the property ownership and Town rights is not an issue that can be decided by the Planning and Zoning Commission. He suggested that the matter be referred to Town Counsel. He said that the Town has never exercised its right to acquire the property. The Town has not taken any action to create the turn around at the end of Oak Crest. He referred to Map #3853 in the Darien Land Records, and specifically to Note #10 that indicates that Parcel X-2 is a turn around that is reserved for highway use and is to be conveyed to the Town upon demand, for no financial consideration.

Mr. Ranelli submitted a copy of the August 25, 2008 letter to Mr. Jacobson.

At about 9:55 P.M., Joseph Canas, Professional Engineer, of Tighe & Bond, explained that he was hired by the Town to analyze the storm drainage aspects of the project. He reviewed the various correspondence that he has generated and the comments and issues that have been raised. One of the issues has been analysis to determine whether the peak discharge from this site would coincide with the peak discharge from Granaston Lane. He said that the applicant has been able to demonstrate that there is enough capacity in the Granaston Lane storm drainage system to accommodate the runoff from the subject property. He mentioned that a similar finding has been

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made with respect to Goodwives River. He said that the applicant has submitted revised information in response to issues raised at the Environmental Protection Commission meeting of August 20, 2008. He noted that he is still reviewing their responses.

Mr. Conze said that it appears that the volume and velocity of storm water runoff coming down from Oak Crest and the proposed turn around area could go past the proposed catch basin. Mr. Canas said that a curb analysis indicates that a six inch curb will contain the flow of water. He noted that the increase in pavement will increase the velocity of the water, and he will re-examine that issue. He said that there are two catch basins just above the site in Oak Crest. They deposit water into a pipe that goes through the subject property, but storm water from the site is not tied into the pipe that goes through the property. Mr. Canas explained that at present there is a sheet flow of water over a mostly undeveloped area. He said that will change and become directed into Granaston Lane after it goes through the storm water treatment areas on the site. He added that there is no visible evidence of scouring, and that the site detention system and metering outflow system are designed so that the timing of the outflow will not coincide with the peak drainage flow off site.

Mr. Ginsberg indicated that the Environmental Protection Commission hearing is scheduled to continue on Thursday, September 18, 2008. He suggested that it might be appropriate for the Planning and Zoning Commission to continue this Public Hearing on September 30th. Mr. Ranelli said that he would grant an extension of the statutory time period to allow the Commission to continue the Public Hearing on that date.

At about 10:05 P.M., Mr. Conze asked if there were any members of the public who would like to speak. Mr. William Golden of 8 Granaston Lane said that he is an intervener in the Environmental Protection Commission process. He wondered who the applicant really is. He said that Section 8-30g of the State Statutes is subject to abuse as people try to increase the value of their land by threatening to put affordable housing on the property. He claimed that the Connecticut Supreme Court has ruled that towns are entitled to an assurance that the affordable housing units are actually going to be built. He referred to a *Kaufman vs. Danbury* case. He believed that if somebody is abusing the State Statutes, the Commission should look past the proposal and examine it closely. He questioned who is behind Oak Crest Road, LLC and Oak Crest Capital Partners. He said that in fact, those are controlled by Mr. Hamer. He said that Mr. Hamer has repeatedly threatened an affordable housing application if the neighbors did not support his subdivision proposal. He mentioned that Mr. Hamer met with neighbors and then wrote a follow-up letter indicating that he wanted to subdivide his property. Mr. Golden said that the site includes approximately one third of an acre that the Town could take if it wants to. He submitted a letter from a previous owner by the name of Clark. He claimed that the previous owner had tried to subdivide the property, but was unable to because of the Town's ability to take the land area for the Town. He said that the Town had refused to waive that right. There was uncertainty whether a formal application had ever been submitted in the 1970s or 1980s. Mr. Ginsberg said that he will research to see if there are any formal applications in the Planning and Zoning Commission's files.

Mr. Golden believed that this is a bad faith application, and that the threshold issues should be addressed before more time is spent on this matter. He said that there is a lack of details about the involvement of various parties. He submitted photographs of water in the pipe on Granaston Lane

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and said that the pipe was virtually full as the result of a 25 Year Storm. He said that changes have already been made to the drainage pattern by Mr. Hamer because he has bypassed a catch basin.

Julie Hekker of 19 Granaston Lane explained that during a storm on this past Saturday night, the water was already rising above the curbs. She wondered how intense the storm was, but believed that the storm drainage design of the project would not be adequate.

Joe Adams of 10 Granaston Lane noted that he had delivered a letter to the Commission earlier in the day, and that letter was now part of the file. He was concerned about storm water runoff and the amount of water in Goodwives River in storms. He said that he will submit a DVD of the effects of the last rain storm. He said that water backs up on the uphill side of Granaston Lane under the existing conditions.

Jean Bollman of 29 Granaston Lane expressed her concern about storm water runoff and wondered whether the removal of total suspended solids would include the removal of chemicals. Mr. Ranelli said that he understands that any chemicals that are attached to the soil or solid particles would be removed, but other chemicals would be not captured by the water treatment system. Mrs. Bollman said that railroad ties and other materials had washed down the river and collected along with much debris. She said that unfortunately there are no fish, frogs or tadpoles in the waters of Goodwives River. She expressed her concern for the water quality that may be impacted by the proposed development because more people would be living close to the river.

Dan Anderson of 19 Holly Lane explained that he is a volunteer fire fighter, and said that it is already difficult to access the site due to the lack of a turn around in Oak Crest. He said that if there was a fully involved fire, 10-12 emergency vehicles and volunteer fire fighter vehicles could be at the site at once, especially during the day. These would include large fire trucks and police vehicles. He said that the large fire trucks would not go off the pavement. He said that there is low water pressure in the area and that the low pressure makes fighting a fire even more difficult. Mr. Spain asked if there were two houses instead of 10 condominium units, would it be as likely to need as much pressure to fight a fire. He also asked if there is any difficulty getting to fires on the street under the existing conditions. Mr. Anderson responded that access to the back of these dwellings would not be achievable by the large fire trucks. The fire fighters would have to carry ladders to the back portions of the building.

Peter Ryan of 18 Roland Drive said that he is appalled that the applicant is not in attendance. He noted that the Darien Affordable Housing Advisory Commission is in support of affordable housing, but not at the cost of neighborhood busting. He read aloud a petition in opposition to the application. The petition notes that there are 60 or more children who cross Oak Crest each day on their way to Royle School. He said that adding 20+ more cars puts children at grave risk. He believed that the risks of safety of the children outweigh the benefits of adding three affordable housing units.

Ashleigh Banfield of 128 Mansfield Avenue noted that many traffic accidents and injuries happen to children on those major and minor streets. She explained that children represent a disproportionately large number of pedestrians injured in traffic accidents and communities need to calm traffic in order to minimize the accidents and threats to children.

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Mr. Spain said that he would like to read the court case suggested by Mr. Golden, and wants more information from the applicant about their ability to actually implement the project in accordance with Section 8-30g. Mr. Ranelli confirmed that Mr. Hamer is the principal behind the application, and he fully intends to implement the project.

With the concurrence of Mr. Ranelli, the following motion was made: That the Commission continue the Public Hearing regarding this matter at the meeting to be scheduled for September 30, 2008 at 8 p.m. in a room to be determined within Darien Town Hall. The motion was made by Mr. Finke, seconded by Mr. Spain and unanimously approved.

There being no other business, the meeting was adjourned at 10:57 p.m.

Respectfully submitted,

David J. Keating
Assistant Planning & Zoning Director

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