

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 14, 2020

Application Number: Coastal Site Plan Review #165-A
Flood Damage Prevention Application #173-A

Street Address: 14 Raymond Street
Assessor's Map #36 Lot #98

Name and Address of Property Owner: Lawrence Stephens
14 Raymond Street
Darien, CT 06820

Name and Address of Applicant & Applicant's Representative: John Hilts
P.O. Box 47
Rowayton, CT 06853

Activity Being Applied For: Proposal to construct and install a dock consisting of a fixed ramp, pier and platform, and to perform related site development activities within regulated areas.

Property Location: The 0.16+/- acre subject property is located on the east side of Raymond Street approximately 300 feet north of its intersection with Tokeneke Road.

Zone: R-1/5

Dates of Public Hearing: January 21, 2020 continued to February 25, March 24 (cancelled), March 31 (cancelled), April 21 (immediately continued), May 5 (immediately continued), May 19 (immediately continued), May 26, 2020, and June 23, 2020.
Deliberations Held: July 7, 2020

Time and Place: 8:00 P.M. Room 119 and Room 206 (6/23 only) Town Hall and GoToMeeting (online) (5/26 and 6/23 only)

Publication of Hearing Notices
Dates: January 9 & 16, 2020 Newspaper: Darien Times

Date of Action: July 14, 2020 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: July 23, 2020 Newspaper: Darien Times

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

- the proposed use and activities must comply with all provisions of Sections 406, 810, and 820 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 the application 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.

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- 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 application is to construct and install a dock on the Five Mile River consisting of a fixed ramp, pier and platform, and to perform related site development activities within regulated areas. This dock will replace a dock that was previously located on the property in the same general location.
2. Testimony on this matter was taken at the public hearings on January 21, February 25, May 26 and June 23. During the public hearings on the matter, Mr. Hilts, the applicant, noted that the new proposed dock was to replace a smaller timber dock that had since been destroyed by construction activities on the adjacent property to the north (now owned by Dr. Perreira). It was noted that the new dock is proposed to be constructed in generally the same location as the previous structure. The submitted survey entitled, "Plot Plan of property prepared for Timothy Clark & Barbara Bruce Field, 14 Raymond Street" by Arcamone Land Surveyors, dated February 18, 1999, shows the location of that previous dock.
3. Several neighbors and members of the public spoke during the public hearing, related to potential navigational impacts on the Five Mile River and impacts to ecological habitats within and directly adjacent to the River.
4. A survey was submitted for the record entitled, "Improvement Location Survey, 14 Raymond Street, Prepared for Lawrence Stephens and Laura McKittrick", by William W. Seymour & Associates, P.C., dated April 16, 2020, last revised April 22, 2020. A bathometric survey, dated April 22, 2020, was submitted for the record to allow CT DEEP and the Commission to better ascertain the potential impacts of the dock on navigation within the Five Mile River.
5. Commission members noted concerns regarding the size of the dock and questioned whether the landing area could be rotated to the downstream side to further alleviate navigational concerns. It was explained that if the application were to be approved by the Commission, it would be important for the property owner to comply with berthing restrictions imposed by the State of Connecticut Department of Energy and Environmental Protection (DEEP).
6. Based on concerns raised during the public hearing from the Planning & Zoning Commission, the Five Mile River Commission, CT DEEP, and the public, the applicant submitted revised plans, dated June 4, 2020 for the Commission's consideration. Those plans modify the proposed dock to relocate it away from the upstream property boundary (20 Raymond Street) and closer to the shoreline. This revised location, along with other concessions, was reviewed and agreed to with conditions and stipulations by the neighbor, Dr. Perreira, and noted in an e-mail from Wilder Gleason to John Hilts dated June 4, 2020.

STATE OF CT DEEP & ARMY CORPS OF ENGINEERS APPROVALS

7. On September 19, 2019, the State of CT DEEP issued License #201907997-LISGP approving this project. A copy of that approval was submitted for the record and is hereby incorporated by reference.

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8. On February 25, 2020, CT DEEP issued a letter responding to assertions from the Darien Five Mile River Commission and attorney Wilder Gleason, that the proposed dock, if installed, would have adverse impacts to navigation in the River and interfere with riparian access at 20 Raymond Street. CT DEEP requested supplementary information from the applicant to assess these claims.
9. On May 12, 2020, CT DEEP issued a modified permit for the dock (Modification of #201907997-LISGP) in a two-page letter, with conditions prohibiting the berthing of vessels on the north or east sides of the proposed float. In that approval, the DEEP notes that “..the berthing restriction on the north and east side of the float will preserve the established navigation.” A copy of that modified approval is hereby incorporated by reference.
10. On June 26, 2020, CT DEEP approved a de minimis change to the dock requested by the applicant (plans last revised June 5, 2020 – revision 5).
11. The Army Corps of Engineers authorized this project as part of NAE-2019-02089 on August 7, 2019. A copy of that approval was submitted for the record and is hereby incorporated by reference.
12. On May 14, 2020, the Army Corps of Engineers submitted an e-mail from Kevin Kotelly, P.E., for the record concurring with the May 12, 2020 modified approval issued by CT DEEP.

OTHER LOCAL REVIEWS AND APPROVALS

13. The Darien Environmental Protection Commission (EPC) approved proposed work within an upland review area for this project as part of EPC #42-2019 on November 6, 2019. That EPC agent approval was submitted for the file, and is hereby incorporated by reference.
14. On February 18, 2020, the Five Mile River Commission issued a favorable report for the proposal, noting that the “...proposed work will have minimal if any impact on safe navigation or recreational activities in the river and no apparent environmental impact on protected vegetation or aquatic species near the site.”
15. On February 23, 2020, the Five Mile River Commission sent a letter revoking its February 18, 2020 conditional approval of the proposed dock, noting that its previous decision was mistaken and the dock, as configured and sited, would directly impede and largely prevent recreational usage of the River near the project site during most stages of the tide.
16. On May 18, 2020, the Five Mile River Commission sent a letter supplementing its February 23, 2020 letter, responding to a May 12, 2020 modified approval issued by CT DEEP, and again objecting to the application based on navigational concerns.
17. On June 9, 2020, the Five Mile River Commission sent a letter withdrawing its objections to the application, based on June 4, 2020 amended plans submitted by the applicant. The modified proposal relocates to dock away from the upstream property boundary (20 Raymond Street) and closer to the shoreline.

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18. The Western Connecticut Council of Governments (WestCOG) submitted comments on the application for the record on December 18, 2019. WestCOG wrote, “The opinion of WestCOG staff is that the proposal may be of interest to the City of Norwalk.” The Commission notes that the application was referred to the City of Norwalk, with no comments from the City.
19. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.

FLOOD DAMAGE PREVENTION FINDINGS

20. The proposed activities, to be implemented with the conditions listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage. In accordance with the submitted engineering information, the proposed activity will have no adverse impacts on flooding on adjacent properties.
21. A one-page letter dated June 9, 2020 was received from Scott Davies, P.E., SECB of Champion Engineering certifying that the proposal has been designed to withstand flooding forces pursuant to Section 825 of the Darien Zoning Regulations.
22. The proposed work will not result in an increase of flood heights and the proposal meets or exceeds Section 825 of the Darien Zoning Regulations.

COASTAL SITE PLAN REVIEW COMMENTS

23. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
24. The proposed activity, as modified within this resolution, is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #165-A and Flood Damage Prevention Application #173-A are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction shall be in accordance with the plans submitted to and reviewed by the Commission entitled:
 - Sheet 1 of 1, Proposed Dock/Survey Overlay, Proposed Landing, Ramp and Floating Dock in the Five Mile River at 14 Raymond Street, Prepared for Lawrence Stephens by John Hilts, dated 4/20/20, last revised 6/03/20 (Revision Number 4).
 - Sheet 4 of 4, Proposed Detail Plan View, Proposed Landing, Ramp and Floating Dock in the Five Mile River at 14 Raymond Street, Prepared for Lawrence Stephens by John Hilts, dated 6/06/19, last revised 6/04/20 (Revision Number 5).These plans reflect the amendments supported by the Five Mile River Commission and the neighbor to the north, Dr. Perriera (20 Raymond Street).

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- B. 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. These sediment and erosion controls shall be installed and maintained 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. All erosion control measures must be maintained until the disturbed areas are stabilized.

- C. Due to the location of the subject property and the scope, nature and amount of work proposed within the application, the Commission hereby waives the requirement for stormwater management pursuant to Sections 888(a)(1) and 888(a)(3) of the Darien Zoning Regulations.

- D. The proposed activity is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.

- E. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. Zoning and Building Permits will be required for the construction of the dock. The plans submitted as part of those Zoning and Building Permit applications shall be signed by a professional engineer.

CERTIFICATE OF ZONING COMPLIANCE

- F. When the project is complete, a professional engineer shall certify to the Commission that the as-built dock structure complies with Section 825.d.1 of the Zoning Regulations, and is consistent with the plans approved herein in Condition A.

- 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 to modify, suspend, or revoke the permit as it deems appropriate.

- H. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (July 14, 2021). This may be extended as per Sections 815 and 829f.

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.