

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
June 23, 2015

Application Number: Proposed Amendment to Darien Zoning Regulations (COZR #1-2015)
Special Permit Application #287/Site Plan review
Land Filling & Regrading #349

Street Address: 40 Locust Hill Road
Assessor's Map #64 Lot #49

Name and Address of Applicant & Property Owner: Knobel Hill, LLC
23 Butler's Island Road
Darien, CT 06820

Name and Address of Applicant's Representative: Robert F. Maslan, Jr., Esq.
Maslan Associates
30 Old King's Highway South
Darien, CT 06820

Activity Being Applied For: Proposing to demolish the existing structures on-site, apply the Active Senior Residential Overlay Zone to the subject property, and construct an "Active Senior Residential Development" under Section 430 of the Darien Zoning Regulations consisting of six dwelling units on the site and two additional below market rate units that would be off-site; install associated stormwater management; and to perform related site development activities. The application also includes a proposed amendment to Subsection 436b of the Zoning Regulations regarding terraces and utility equipment.

Property Location: The subject property is located on the south side of Locust Hill Road, at the southwest corner formed by its intersection with Settler's Trail.

Zone: R-1 Zone

Date of Public Hearing: April 28, 2015 continued to May 12, 2015 and May 26, 2015
Deliberations held on: June 2, 2015

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

Publication of Hearing Notices
Dates: April 17 & 24, 2015 Newspaper: Darien News

Date of Action: June 23, 2015

Actions: Zoning Regulation Amendment-- ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, JULY 12, 2015 AT TWELVE NOON.

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Special Permit/Site Plan, and
Land Filling & Regrading Application— GRANTED WITH STIPULATIONS WITH AN
EFFECTIVE DATE OF SUNDAY, JULY 12, 2015
AT 12:01 p.m.

Scheduled Date of Publication of Actions: Newspaper: Darien News
July 3, 2015

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

- the proposed use and activities must comply with all provisions of Sections 430, 850, 1000 and 1020 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 plans, and the statements of the applicants 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 review of the submitted application materials and related analyses, the Commission finds:

1. The subject applications consist of the following:
 - a) **Zoning Regulation amendment.** A proposed amendment to Subsection 436b of the Zoning Regulations regarding terraces and utility equipment.
 - b) **Special Permit Application/Site Plan, Land Filling & Regrading Application.** The proposal is to demolish the existing structures on-site, apply the Active Senior Residential Overlay Zone to the subject property, and construct an “Active Senior Residential Development” under Section 430 of the Darien Zoning Regulations consisting of six dwelling units on site and two additional below market rate units off-site; install associated stormwater management; and to perform related site development activities.
 - c) **Requirement for elderly below-market rate units.** This includes the question of whether any elderly below market rate unit should be constructed on-site, off-site, consistent with Section 438 of the Zoning Regulations. Note that according to Section 438d of the Regulations, the Inclusionary Zoning provision of Section 580 does not apply to this proposal, since this overlay zone has a separate below market rate requirement.
2. In October 2014, the Darien Planning & Zoning Commission adopted an amendment to the Darien Zoning Regulations by establishing an overlay zone that would apply to larger sites in the R-1 Residence Zone served by public water supply and sanitary sewer. It allows multi-family age-restricted developments by Special Permit in the R-1 Zone, if the overlay zone is placed upon a property.

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PUBLIC WATER AND SEWER

3. In order to establish an “Active Senior Residential Overlay Zone”, the site requirements of Section 433 of the Zoning Regulations must be met. The subject property at 40 Locust Hill Road is in the R-1 Residence Zone; and is at least three acres in size. It is served by public water. At the public hearing on this matter, it was noted that the Darien Sewer Commission recently approved a sewer extension in concept which would allow this property to tie into public sewer. Based on the proximity of the site to the downtown business area and the above noted criteria, the Commission finds that the subject property is appropriate for the “Active Senior Residential Overlay Zone”.
4. A Mandatory Referral under Section 8-24 of the General Statutes will be required for the proposed extension of the sanitary sewer line. It was noted that the Sewer Commission has approved the proposed extension in concept.

ZONING REGULATION AMENDMENT

5. Part of the application is to amend the Zoning Regulations regarding the terraces at grade so that they can be 25 feet instead of the originally adopted 40 foot from the property line and so that the transformer of the utility structures can be located within the setback area when necessary and if approved by the Commission. The Commission finds that the proposed amendments are reasonable and in compliance with the Town Plan of Conservation and Development and are appropriate.

OTHER PERMITS AND APPROVALS

6. The Darien Environmental Protection Commission (EPC) approved this project as part of EPC #7-2015 on April 1, 2015. That approval is hereby incorporated by reference.
The Darien Architectural Review Board (ARB) approved this project as part of ARB #2-2015 on February 24, 2015. That approval is also incorporated by reference.

TRAFFIC/PARKING/SIGHT LINES/ACCESS

7. The proposed sidewalk shown on the plans would extend from the existing sidewalk on Locust Hill Road to the proposed driveway on Settlers Trail. The Commission finds that the new sidewalk shown on the submitted plans is appropriate, and will improve pedestrian access in the area. At the public hearing, one of the reasons given for the fact that they are not continuing the sidewalk along Settler’s Trail to the south of the proposed driveway is because it would require the removal of many additional trees within the street right-of-way. The Commission concurs.
8. The applicant has proposed a driveway for the proposed development on Settler’s Trail, with the existing driveway on Locust Hill Road to be reserved for emergency access only, which will have gates at both ends and a “no parking” sign on the development-side (the southernmost) gate.
9. The Fire Marshal wants to make sure that the emergency egress or access driveway from Locust Hill Road into the site will be hard surface material so that emergency vehicles can use it during all

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weather conditions. Attorney Maslan, who represents the applicant, said that they will probably use grass pavers so that it will look like a lawn area but it will support the weight of the large emergency equipment. He said that the applicant might also install asphalt in that area and then top it with stone so that it does not appear to be a typical black asphalt driveway. He said that there would be a gate near the street and a gate near the driveway so that the emergency access driveway is not used by vehicles except during emergencies.

10. The applicant shall have the option whether to install a pedestrian walkway on or adjacent to the emergency driveway so that residents within the development could access directly the existing Locust Hill Road sidewalk (without having to walk out the primary vehicular driveway to Settlers Trail and then down the new sidewalk along Settlers Trail). If installed, there shall be no vehicular access in the walkway.

BUFFERING/SCREENING/LANDSCAPING

11. Section 436c requires that a minimum 25 foot wide buffer area surround the proposed Special Permit use within the R-1 zone. The submitted plans include this required buffer area consisting of existing and proposed landscape materials. The plans also include a conservation easement area on the south side of the site. The Commission finds the proposed buffer and open space easement area to be appropriate and satisfactory.
12. At the public hearing, it was noted that the trees to be removed and trees to be preserved are highlighted on the Site Utility Plan.
13. Wesley Stout, Landscape Architect, reviewed the colored plan of the trees to be removed. He said that approximately five trees will be planted for each one large tree to be removed. Ms. Cameron said that she wants the applicant to consider removing all of the Norway Maple trees because they are considered an invasive species. The Commission concurs with this suggestion, but it is not a mandatory requirement of this action.
14. Ms. Cameron suggested that more trees be added within the conservation area even if they are smaller native trees that will grow in that conservation area. The Commission concurs with this suggestion, but it is not a mandatory requirement of this action.

BELOW MARKET RATE UNITS

15. Attorney Maslan said that the applicant has made arrangements to purchase a two-family house on Leroy Avenue. Each of the dwelling units is approximately 1,300 square feet and these will serve as the two affordable housing units that will be age and income restricted. Detailed information will need to be submitted regarding the square footage of the affordable housing units because the new units to be constructed at the Knobel Hill site can be no more than two times the average square footage of the affordable units. Attorney Maslan said that the deed restriction will be placed on the affordable housing units prior to the request for the Certificate of Occupancy for the first new unit within the development on Locust Hill Road. Architect Robert Cardello said that the dwelling units that are proposed will be about 2,200 square feet with the potential for additional square footage on the second floor.

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STORMWATER MANAGEMENT

16. Doug DiVesta, Professional Engineer, said that he has been reviewing the details and comments made by the Town's consulting engineer Todd Ritchie. Based on those comments, he has enlarged the rain garden area and said that a 50-year design storm would not exceed the limits of the embankments.

BLASTING/SITE DEVELOPMENT/PHASING

17. Doug DiVesta, Professional Engineer, said that they have tested the rock in the area and most of it seems friable which will allow it to be ripped out of place using large machines and therefore they will probably not need to do any blasting or hoe ramming. They may use a pneumatic drill to break the stone apart. He estimated that approximately 1,400 cubic yards of material will need to be cut or excavated from the site. This equates to approximately 90 truckloads of material over 60-90 day initial excavation. The applicant's engineer noted that some blasting or hoe-ramming may need to be done to implement the proposed plan if the rock is not friable. The Commission encourages blasting, since it may have less of an impact on neighboring properties.
18. The amount of blasting needed will be determined by how deep any proposed basements are for the proposed units. Professional engineer DiVesta said that the test borings are still being analyzed. The Commission encourages the applicant to minimize blasting by reducing the ceiling heights in the basements of the proposed units.
19. It was noted that during the construction process there will be almost three acres of the site that will be disturbed at one time. Dust and erosion controls and temporary grass covers will be important to make sure that there are no adverse impacts on the neighboring property owners or the wetlands.

CONCLUSIONS AND FINDINGS

20. 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.
21. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
22. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
23. The elements of the Site Plan, submitted as part of the application, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

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24. The elements of the Site Plan, submitted as part of the application, **AS REQUIRED TO BE MODIFIED HEREIN**, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

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NOW THEREFORE BE IT RESOLVED that Amendment to Darien Zoning Regulations (COZR #1-2015), is hereby adopted subject to the foregoing and following stipulations, modifications and understandings:

NEW WORDING IN BOLD, DELETIONS IN STRIKEOUT:

Changes to Section 436a of the Regulations:

- a. No structures, ~~terraces~~, swimming pools, or sports courts shall be located within the minimum yard areas. **Terraces at grade may be located at least 25 feet from property boundaries, where the Commission finds that such terraces are adequately screened to avoid negative impacts to abutting streets and residential properties. Power transformers and similar public utility equipment serving only the development may be located within required yards, where the Commission finds that such equipment is adequately screened to avoid negative impacts to abutting streets and residential properties.**

This amendment to Section 436a takes effect on July 12, 2015 at twelve noon.

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NOW THEREFORE BE IT RESOLVED that Special Permit Application #287/Site Plan review, Land Filling & Regrading #349 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction, on-site work (including lighting and landscaping), and associated sidewalks and sight line improvements shall be in accordance with the following plans:
- Proposed Site Utility Plan, Knobel Hill, LLC, 40 Locust Hill Road, by DiVesta Civil Engineering Associates, Inc., last revised 05/22/15, Sheet No. SE-1.
 - Proposed Sewer System & Water Main, Knobel Hill, LLC, 40 Locust Hill Road, by DiVesta Civil Engineering Associates, Inc., last revised 3/4/15, Sheet No. SE-2.
 - Sedimentation and Erosion Control Plan, Knobel Hill, LLC, 40 Locust Hill Road, by DiVesta Civil Engineering Associates, Inc., last revised 05/21/15, Sheet No. SE-3.
 - Details, Knobel Hill, LLC, 40 Locust Hill Road, by DiVesta Civil Engineering Associates, Inc., last revised 05/22/15, Sheet No. SE-4.
 - Sedimentation and Erosion Control Notes and Details, Knobel Hill, LLC, 40 Locust Hill Road, by DiVesta Civil Engineering Associates, Inc., last revised 05/22/15, Sheet No. SE-5.
 - Water Main Details, Knobel Hill, LLC, 40 Locust Hill Road, by DiVesta Civil Engineering Associates, Inc., last revised 3/4/15, Sheet No. SE-6.
 - Landscape & Lighting Plan, by Wesley Stout Associates, dated 3-5-2015, Sheet SP-1.0.
 - Wetlands Enlargement, by Wesley Stout Associates, dated 3-5-2015, Sheet SP-1.1.
 - Lighting & Planting Details, by Wesley Stout Associates, dated 3-5-2015, Sheet SP-2.0.
- B. All utilities serving this property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring.

PRE-CONSTRUCTION

- C. The conservation easement area shown on the plans shall be properly monumented by a licensed land surveyor for clear demarcation. This monumentation shall be put in place prior to the filing of the development and/or project plans with the associated conservation easement wording in the Darien Land Records. This shall be accomplished prior to the issuance of a Zoning and Building Permit for the foundation for any on-site building.
- D. Prior to preparing the final mylar, unit numbers and street addresses shall be verified with the Assessor. Those should be included on the final mylar for filing. This mylar shall be filed along with any applicable deed restrictions required herein for age-restrictions.
- E. The Darien Zoning Regulations require that the size of the below market rate units be established in order to determine the maximum size allowed of the market-rate units. At the public hearing, the applicant noted that the purchase of 65-67 Leroy Avenue is imminent. That structure is now a two-family residence. The sizes were estimated to be 1,400 square feet each. If this property falls through, other options shall be pursued by the applicant. Once evidence of purchase and deed restrictions are implemented, the Zoning Enforcement Officer can approve

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Zoning and Building Permits for construction above the foundation level for structures at 40 Locust Hill Road. All deed restrictions shall be filed in the Darien Land Records.

- F. Before the issuance of any on-site Zoning and Building Permit, the applicant shall file two performance bonds with the Planning & Zoning Department.
1. A \$5,000 bond for sediment and erosion controls. Due to the nature of the project (the large extent of land disturbance involved, and the long construction time) the Planning and Zoning Commission will require a \$5,000 Performance Bond. This shall be in place for the extent of the work on the project. Once soil stabilization is completed per the approved plans, and the required as-built map and drainage certification submitted to the Planning & Zoning Office, the bond can be returned in full.
 2. A \$3,000 bond for plantings/landscaping. In order to assure the survival and healthy condition of the plants, and their replacement if they do not survive, prior to the issuance of a Zoning and Building Permit for any part of the first unit, the applicant is required to post a \$3,000 performance bond for the plantings. This shall be in place for two years from the date of the Certificate of Occupancy (CO) for the final on-site unit. After one planting season, the applicant may request that up to ½ of the bond be returned, if in the determination of Planning and Zoning staff, the plantings have survived. Two years after the completion of the planting, the applicant may request the return of the remaining balance of the bond. If in the determination of the Planning and Zoning staff, the plantings have survived and thrived, ½ of the bond may be returned.
- G. The applicant has proposed that all of the units will be served by a private driveway and not a street. Since there is no new public or private road construction and no extension of public utility facilities, the Commission waives the requirement for submission of a Performance Bond for street construction.
- H. The applicant shall ensure via notes on revised plans and/or on construction plans to be submitted that all of the Fire Marshal comments received March 20, 2015 are addressed. These are:
1. *Strongly recommend protection of houses with fire sprinkler systems;*
 2. *Verify adequate turning radius for fire apparatus*
 3. *Fire access road to be maintained and kept clear year round*
 4. *Verify adequate water supply for fire suppression*
 5. *All windows required for egress must be accessible from grade.*
- Any types of grass pavers to be used on-site shall be reviewed and acted upon by the Fire Marshal.

DURING CONSTRUCTION

- I. 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

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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.

- J. Since large expanses of land have the potential of being open for long periods of time, and this construction could take more than a year, in order to minimize erosion and for dust control, all on-site stockpiles shall be vegetated.
- K. At the May 26, 2015 public hearing, the applicant's landscape architect committed to removing three Norway Maples within the conservation easement area.
- L. In order to resolve existing sight line issues, work in the Locust Hill Road right-of-way near the Settler's Trail intersection shall be commenced as soon as possible and shall be completed prior to the issuance of a Zoning and Building Permit beyond the foundation for the first unit on-site. This includes, but is not limited to, the removal of trees within 30 feet of the intersection; removal of existing retaining wall and associated regrading; and removal of any telephone pole(s) within that 30 foot triangle. The reason for requiring the sight line improvements very early on in the construction process is so that the construction vehicles and workers will have an improved sight line throughout the anticipated multi-year construction process. The installation of the sidewalk along Settler's Trail and the final landscaping of the area will need to be completed prior to the request for the first Certificate of Occupancy within the development.

DRAINAGE/STORMWATER MANAGEMENT

- M. The applicant shall incorporate the recommendations outlined in comments received from peer engineer Todd Ritchie of Woodard & Curran.
- N. 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 negative impacts upon the adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible for remedying the situation at such owner's expense and as quickly as possible. The applicant is responsible for the management of storm water throughout the development process, even before the final approved drainage system is installed. Proper provisions shall be made to assure that, for the many months while the site is disturbed, structures are being built and systems are being installed, runoff water will be directed into temporary on site drainage systems to assure that it will not adversely impact the nearby neighbors, streets, and/or stormwater sewers.
- O. It is incumbent upon the property owner(s) to maintain the installed drainage system, including, but not limited to, maintenance of the underground structures, (such as inspection and clean out once every 6 months or more frequently as needed). A long-term maintenance plan for drainage was submitted to the Planning and Zoning Commission file as Appendix C within the Site Engineering Report dated March 2015 from DiVesta Civil Engineering Associates. It shall be implemented by the property owner(s)/condominium association.

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- P. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this approval. This Notice of Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 40 Locust Hill Road to maintain the on-site drainage facilities in accordance with the Drainage Maintenance Plan, and will alert future property owners of the on-site drainage facilities and the need to maintain said facilities to minimize impacts upon adjacent properties.

PARKING/TRAFFIC SAFETY

- Q. As noted above, all sight line related work shall be completed first, so that construction vehicles will have improved sight lines looking west down Locust Hill Road throughout the construction process.
- R. As recommended by the Police Department, the applicant shall install the advance notice, MUTCD compliant “intersection ahead” sign, to be viewable by westbound Locust Hill Road, traffic.
- S. The proposed sidewalk (both on Locust Hill Road and Settler’s Trail) shall be constructed according to the submitted plans prior to the issuance of a Certificate of Occupancy for the first on-site unit.

DEED RESTRICTIONS

- T. Deed restrictions on the below market rate housing units (both income and age restrictions) shall be filed in the Darien Land Records prior to the issuance of Zoning and Building Permits for new construction above the foundation for the second on-site building. Copies of those restrictions, which should include the entity certifying annually the income verification of the tenants, would need to be submitted for the record in this matter. Restrictions shall comply with Sections 434 and 586 and 587.
- U. On site dwellings shall be deed restricted to assure that any and all occupants shall be at least 62 years or older. On site units shall not be income restricted, but must be age restricted to comply with the intent and requirements of the Regulations allowing this Special Permit use within the R-1 single family residential zone.

POST-CONSTRUCTION

- V. A final “as-built” survey is hereby required for each phase to certify that the site improvements (including drainage and landscaping) are all in compliance with the approved plans. In addition, a Professional Engineer shall certify in writing that the required drainage work has been properly completed in accordance with the approved plans. A certification shall be submitted regarding the final building height of the buildings as constructed.
- W. All site work around and related to a particular building, including but not limited to curbing, paved parking spaces, drainage systems, safety signage, landscaping and other site improvements as shown on the approved plans shall be properly installed and completed prior to the use of and/or the issuance of a Certificate of Occupancy for that building.

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- X. All landscaping shall be installed per the submitted Landscape Plan referenced in Condition A, above. Prior to implementation, any changes or substitutions must be reviewed and acted upon by the Planning and Zoning Commission.
- Y. 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. This would include, but not be limited to the following:
1. A Demolition Permit from the Building Department.
 2. Permits from the Fire Marshal will be needed to remove any existing underground oil tanks, to install any new oil tanks, and for removal of any above-ground or underground propane tanks.
 3. A Blasting Permit will also be required from the Fire Marshal for any proposed blasting.
 4. Sewer Connection Permits will be needed for the new units.
 5. The Darien Health Department will require that any existing on-site septic system(s) be located, and properly abandoned.
 6. Zoning and Building Permits. It is acknowledged that the applicant may wish to proceed with Foundation Permits separate from the buildings.
 7. It was noted in the ARB approval letter in February 2015, that a ground sign might be installed on the site. If the applicant wishes to proceed with such a sign, review and action by the Architectural Review Board will be required. Depending on the size and location of the sign, review and action by the Zoning Board of Appeals may also be required.
- Z. 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 this permit as it deems appropriate.
- AA. This permit shall be subject to the provisions of Sections 858, 1009 and 1025 of the Darien Zoning Regulations, including but not limited to implementation (i.e., the start of construction) of the approved plan within two years of this action (June 23, 2017). This approval may be extended as per Sections 858, 1009 and 1025.

All provisions and details of the plans, as required to be revised and modified herein, 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. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void. All completed requirements and materials shall be completed and submitted to the Planning and Zoning Department within 90 days of this action, or this approval shall become null and void.