

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
April 6, 2010

Application: Proposed Amendments to the Darien Zoning Regulations
Put Forth by the Darien Planning and Zoning Commission

Proposing to modify the existing zoning regulations relative to the Town's Flood Damage Prevention regulations, specifically with changes proposed to Section 210 (Definitions), including the insertion of new definitions and the amendment of some existing definitions; and changes to Section 820 (Flood Damage Prevention), including changes to Sections 822, 825, 826 and 828. This includes a proposal to delete the existing subsection 825g(4) and replace it with a new subsection 825g(4).

Date of Public Hearing: March 23, 2010

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: March 11& 18, 2010

Newspaper: Darien News-Review

Date of Action: April 6, 2010

Action: AMENDMENTS TO THE DARIEN ZONING REGULATIONS ADOPTED, WITH AN EFFECTIVE DATE OF SUNDAY, MAY 30, 2010 AT TWELVE NOON.

Scheduled Date of Publication of Action:

April 15, 2010

Newspaper: Darien News-Review

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

1. The Commission proposes to modify the existing zoning regulations relative to the Town's Flood Damage Prevention regulations, with changes proposed to Section 210 (Definitions), including the insertion of new definitions and the amendment of some existing definitions; and changes to Section 820 (Flood Damage Prevention), including changes to Sections 822, 825, 826 and 828. This includes a proposal to delete the existing subsection 825g(4) and replace it with a new subsection 825g(4). The proposals are specifically detailed in an eight-page memorandum from Jeremy Ginsberg to the Planning & Zoning Commission dated January 15, 2010. One additional change put forth was in a one-page memorandum from Jeremy Ginsberg to the Planning & Zoning Commission dated February 16, 2010. A public hearing on the proposed amendments was held on March 23, 2010.
2. These Amendments to the Regulations are proposed in response to a December 14, 2009 letter from Diane Ifkovic, State NFIP (National Flood Insurance Program) Coordinator. This letter outlines both the required and optional changes. That letter notes that certain changes are required to be implemented by June 18, 2010—the date that the new Flood Insurance Rate Maps produced by the Federal Emergency Management Agency (FEMA) will become effective. In that letter, it is noted that "...revisions to the community's existing floodplain regulations are needed in order to maintain minimum compliance with the NFIP minimum standards and recently enacted state flood plain management requirements..."

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3. Per State Statutes, the draft amendments were submitted to the Connecticut Department of Environmental Protection for review and comment. The State of Connecticut DEP sent an e-mail dated March 10, 2010, noting that they "...find no inconsistencies in the proposal..." Those comments were read aloud at the public hearing. The Darien Environmental Protection Commission (EPC) sent comments on the application in a memo dated February 22, 2010. In the EPC memo, they note that some changes to the regulations are required, while others are recommended or suggested. They believed that two sections of recommended language which they feel are onerous on potential property owners which will not necessarily result in increased protections are the new proposed Section 825i Equal Conveyance and the new proposed Section 825j Compensatory Storage.
4. As noted in the December 14, 2009 letter from Diane Ifkovic, there are certain amendments to the Flood Damage Prevention Regulations that must be incorporated in order to continue to comply with the FEMA guidelines and requirements. There are other proposed amendments that are optional for Darien to adopt. Staff reviewed that letter, and put together the memoranda dated January 15, 2010 and February 16, 2010. Those memoranda put forth the subject proposal as modified to fit Darien's specific needs. For example, the State of Connecticut DEP believed that existing subsection 825g(4) was unclear relative to the need for additional permits. Thus, this proposal was put forth to replace existing with new language.
5. At the March 23 public hearing, there were concerns regarding the proposed modifications to the existing definition of "Substantial Improvement" in Section 210, and the possible inclusion of a new Section 825i regarding equal conveyance and a new Section 825j regarding Compensatory Storage.
6. Relative to the proposed modification to the definition of "Substantial Improvement", there was discussion at the public hearing regarding the appropriate time frame standard to include. The Regulations do allow for repair and maintenance and improvement of structures that are in the flood zone. At present, the Zoning Regulations do not define whether the 50% improvements will be cumulative and thus the policy of the Commission has been that each improvement project allows 50% of the value to be spent. Each project must be completed before an additional project can be undertaken. This has happened on several occasions where one renovation project of less than 50% of the value of the structure has been allowed and, as soon as the owner has completed that project and received their Certificate of Occupancy, they can undertake a second project to modify the structure even more. The current Regulations do not add the value of the renovation work together. The proposal put forth was to add the values for work undertaken within each calendar decade. As put forth, within a calendar decade the total value of the renovations could not exceed 50% of the value of the structure unless the structure is brought into compliance with all flood damage prevention criteria. At the end of the decade, the owner would be allowed to make more renovations and modifications up to 50% of the new value of the structure. At the public hearing, discussion ensued as to the appropriate time frame.
7. At the public hearing on this matter, Craig Flaherty, a professional engineer, noted his concern with the possible inclusion of a new Section 825i regarding equal conveyance and a new Section 825j regarding Compensatory Storage.

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8. The applicable recommendations in the 2006 Town Plan of Conservation & Development, as previously amended, are as follows: Recommendation on Page 3-4: *“Amending the Zoning Regulations to strengthen floodplain regulations by limiting the number of improvements occurring below the ‘substantial improvement’ threshold by placing a time frame on individual improvements.”*
9. The Commission hereby finds that the proposed Amendments of the Darien Zoning Regulations are fully consistent with the 2006 Town Plan of Conservation & Development, as amended.
10. The Commission has scheduled these amendments to take effect on May 30, 2010. Because the new flood maps take effect on June 18, 2010, this May 30 effective date still allows time for applicants to submit applications under the old (existing) regulations and becomes implemented prior to when the new maps take effect.
11. Section 8-2h of the Connecticut General Statutes addresses the issue of zoning applications filed prior to a change in the Zoning Regulations, and notes that a complete application filed with the Planning and Zoning Commission shall not be required to comply with any change in the zoning regulations taking effect after the filing of such application.

NOW THEREFORE BE IT RESOLVED that the ***Proposed Amendment to the Darien Zoning Regulations*** are hereby ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, MAY 30, 2010 AT TWELVE NOON, as approved herein (with some modifications from the proposal as put forth):

The following are amendments to the Zoning Regulations put forth and adopted by the Darien Planning & Zoning Commission:

- I. New definitions to be added to Section 210 (Definitions)
- II. Amendment of existing definitions in Section 210 (Definitions)
- III. Replacement of existing subsection 822a.
- IV. Modify subsections 825d, and 825d(1), 825d(2), 825d(10) and 825d(12)
- V. Add new subsections 825d (13), 825d(14) and 825d(15)
- VI. Modify subsections 825e, 825f, 825f(6), and add a new subsection 825f(7)
- VII. Add new subsections 825i, 825j, 825k and 825l
- VIII. Add a new subsection 826d(9)
- IX. Modify Section 828c (Application Review)
- X. Modifications to the Table of Contents and Appendix C to reflect any adopted amendments.
- XI. Delete existing Section 825g(4) and replace it with a new subsection 825g(4).

Additions are in bold and deletions are in strikethrough.

- I. *New definitions to be added to Section 210 (Definitions)*
All definitions to be placed in alphabetical order within that Section.

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Base Flood Elevation (BFE): The elevation of the crest of the base flood or 100-year flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

Existing Manufactured Home Park or Subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date, December 28, 1980, of the floodplain management ordinance adopted by the community.

Expansion to an Existing Manufactured Home Park or Subdivision: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA): The federal agency that administers the National Flood Insurance Program (NFIP).

Flood Insurance Study (FIS): The official report of a community in which the Federal Emergency Management Agency has conducted an examination, evaluation and determination of flood hazards and has provided flood profiles and water surface elevation of the base flood.

Functionally Dependent Use or Facility: A use or facility that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities. The term does not include seafood processing facilities, long-term storage, manufacturing, sales or service facilities.

Historic Structure: Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor.

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Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” also includes park trailers, travel trailers, recreational vehicles and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market Value: The market value of the structure shall be determined by the property’s most recent tax assessment, minus land value prior to the start of the initial repair or improvement, or in the case of damage, the value of the structure prior to the damage occurring.

New Manufactured Home Park or Subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date, December 28, 1980, of the floodplain management regulation adopted by the community.

Recreational Vehicle: For purposes of the Flood Damage Prevention Regulations, a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Sand Dunes: Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Start of Construction: The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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Variance: A grant of relief by the Town of Darien Zoning Board of Appeals from the terms of the floodplain management regulation that allows construction in a manner otherwise prohibited and where specific enforcement would result in unnecessary hardship.

Violation: For purposes of Section 820, the failure of a structure or other development to be fully compliant with the Darien's floodplain management regulations.

Water Surface Elevation: The height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. As of January 2010, the Flood Insurance Rate Maps in use in Darien relate expected flood levels to NGVD '29 as sea level.

II. *Amendment of existing definitions in Section 210 (Definitions)*
Revise the following existing definitions in Section 210. All definitions to remain in alphabetical order.

Area of Special Flood Hazard: The land in the floodplain within Darien subject to a one percent or greater chance of flooding in any given year. The area may be designated as a Zone A, ~~A1-A30~~, AE, ~~AH, AO, A99, V, V1-30~~, and/or VE, on the Flood Insurance Rate Map (FIRM). These areas are also referred to as flood zones or flood areas.

Basement: A cellar or floor area of a building which is located partly or wholly below the average level of the finished grade at the exterior walls of the building. To determine if a basement is a story, see the definition of story. **For floodplain management purposes, a basement is any area of the building having its floor subgrade below ground level on all sides.**

Coastal High Hazard Area: An area of special flood hazard extending from off-shore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources, including but not limited to hurricane wave wash or tidal wave. These areas are designated on the Flood Insurance Rate Map (FIRM) as Zones ~~V1-30, V~~ or VE.

Development: For the purpose of these Regulations and with respect to the movement of earth materials, development shall mean any man-made change to improved or unimproved real estate, including but not limited to, **the construction of buildings or structures; the construction of additions, alterations or substantial improvements to buildings or structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment; the storage, deposition, or extraction of materials; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.**

Flood Insurance Rate Map (FIRM): An official map ~~of a community~~ on which the ~~Flood Insurance Administrator~~ **Federal Emergency Management Agency** has delineated both the special flood hazard areas and the risk premium zones ~~covered by the Federal Flood Insurance Program~~ **applicable to the community.**

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Mean Sea Level: The average height of the sea for all stages of the tide. National Geodetic Vertical Data 1929 (NGVD '29), 19-year averages for Darien ending 1929 shall be the datum designated as zero in determining elevations. **For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.**

Substantial Improvement: For the purposes of Section 820, any repair, reconstruction or improvement of a structure, **taking place over the previous three year period (as calculated from the issuance of the Certificate of Occupancy)**, the **cumulative** cost of which equals or exceeds 50 percent of the market value of the structure itself, exclusive of land value either...

III. *Delete subsection 822a, and replace with the following:*

Section 822 Inventory of Regulated Areas.

a. **Regulated areas are identified as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study (FIS) for Fairfield County, Connecticut, dated June 18, 2010, and accompanying Flood Insurance Rate Maps (FIRM), dated June 18, 2010, and other supporting data applicable to the Town of Darien, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this regulation. Since mapping is legally adopted by reference into this regulation it must take precedence when more restrictive until such time as a map amendment or map revision is obtained from FEMA. The area of special flood hazard includes any area shown on the FIRM as Zones A, AE, and VE, including areas designated as a floodway on a FIRM. Zone VE is also identified as a Coastal High Hazard Area. The determination of flood hazard areas shall be based on the flood elevations shown on the FIRM maps in conjunction with an up-to-date and accurate topographical survey of the property. Areas of special flood hazard are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the Flood Insurance Study (FIS) for a community. BFEs provided on a Flood Insurance Rate Map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location.**

IV. *Modify subsections 825d, and 825d(1), 825d(2), 825d(10) and 825d(12)*

Section 825 Permitting of Regulated Areas

Delete text to section 825 d. Add text to (1), (2), and (10). Add new sections 825 d. (13), (14) and (15). Add bold text to section 825 e. Add text to section 825 f. (6) and new section (7).

d. In all areas of special flood hazard and Coastal High Hazard areas (for all unnumbered and numbered A and V zones and A, AE, ~~AH, A99, V~~ and/or VE zones), the following provisions shall apply:

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(1) Permits shall be required for all new construction, substantial improvements (including placement of prefabricated buildings **and manufactured homes**) and other development . . .

(2) Subdivision proposals shall be . . . flood hazards. Flood elevation data shall be included **with all subdivision proposals. Where flood elevation data is not available, the applicant shall provide a hydrologic and hydraulic engineering analysis performed by a licensed professional engineer that generates base flood elevations for all subdivision proposals and other proposed development, including manufactured home parks and subdivisions;**

(10) Designs for meeting ~~this~~ **the requirement in (9) above** must either be certified by a . . .

(12) Recreational vehicles . . . , or meet all the general standards of 825 (d) **and the elevation and anchoring requirements of 825 d. (13), (14) and (15).** . . .

V. *Add a new subsection 825d (13), 825d(14) and 825d(15)*

(13) In areas of special flood hazard (A and AE Zones), any manufactured home to be newly placed, undergoing a substantial improvement or repaired as a result of substantial damage, shall be elevated so that the bottom of the lowest floor is at least one foot above the base flood elevation (BFE). The manufactured home must also meet all the construction standards for Zones A and AE as per Section 825. This includes manufactured homes located outside a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an existing manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or on a site in an existing manufactured home park in which a manufactured home has incurred substantial damage as a result of a flood.

(14) In all coastal high hazard areas (VE Zone), any manufactured home to be newly placed, undergoing a substantial improvement or repaired as a result of sustained substantial damage, shall be elevated so that the bottom of the lowest horizontal structural member is at least one foot above the base flood elevation. The manufactured home must also meet all the construction standards for the VE Zone as per Section 825. This includes manufactured homes located outside a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an existing manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or on a site in an existing manufactured home park in which a manufactured home has incurred substantial damage as a result of a flood.

(15) All manufactured homes within areas of special flood hazard and coastal high hazard areas shall be placed on a permanent foundation which itself is securely

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anchored and to which the structure is securely anchored so that it will resist flotation, lateral movement and hydrostatic pressures. Anchoring may include, but not be limited to, the use of over-the-top or frame ties to ground anchors. All manufactured homes shall be installed using methods and practices that minimize flood damage. Adequate access and drainage should be provided. Elevation construction standards include piling foundations placed no more than ten (10) feet apart, and reinforcement is provided for piers more than six (6) feet above ground level.

VI. *Modify subsection 825e, 825f, 825f(6), and add a new subsection 825f(7)*

- e. Within the regulatory floodway, delineated by the ~~MAP on the Flood Insurance Rate Map~~, all development, including but not limited to fill, new construction and substantial improvements, **encroachments, including fill, new construction, substantial improvements, repairs to substantially damaged structures and other developments** that would result in any **(0.00 feet)** increase in flood levels during the occurrence of the base flood discharge, shall be prohibited. The provision of proof that there shall be no **(0.00 feet)** increase in flood levels **during occurrence of the base flood discharge** due to the proposed construction **or encroachment** shall be the responsibility of the applicant and shall be based on **hydrologic and hydraulic studies, performed in accordance with standard engineering practice, and certification, with supporting technical data**, by a Connecticut Registered Professional Engineer.
- f. In the coastal high hazard zones, **VE zone**, the following provisions shall additionally apply:
- (6) Non-supporting breakaway walls, lattice work or mesh screening shall be allowed below the base flood elevation provided it is not part of the structural support of the structure and is designed so as to break away under abnormally high tides or wave action, without damage to the structural integrity of the structure on which it is to be used **and provided the following design specifications are met: (1) Design safe loading resistance of each wall shall not be less than ten (10) pounds per square foot or more than twenty (20) pounds per square foot; or (2) If more than twenty (20) pounds per square foot, a licensed professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components prior to or during the collapse of such wall.** Such enclosed space shall be used solely for building access, parking of vehicles, and/or storage.
- (7) **There shall be no alteration of sand dunes that would increase potential flood damage.**

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VII. Add new subsections 825i, 825j, 825k, and 825l

- i. Aboveground Storage Tanks - Above-ground storage tanks (oil, propane, etc.) which are located outside or inside of the structure must either be elevated above the base flood elevation (BFE) on a concrete pad, or be securely anchored with tie-down straps to prevent flotation or lateral movement, have the top of the fill pipe extended above the BFE, and have a screw fill cap that does not allow for the infiltration of flood water.**
- j. Portion of Structure in Flood Zone - If any portion of a structure lies within the Special Flood Hazard Area (SFHA), the entire structure is considered to be in the SFHA. The entire structure must meet the construction requirements of the flood zone. The structure includes any attached additions, garages, decks, sunrooms, or any other structure attached to the main structure. Decks or porches that extend into a more restrictive flood zone will require the entire structure to meet the standards of the more restrictive zone.**
- k. Structures in Two Flood Zones - If a structure lies within two or more flood zones, the construction standards of the most restrictive zone apply to the entire structure (i.e., V zone is more restrictive than A zone; structure must be built to the highest BFE). The structure includes any attached additions, garages, decks, sunrooms, or any other structure attached to the main structure. (Decks or porches that extend into a more restrictive zone will require the entire structure to meet the requirements of the more restrictive zone.)**
- l. No Structures Entirely or Partially Over Water - New construction, substantial improvements and repair to structures that have sustained substantial damage cannot be constructed or located entirely or partially over water unless it is a functionally dependent use or facility.**

VIII. Add a new subsection 826d(9)

Section 826

- d. (9) In all areas of special flood hazard (A and AE Zones), the Commission will obtain, record and maintain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new construction, substantial improvement or repair to a structure that has sustained substantial damage and the elevation (in relation to mean sea level) to which all new construction, substantial improvement or repair to a structure that has sustained substantial damage has been flood-proofed. In all coastal high hazard areas (VE zones), the Commission will obtain, record and maintain the elevation of the bottom of the lowest horizontal structural member for all new construction, substantial improvement or repair to a structure that has sustained substantial damage.**

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IX. *Modify subsection 828 c. as follows:*

Section 828 Application Review

- c. Where a regulated activity shall be proposed, which the applicant can reasonably demonstrate shall be likely to have no adverse effect on levels of flooding or erosion, the applicant may submit a preliminary plan for review by the Commission. **The Commission will review all proposed regulated activity to determine whether the proposed development and building sites will be reasonably safe from flooding.** The preliminary plan shall be accurately drawn to scale from a certified survey of the property and . . .

X. *Modifications to the Table of Contents and Appendix C to reflect any adopted amendments.*

Appendix C and the Table of Contents within the Darien Zoning Regulations shall be modified accordingly to reflect the changes adopted herein.

XI. *Replace subsection 825g(4)*

Delete the existing subsection 825g(4) and replace it with a new subsection 825g(4). *Existing Wording (to be deleted):*

- ~~(4) Additional Federal or State permits may be required and if said permit requirements are known, copies of such permits must be provided and maintained on file with the development permit.~~

Proposed Wording (to be added):

- (4) The applicant shall either obtain a written report indicating recommendations, preliminary approvals, final approvals or disapprovals from any State or Federal Department or Agency such as Connecticut Department of Environmental Protection, U.S. Army Corps of Engineers, Connecticut Department of Transportation, etc., having jurisdiction over the application or any aspect thereof; or otherwise provide sufficient written evidence that such State or Federal agency approval appears to have a reasonable probability of success. In the event that any State or Federal agency has a policy that precludes the provision of such decision until after the Planning & Zoning Commission has rendered its decision, the Planning & Zoning Commission may waive this requirement. If the Commission determines that a State or Federal agency's approval has a material impact on the approved application, further review by the Commission may be required. Copies of any permits or approvals must be provided and maintained on file with the development permit.**