

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
NOVEMBER 24, 2015**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Cameron, DiDonna, Cunningham, Sini, Jr., Voigt

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat
Channel 79

Chairman Cameron opened the meeting at 8 P.M. and read the first agenda item:

PUBLIC HEARING

Continuation of Public Hearing regarding Proposed Amendments to Darien Zoning Regulations put forth by Gleason & Associates, LLC on behalf of BMW of Darien (COZR #3-2015). Proposal to amend Sections 210, 665, and 666 of the Darien Zoning Regulations as follows: to establish a definition of a Parking Device in Section 210; to allow Parking Devices as an Accessory Use Requiring a Special Permit in the Service Business (SB) Zone in Section 665; and to specifically exempt Parking Devices from Building Coverage and Minimum Yard Requirements in Section 666. *THIS APPLICATION HAS BEEN WITHDRAWN.*

Continuation of Public Hearing regarding Business Site Plan #194-G/Special Permit, BMW of Darien, 136-138 Ledge Road. Proposal to allow installation of ninety parking devices at its 140 Ledge Road site and perform related site activities. *THIS APPLICATION HAS BEEN WITHDRAWN.*

Mrs. Cameron noted that both of the BMW applications had been withdrawn. She then read the next agenda item and noted that the 47 Pear Tree Point Road matter will be continued to January 26, 2016 at 8 p.m. in Town Hall.

Coastal Site Plan Review #83-B, Flood Damage Prevention Application #71-B, Land Filling & Regrading Application #371, Justin Scott, 47 Pear Tree Point Road. Proposing to lift the existing residence; lift the garage slab and modify the internal circulation; regrade the driveway, garage access and new entrance stair; and perform related site development activities within regulated areas. The subject property is situated on the west side of Pear Tree Point Road, approximately 900 feet south of its northernmost intersection with Long Neck Point Road, and is shown on Assessor's Map #60 as Lot #51, in the R-1 Zone. *TO BE OPENED AND IMMEDIATELY CONTINUED TO JANUARY 26, 2016.*

Mrs. Cameron then read the next agenda item:

Continuation of Public Hearing regarding Proposed Amendments to the Darien Zoning Regulations (COZR #5-2015), Special Permit Application #153-D/Site Plan, Land Filling & Regrading Application #366, Atria Darien, 50 Ledge Road. Proposed zoning regulation

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amendments to Sections 664, 667 and 668 to: correct existing references; eliminate the distinction between ILF and ALF units; provide minimum and maximum size units; modify parking standards; and allow the Commission to waive or reduce setback or buffering requirements. Proposing to construct additions and alterations to the existing structure, modify the driveway, add on-site parking, and perform related site development activities. The subject property is located on the north side of Ledge Road, approximately 2,700 feet west of its intersection with Boston Post Road, and is shown on Assessor's Map #40 as Lot #43 in the Service Business (SB) Zone. *DEADLINE TO CLOSE PUBLIC HEARING IS 12/1/2015, UNLESS EXTENSION IS GRANTED.*

Attorney Wilder Gleason was present, and referenced his November 20, 2015 letter. He looked at neighboring communities' Zoning Regulations and other Atria facilities. He said that 28% of Darien's Atria unit residents have vehicles, which is a higher ratio than other communities. Mr. Sini acknowledged that the proposal is for a Town-wide change, not a change specific to this property. Mr. Gleason said that he recommends that different standards be established for an ALF, ILF, and Memory Care. He said that this Atria facility is a combination of ILF and ALF, and 0.8 parking spaces/unit is appropriate. They are an ALF/ILF both as defined in the Zoning Regulations and as licensed by the State of Connecticut. Mr. DiDonna asked whether this could change in the future. Mr. Gleason replied that they do not have a license from the State of CT to change, and would also need local P&Z approval to change to a different use. Mrs. Cameron confirmed that any parking standard be sensitive to the presence of private aides and the possible occasional use by outside groups. Ms. Joann Panella, Executive Director of Atria, said that there are now some residents with private aides—about 20 of the 80 units have part-time aides. The facility is now 60% ILF and 40% ALF. It is usually 30-45% assisted living (ALF).

In response to a question, Ms. Panella said that there are now parking spots which are not reserved. Mrs. Cameron said that it is now difficult to determine which are reserved spaces and which are not. Ms. Panella said that there are some reserved spaces in front for residents. The word "reserved", which was on the pavement in some spots, has been removed.

Mr. Gleason explained that under the current approval, Atria is not allowed to have outside groups meet there. He said that he believes a 0.8 parking standard is appropriate for a combination ILF/ALF. He said that for ALF/Memory Care, the ITE recommends 0.6 spaces/unit. He noted the existing Maplewood facility at 599 Boston Post Road has 35 spaces for 66 units (a 0.53 ratio).

Mr. DiDonna believed that there is a cushion for special events and outside groups. Mr. Gleason reiterated that Memory Care is not the subject of this application. As part of this proposal, they will be increasing the number of units from 80 to 86; and the number of on-site parking spaces from 89 to 91.

Mr. Gleason mentioned that Mr. Olvany had made reference in an e-mail to a required parking ratio of 1.0 to 1.25 spaces per unit. Mrs. Cameron said that she wanted to hear from Mr. Olvany on this. Mr. Gleason said that Mr. Olvany is not a traffic engineer.

Mr. Gleason then addressed Mr. Ginsberg's concern regarding on-site generator(s) to power the facility during an emergency. Mr. Gleason explained that there is now a generator, and if the project is approved, they will upgrade the generator to power all of the essentials, including some outlets in every unit. The generator will be propane powered. The generator will have at least 48

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hours of power, possibly longer. They will not become a burden to emergency services, and the new generator will be a big improvement over the existing conditions.

Mr. David Sullivan, traffic consultant from Milone and MacBroom, confirmed that there is a high vehicle occupancy rate at this location. In his experience 0.8 spaces per unit is a reasonable rate to use for this specific facility. Mr. Michael Galante, of FP Clark Associates, explained that he had been hired by the Town at the applicant's expense to review this application. He said that in his November 18, 2015 letter, he agreed with the 0.7 parking spaces per unit standard. This is based upon both the applicable ITE standard, and counts which his firm had done. He also looked at Saturday information. In response to a question, he said that the facility in Rye Brook has 0.75 spaces per unit. Thus, 0.8 spaces per unit is appropriate here. He believed that 1.25 spaces per unit is more applicable for typical apartments. In conclusion, he believed that a 0.8 standard is appropriate in this specific instance. Mrs. Cameron noted that holiday events are busiest at Atria. Mr. Gleason said that the Rye Brook facility is an Independent Living Facility (ILF) with 0.75 spaces per unit. That facility does allow outside groups to meet there.

There being no other comments or questions from the general public or Commission members, Mr. Sini made a motion to close the public hearing on this matter. That motion was seconded by Mr. Voigt and unanimously approved.

At about 8:40 p.m., Chairman Cameron read the next agenda item:

Land Filling & Regrading Application #370, Patricia Hemingway LLC, 23 Patricia Lane. Proposing to construct a replacement single-family residence and associated stormwater management, and perform related site development activities. The property is situated on the east side of Patricia Lane approximately 350 feet northeast from its southerly intersection with Dubois Street, and is shown on Assessor's Map #43 as Lot #73, in the R-1/3 Zone.

Mr. Mark Lebow of William Seymour & Associates was present on behalf of the applicant and submitted two letters of support. They are lowering the grade in the front yard by about 1.2 feet for a new driveway. Overall, other on-site grading will generally range from 6-9 inches. They will be building a complying replacement residence. The prior house was non-conforming relative to setbacks. The ZBA granted a variance last Wednesday night, with conditions. P&Z members were given a copy of that approval.

Regarding stormwater management, Mr. Lebow explained that there will be infiltrators in both the front and rear of the house. The on-site drainage patterns will be the same. Mr. DiDonna noted that one of the ZBA conditions of approval in Calendar #51-2015 was that a row of eight foot high trees be planted along the north property line. Mr. Lebow acknowledged that condition of approval, and said that those trees will be planted.

Mr. Dieter Bruhn of 31 Noroton Avenue said that he lives near the subject property (off of Noroton Avenue) and has concerns regarding stormwater management. Mr. Craig Schorr of 21 Patricia Lane submitted a letter dated November 18, 2015, with three concerns: the need to include drainage maintenance; light restrictions; and natural screening/trees along the north property line. It was noted that a Stormwater Facilities Maintenance Plan has been prepared and submitted for the record. Mr. Lebow noted that this property is higher than the nearby manmade pond which is on

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the Noroton Presbyterian property. He added that they are not connecting to the storm drain(s) in the street.

There being no other comments or questions from the general public or Commission members, Mr. Voigt made a motion to close the public hearing on this matter. That motion was seconded by Mr. Sini and unanimously approved.

At about 9:00 p.m., Chairman Cameron read the next agenda item:

Land Filling & Regrading Application #369, Luciano Lombardi, Jr., 8 West Elm Street. Proposing to regrade back yard, construct associated retaining wall, and to perform related site development activities. The subject property is located on the south side of West Elm Street approximately 200 feet west of its intersection with Noroton Avenue and is shown on Assessor's Map #21 as Lot #167 & #168 in the R-1/3 Zone.

Mrs. Cameron explained that the application did not include plans for the proposed retaining wall. She also mentioned that a zoning chart should be submitted as part of this application. Mr. Ginsberg noted the need to have correct information. Mr. Mario Lombardi said that he is hoping to bring up the level of the back yard by about five feet, and construct a retaining wall a maximum of five feet high. Mrs. Cameron said that the supplemental plans should show the location of any weepholes in the proposed retaining wall, as well as any proposed fence or railing on top. Mr. Cunningham encouraged Mr. Lombardi to work with the neighbors.

Mr. DiDonna noted the e-mail which was sent from Pam Gery of the Park and Recreation Department. He asked Mr. Lombardi if he could live with the conditions included in that e-mail, including the requirements for no vehicles or parking or site work on Town property. Mr. Lombardi responded that the proposed retaining wall will be set in one foot from the property line. Mrs. Cameron said that some additional room beyond that one foot may be necessary. Mr. Lombardi noted that the proposed retaining wall will be 2-1/2 feet thick.

Mr. Thomas Smith of 229 Noroton Avenue said that he now has some issues with drainage after a heavy rain. He is not sure how this proposal may affect that. Mr. Mike Medeiros of 12 West Elm Street said that he had spoken with Mario Lombardi about the proposal. He said there is wet ground in the area, and he wanted to make sure that any system is properly installed to avoid problems to his property and other downhill property owners.

There being no other comments or questions from the general public or Commission members, it was agreed to continue the public hearing on this matter to January 5, 2016 at 8 p.m. in room 206 of Town Hall.

GENERAL MEETING

At about 9:15 p.m., Chairman Cameron read the following general meeting agenda item, and took items out of order, in order to accommodate members of the general public who were present. Mr. DiDonna made a motion to waive the reading of the draft resolutions aloud. That motion was seconded by Mr. Voigt, and unanimously approved.

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Special Permit Application #277-C/Site Plan, Darien Butcher Shoppe, 13 Grove Street. Proposal for retail butcher shop with associated convenience food service use in a portion of the first floor of the existing 13 Grove Street building.

Mr. Sini said that Condition B should be clarified regarding trash collection. Mr. Cunningham noted the importance of getting the as-built survey of the property, which had been requested by the adjacent property owner, Mr. Genovese. Mr. DiDonna confirmed that this building is subject to a shared parking agreement, and paragraph 2 should mention that. Mr. Sini made a motion to adopt the resolution as amended. That motion was seconded by Mr. Cunningham and approved by a vote of 5-0. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 24, 2015**

Application Number: Special Permit Application #277-C/Site Plan

Street Address: 13 Grove Street
Assessor's Map #73 Lots #15 & #16

Name and Address of Property Owner: Albert Orlando
And Applicant's Representative: Day Street Development, LLC
84 Hobsen Street
Stamford, CT 06902

Name and Address of Applicant: Peter Crawford
Darien Butcher Shoppe
26 West End Ave.
Old Greenwich, CT 06910

Activity Being Applied For: Proposal for retail butcher shop with associated convenience food service use in a portion of the first floor of the existing 13 Grove Street building.

Property Location: The subject property is located on the southwest corner formed by the intersection of Day Street and Grove Street.

Zone: CBD

Date of Public Hearing: November 10, 2015

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

Publication of Hearing Notices

Dates: October 30 & November 6, 2015 Newspaper: Darien News

Date of Action: November 24, 2015 Action: GRANTED WITH STIPULATIONS

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Scheduled Date of Publication of Action: Newspaper: Darien News
December 4, 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 650, 905, 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 proposed floor plan, and the statements of the property owner and applicant 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 careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to establish a retail butcher shop with associated convenience food service use in a portion of the first floor of the existing 13 Grove Street building. This property is within the Central Business District (CBD) zone. In this zone, the butcher is a retail use, permitted as-of-right. This zone allows Convenience Food Service as an Accessory Use Requiring a Special Permit pursuant to Section 655a of the Zoning Regulations. They can have up to eight indoor seats for such a use.

DESCRIPTION OF SUBJECT PROPERTY AND PRIOR SITE PLAN APPROVAL

2. The subject property contains two buildings, the “front” building with an address of 1015 Boston Post Road, and the “back” building with an address of 13 Grove Street. The 1015 Boston Post Road building is two stories, with part of the first floor now containing BlueMercury. The remainder of the first floor of that building will soon be occupied by Fjord Fishery. The second floor of that building has been approved for and now contains three residential apartments. The 13 Grove Street building also now has three residential apartments on the second floor. The remainder of the first floor not to be used by the butcher shop will be used by Le Boudoir. The two buildings share one parking lot pursuant to a shared parking agreement.

DESCRIPTION OF PROPOSED USE AND OPERATIONS

3. Mr. Peter Crawford, the proposed tenant, is proposing side dishes to go with the meats that he will sell. Side dishes would be prepared at Amanda Smith Catering and be brought to the premises. Sandwiches would be prepared on-site. There will be no heating of foods. He would bring in fresh bread, possibly as frequently as daily.
4. Mr. Crawford then confirmed that there would be no cooking done on-site. He said that therefore, no odors would be generated, and that garbage would be double-bagged.

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5. Building owner Albert Orlando explained that the shared Dumpster is now emptied two times a week, and they plan on increasing that to at least three times a week.

PARKING AND TRAFFIC

6. Albert Orlando of Day Street Development LLC, the property owner, conducted his own informal parking counts on a number of dates in October 2015. He counted numerous on-street, on-site, and municipal parking lot spaces that were available during all times of the day. Mr. Orlando acknowledged that Le Boudoir (the other first floor tenant in this building) is not yet open, nor is Fjord Fisheries, a first floor tenant in the other building on this property. Mr. Orlando said that the lease requires that all employees park off-site.
7. The location and size of the use, the nature of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
8. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
9. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
10. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
11. 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.
12. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
13. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE, BE IT RESOLVED that Special Permit Application #277-C/Site Plan is hereby modified and granted subject to the foregoing and following stipulations, conditions, modifications and understandings:

- A. The Commission is approving only the specific use as described in detail in the application and at the Public Hearing. If, at some time in the future, the tenant and/or property owner wishes to change to a different business or to expand the business in terms of additional space, or other aspects of the business, then prior review and action by the Planning & Zoning Commission is required. The establishment of the Convenience Food Service use shall be in accordance with

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the following plan submitted to the Commission, as may need to be modified by the Fire Marshal, Health Department, and/or the Building Official:

- First Floor Plan Proposed, Darien Butcher Shop floor plan showing eight seats and two tables, prepared by Ridberg + Associates, dated November 3, 2015, Drawing #A1.0.

CONDITIONS REGARDING THE ON-SITE OPERATIONS OF THE BUSINESS

- B. During the public hearing and as part of the submitted application materials, the applicant and business owner noted that the proposal is for a butcher shop with associated convenience food service use. No cooking shall be done on-site. The shared Dumpster shall be emptied, at least three times per week or more often if necessary to keep the area neat and orderly, and to minimize odors.
- C. The hours of operation to the public, as proposed by the applicant, and approved herein, are a maximum of 9 A.M. to 7 P.M. seven days a week. It is acknowledged that employees may need to come in earlier or stay later. Due to its location directly below residential tenants, any expansion of the maximum hours of operation requires further review and action by the Planning and Zoning Commission.

CONDITIONS RELATED TO PARKING

- D. At the public hearing, the applicant and owner/operator put forth that employees not taking public transportation will park off-site. That is an integral part of this approval. The Commission hereby requires that annual certification of such off-street parking be made by the owner/operator of the business to the Planning and Zoning Director.
- E. The subject on-site parking lot is a shared parking lot with the building at 1015 Boston Post Road. Section 905 of the Darien Zoning Regulations does not allow reserved parking spaces. Thus, no parking spaces can have signage reserving spaces for a specific tenant or use, and no formal or informal agreement made reserving on-site spaces for any business or residential use on-site.
- F. Since on-site parking is limited, there shall be no delivery or marked or unmarked business vehicle parked on-site.

CONDITIONS REGARDING THE SITE PLAN

- G. Because of this property's first floor location in downtown Darien, it is essential that the front and side windows not be blocked. The Commission hereby requires that no curtains or drapes block the ability of the public to look into the building. Displays of retail products and other items in the windows are strongly encouraged. The Commission requires that both doors (from Grove Street and from the shared parking lot) be available for use by the general public.
- H. Because of the fact that all of the proposed work is interior work, and there is no new impervious surface proposed as part of this application, the Commission hereby waives the requirement for stormwater management under Sections 888a(3) and 888a(4).
- I. In evaluating this application, the Planning & Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive,

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incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.

- J. The granting of this Special Permit does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. Zoning and Building Permits (with associated review by the Fire Marshal) are required for the interior tenant fit-up.
- K. This permit shall be subject to the provisions of Section 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action by (November 24, 2016). This may be extended as per Section 1009.

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. Prior to the establishment of the Convenience Food Service use, a Special Permit form must be filed in the Darien Land Records or this approval shall become null and void. Any desired signage for this business requires review and action by the Architectural Review Board.

Deliberations and possible decisions regarding:

Amendments to Darien Zoning Map (COZM2-2015), Amendment to Darien Zoning Regulations (COZR4-2015) put forth by 1950 Post Road, LLC. Proposing to: 1) amend the Darien Zoning Map by changing the current boundary between the NB Zone and the R-1/2 Zone to run along the property boundaries, rather than being 100 feet from the Boston Post Road right-of-way; and 2) amend Section 604(c) of the Darien Zoning Regulations to allow dwelling units on upper floors: The Zoning Map amendments would rezone the following parcels from being split-zoned, to be entirely within the NB Zone: 1926, 1936, 1950 & 1958 Boston Post Road (shown on Assessor's Map #51 as Lots #38, #39, #40, and #41). The parcel which will be rezoned to become entirely within the R-1/2 Zone is 8 Ring's End Road (Map #51, Lot #34).

Mrs. Cameron had comments on paragraphs 6 and 7. Mr. DiDonna wanted a clarification to paragraph 9. Other typographical corrections were noted. Mr. DiDonna made a motion to adopt the resolution as amended. That motion was seconded by Mr. Sini, and approved by a vote of 4-0-1, with Mr. Cunningham abstaining, since he was not at the public hearing on this matter. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 24, 2015**

Application Number: Amendments to Darien Zoning Map (COZM2-2015)
Amendments to Darien Zoning Regulations (COZR4-2015)
put forth by 1950 Post Road, LLC

Name and Address of Applicant: 1950 Post Road, LLC
c/o 48 Ring's End Road
Darien, CT 06820

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

Activity Being Applied For:

- 1) Amend the Darien Zoning Map by changing the current boundary between the NB Zone and the R-1/2 Zone to run along the property boundaries, rather than being 100 feet from the Boston Post Road right-of-way; and
- 2) Amend Section 604(c) of the Darien Zoning Regulations to allow dwelling units on upper floors: The application was subsequently amended to include regulation amendments to Sections 601, add a new subsection 604(e), and to create a new Section 605 Note d(3).

Property Locations:

The Zoning Map amendments would:

- a) Rezone the following parcels from being split-zoned, to be entirely within the NB Zone:
 - 1926 Boston Post Road. Shown on Assessor's Map #51 as Lot #38.
 - 1936 Boston Post Road. Shown on Assessor's Map #51 as Lot #39.
 - 1950 Boston Post Road. Shown on Assessor's Map #51 as Lot #40.
 - 1958 Boston Post Road. Shown on Assessor's Map #51 as Lot #41.
- b) One parcel which will be rezoned to become entirely within the R-1/2 Zone is:
 - 8 Ring's End Road. Shown as Assessor's Map #51 as Lot #34.
- c) Parcels in the vicinity which will not be changed:
 - 6 Ring's End Road. Shown as Assessor's Map #51 as Lot #35.
 - 1910 Boston Post Road. Shown as Assessor's Map #51 as Lot #36.
 - 1918 (sometimes referred to as 1914) Boston Post Road. Shown as Assessor's Map #51 as Lot #37.

Date of Public Hearing: October 6, 2015 continued to October 27, 2015
Deliberations held on: November 3, 2015

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

Publication of Hearing Notices

Dates: September 25 & October 2, 2015 Newspaper: Darien News

Date of Actions: November 24, 2015

Actions: Zoning Map Amendments

ADOPTED WITH AN EFFECTIVE DATE OF
SUNDAY, DECEMBER 13, 2015 AT
TWELVE NOON.

Zoning Regulation Amendments

ADOPTED WITH AN EFFECTIVE DATE OF
SUNDAY, DECEMBER 13, 2015 AT
TWELVE NOON.

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Scheduled Date of Publication of Actions: Newspaper: Darien News
December 4, 2015

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

- the proposed Zoning Regulation and Zoning Map amendments must be consistent with the Town Plan of Conservation & Development for the Commission to approve this project.

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

1. The subject applications consist of the following:
 - a)** Amendments to Darien Zoning Map (COZM2-2015), Proposing to: 1) amend the Darien Zoning Map by changing the current boundary between the NB Zone and the R-1/2 Zone to run along the property boundaries, rather than being 100 feet from the Boston Post Road right-of-way;
 - b)** Amendment to Darien Zoning Regulations (COZR4-2015), and 2) amend Section 604(c) of the Darien Zoning Regulations to allow dwelling units on upper floors. As noted on the previous page of this decision, during the public hearing process, in response to concerns, the applicant modified the application to include Regulation amendments to other sections of the Regulations;

A separate, but related application has been formally submitted, and that has a separate decision by this Commission:

- c)** Business Site Plan Application #289-A/Special Permit, Land Filling & Regrading #351-A, 1950 Post Road, LLC. Proposing to: demolish the existing structures on the 1950 Boston Post Road site; build a two-story mixed use building with associated on-site parking; and perform related site development activities.
2. At the public hearing, Attorney Robert Maslan represented the applicant and property owner of 1950 Boston Post Road, and said that they are proposing to amend the Zoning Map to shift the zoning boundary that separates the residential R-1/2 zone from the Neighborhood Business (NB) zone. At present, the NB zone only extends 100 feet south of the Boston Post Road, yet the subject property at 1950 Boston Post Road extends approximately 297-307 feet south of the Boston Post Road. Attorney Maslan said that in the 1920s, when the zoning boundaries were first established in Darien, they were frequently drawn as being parallel to the streets, regardless of where property lines were located or would be located in the future. At that time, there were no parking requirements because few people owned cars and most cars were parked on streets. Later, the Zoning Regulations included parking requirements and were clarified to indicate that business related parking could not occur in the residential zones.

ZONING MAP AMENDMENTS

3. Attorney Maslan said that the proposed amendment of the zone boundary line is consistent with several portions of the Town Plan of Conservation & Development which he submitted. He noted that in Chapter 9, the Town Plan indicates a hesitancy to rezone residential property to

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commercial due to the need to protect residential character. He said that in this case, rezoning will result in only the parking area being in the residential zone and adequate and sufficient buffer areas will need to be provided to protect the nearby residential properties.

4. The proposed rezoning on the south side of the Boston Post Road would affect properties at 1958, 1950, 1936 and 1926 Boston Post Road. He said that there is also a very small piece of property at 8 Ring's End Road, which is residential, that would be changed from the NB zone to the R-1/2 residential zone.
5. Attorney Maslan noted that the neighbors have indicated that a small house at 6 Ring's End Road is technically in the Neighborhood Business Zone although it is a residence. He said that at some point that business property might be merged with other business property to which it is adjacent or the small property might accommodate a small house. He said whether the existing small house and small property stays in the Neighborhood Business Zone or is changed to the Residential Zone is a decision for the Commission and not part of this application. During deliberations, the Commission discussed that they could pursue a separate application to rezone that 6 Ring's End Road property in the near future.
6. At the public hearing, Attorney Maslan pointed out the existing split-zoned lots. In his application materials he specifically referenced Page 9-3 of the Town Plan, which reads as follows:

Over the next ten years, the Planning and Zoning Commission should continue to study and continue to consider amending the zoning map. This may be appropriate in areas where existing zone boundary lines split properties and are not a set distance from a street.

Some residential district boundaries follow streets rather than rear lot lines, split lots between different districts, or do not appropriately reflect existing lot sizes. In large measure, this is due to those lines having been established as measurements back from a street centerline or right-of-way, before a Town lot line base map existed. It is recommended that these residential zoning district boundaries be studied and carefully reviewed for possible adjustment. Some boundaries which follow streets which should be further considered for alteration include:

- *Hoyt Street properties north of Woodway Road, which are split zoned R-2 and R-1/2;*
- *Holmes Avenue properties which are split zoned R-1/5 and R-1/3;*
- *Fairmead Road properties which are split zoned R-1 and R-1/2;*
- *Hecker Avenue properties near Frate Court, which are split zoned R-1/5 and R-1/3.*

On page 9-5 of the Town Plan, the following recommendation is noted:

Continue to limit (in most circumstances) commercial and business impacts and intrusion on adjacent residential properties and streets.

ZONING REGULATION AMENDMENTS

7. Attorney Maslan said that in addition to the proposed amendment of the Zoning Map, he is also proposing an amendment to the Zoning Regulations that would clarify that dwelling units in the NB Zone are only permitted on the upper floor or floors of existing buildings. He proposed deleting the word "existing" so that a newly constructed building, or a building to be constructed, could be approved with dwelling units on upper floors.

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8. In response to comments received at the first public hearing, a revised version of zoning regulation amendments was submitted. This revision modified Sections 601 and 604 and 605. This version was dated October 13, 2015.
9. During the public hearing, Attorney Maslan said that the minimum buffer area of the commercial use and activity including parking and access driveways to the nearest residential property needs to be at least 25 feet. He said that the Regulations could be changed by the Planning & Zoning Commission to mandate that no buildings are placed in the portion of the land to be changed from residential to business and those areas can only be used as the buffer areas and as parking, but not active principal business structures. The Commission agrees that this is appropriate.
10. It was noted that development activities shown on the associated Site Plan would include the construction of a parking lot, associated parking lot lighting, and a patio. Mr. Olvany asked about the phrase “street line” put forth by Mr. Maslan. Mr. Maslan said that this would be Boston Post Road in the present case, but in the NB zone in the other part of Darien, it could refer to Tokeneke Road. Mr. Olvany suggested using “front street line” or “primary street line”. Mr. DiDonna noted the change of the phrase “upper floor(s)”.
11. At the public hearing, Mr. Maslan explained that based upon his reading, the zoning map amendment and zoning regulation amendment are both consistent with the Town Plan of Conservation & Development.
12. This application was referred to the Western Connecticut Council of Government (which replaced the South Western Regional Planning Agency – SWRPA) and they found that it would have minimal inter-municipal impact, as noted in a September 2, 2015 email from Jonathan Chew of WestCOG.

NEIGHBOR COMMENTS AND CONCERNS

13. At the public hearings on October 6 and 27, neighbors voiced their concerns with both the zoning map amendment, zoning regulation amendment and related site plan. Mr. Terry Gaffney of 8 Ring’s End Road submitted a letter dated October 27, 2015. He had previously asked that 6 Ring’s End Road be rezoned from commercial to residential. He wanted to ensure that any changes are compatible with the residential zone. Mrs. Lisa Cerussi of 12 Ring’s End Road said that she would prefer that there be no zone change. Her concerns were lack of privacy and potential noise. She requested that special controls be implemented, including a thirty foot buffer on all sides, and a buffer zone to include both landscaping and fencing. She also asked why 6 Ring’s End Road was not to be changed as part of the zoning map amendment application.

CONSISTENCY WITH 2006 TOWN PLAN OF CONSERVATION & DEVELOPMENT

14. The Commission finds that both the zoning regulation amendments and zoning map amendments are consistent with the 2006 Town Plan of Conservation & Development. As noted above, specific references are made in the Town Plan about split-lot situations. In this specific instance, and based upon the facts presented, the Commission believes that rezoning certain properties is appropriate.

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15. Section 8-3(d) of the Connecticut General Statutes requires that notice of this decision be published in a local newspaper, and a copy of the regulation change be filed with the Town Clerk prior to the zoning regulation amendments taking effect.

NOW THEREFORE BE IT RESOLVED that the Amendments to the Darien Zoning Map (COZM2-2015), are hereby ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 13, 2015 AT TWELVE NOON.

The Commission hereby approves the amendments to the Darien Zoning Map as shown on the submitted map entitled:

- “Compilation Plan Depicting Proposed Zone Line Revision 1950 Boston Post Road” prepared for Jon Vaccaro, Darien, Connecticut, by William W. Seymour & Associates, dated July 14, 2014.

This map shows areas to be rezoned from the R-1/2 to NB Zone, and areas to be rezoned from the NB to the R-1/2 zone. According to the submitted survey, the area to be rezoned from R-1/2 to NB is 46,929+/- square feet, and the area to be rezoned from NB to R-1/2 is 2,878+/- square feet.

NOW THEREFORE BE IT RESOLVED that Amendments to the Darien Zoning Regulations (COZR4-2015), are hereby ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 13, 2015 AT TWELVE NOON.

(The inside cover page of the Zoning Regulations, the Table of Contents, and Appendix C-Schedule of Amendments also shall be modified accordingly)

NEW WORDING IN BOLD, DELETIONS IN STRIKEOUT:

The Commission hereby adopts the revised version submitted by the applicant, with minor changes. This modifies Sections 601; subsection 604c; adds a new subsection 604e; and adds a new Note d(3) to Section 605.

601. Background and Purposes

This zone is intended to provide local neighborhoods with conveniently located, controlled zones in which needed and desirable commercial sales and services, public and semi-public uses and other similar services can be offered in a manner which will not be detrimental to the surrounding residential area. To minimize impacts to abutting residential properties, all development activities located more than 100 feet from the street line shall require special permits, and no buildings shall be located more than 100 feet from the front street line.

604. Principal Uses Requiring Special Permits

The following uses shall be permitted subject to approval of a Special Permit in accordance with Section 1000:

- a. Any permitted use involving the sale of prepared food whether intended for consumption on or off the premises.
- b. Protected Town Landmarks.

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- c. Dwelling units located on ~~the second floor of an existing building~~ upper floor(s).
- d. Personal Service Businesses.
- e. All development located more than 100 feet from the front street line.

605. Area and Bulk Requirements

...

Notes:

- a. Requirements for yards and buffers control lot sizes.
- b. As stated above, but no parking shall be permitted in front of any building unless the setback from the street line is at least 75 feet. On streets of less than 50 feet width, the front yard setback shall be measured from the center line of the street and 25 feet shall be added to the required front yard setback. See Subsection 372 for requirement where setback of existing buildings is greater or less than minimum requirement.
- c. None, except as follows:
 - (1) If a side yard is provided, it must be at least 4 feet, except where access to parking space is provided through a side yard, in which case the yard shall be at least 25 feet in width. Where access is provided jointly by two adjoining properties, the side yard may be reduced by 12 1/2 feet provided the full 25 feet wide access is assured.
 - (2) Where a side yard abuts a Residential Zone, it shall equal the side yard requirement of said abutting Residential Zone.
- d. As specified, except as follows:
 - (1) Where a rear yard abuts a Residential Zone, the rear yard requirement shall be at least equal to the rear yard requirement of the adjoining Residential Zone;
 - (2) Where the lot is a corner lot and its rear yard is not adjacent to land in any other zone, the rear yard requirement shall equal the side yard requirement-;
 - (3) No buildings shall be located more than 100 feet from the front street line.

This modified Sections 601; subsection 604c; added a new subsection 604(e); and added a new Note d(3) to Section 605 all take effect on Sunday, December 13, 2015 at twelve noon.

Mrs. Cameron then read the next agenda item:

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Business Site Plan Application #289-A/Special Permit, Land Filling & Regrading #351-A, 1950 Post Road, LLC, 1950 Boston Post Road. Proposing to: demolish the existing structures on the site; build a two-story mixed use building with associated on-site parking; and perform related site development activities.

Mr. Sini had a comment on page 3. Mr. DiDonna noted that on page 15 of the related minutes, Mr. Olvany made a point regarding the proposed fence, and he believed that it should be incorporated into the Resolution. Mr. DiDonna then made a motion to approve the resolution as amended. That motion was seconded by Mr. Voigt, and approved by a vote of 4-0-1, with Mr. Cunningham abstaining. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 24, 2015**

Application Number: Business Site Plan Application #289-A/Special Permit
Land Filling & Regrading #351-A

Street Address: 1950 Boston Post Road
Assessor's Map #51 Lot #40

Name and Address of
Applicant and Property Owner: 1950 Post Road, LLC
c/o 48 Ring's End Road
Darien, CT 06820

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

Activity Being Applied For: Proposing to: demolish the existing structures on the site; build a two-story mixed use building with associated on-site parking; and perform related site development activities.

Property Location: The subject property is located on the south side of Boston Post Road, directly across from its intersection with Garden City Road.

Zones: NB and R-1/2. There is a related zoning map application to rezone the subject property to be entirely within the NB Zone.

Date of Public Hearing: October 6, 2015 continued to October 27, 2015
Deliberations held on: November 3, 2015

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

Publication of Hearing Notices
Dates: September 25 & October 2, 2015 Newspaper: Darien News

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2. At the public hearing on this matter, Attorney Robert Maslan represented the applicant and explained that this Business Site Plan and Special Permit are dependent upon the Commission's approval of the Change of Zone map boundary and the proposed amendments to the Zoning Regulations.
3. The subject property at 1950 Boston Post Road is approximately 0.725 acres, and the proposal is to remove the old building and replace it with a new building that will have a mix of business and residential use. The proposed building will have a footprint of approximately 4,122 square feet, with the building to be located entirely within 100 feet of Boston Post Road. The second floor of the proposed building will be slightly larger. The ground floor will be used for retail purposes. The second floor will contain 4 apartments. There will be no third floor. A basement, to be used for storage only, is proposed. The NB zone only allows two story buildings, so there can be no finished space in the basement.
4. On September 8, 2015, the Architectural Review Board reviewed the design of the proposed building and granted their approval.
5. Attorney Maslan said that the previous plan had two separate buildings, one close to the Post Road which would contain business use and some residential use upstairs and a second building in the residential zone which would contain only garage spaces on the ground floor and an apartment on the second floor. The previous application was eventually withdrawn because there were significant questions about whether it complied with the Darien Zoning Regulations. The subject proposal is to have a single building near the Boston Post Road and have parking located to the rear.
6. During the prior application regarding this property heard in June 2015, Town Historian, Marian Castell submitted testimony regarding the condition of the existing building which had previously been designated as a Protected Town Landmark by the Planning and Zoning Commission. The applicant had also submitted testimony from two experts that confirmed that the building was no longer worthy of renovating, and had little to no historical value remaining. It continues to be the Commission's policy to preserve such structures. However, in this specific case, the expert testimony from the applicant's experts, as well as the Town Historian, made it very clear to the Commission that demolishing this Protected Town Landmark would not be inappropriate.
7. The newly proposed building is designed to be entirely within 100 feet of Boston Post Road. The proposed building is reoriented so that the ridge line would be parallel to the Boston Post Road and the parking would be located to the rear. The building has been designed to have a residential feel even though the ground floor will be a retail use. The building will now face Boston Post Road. The second floor apartments will each contain approximately 995 square feet, and the building height will be less than 28 feet, as measured by the Darien Zoning Regulations. Roof mounted utilities will be hidden from view because of the roof design. The 4,123 square feet of retail use on the ground floor will require 28 parking spaces because the Zoning Regulations require one space for each 150 square feet of commercial floor space. The Regulations also require 2.5 parking spaces per residential unit, therefore 10 parking spaces are required for the residential component. A total of 38 on-site parking spaces are required by the Regulations.

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8. A new "Model Block" sidewalk design will be used along the front of the property and two new lamp posts and two new street trees will be installed. Street trees will be installed per the Regulations. An existing oak tree along the property frontage is scheduled to be removed. The Fire Marshal has requested that a new fire hydrant be installed, and the applicant has agreed to that.

STORMWATER MANAGEMENT

9. John Martucci, Professional Engineer and designer of the drainage system, said that the previous plan had included a single drywell to collect water from the driveway, parking area and building. The new plan incorporates a series of galleries to manage storm water on the site. At the public hearing, he reviewed the details of the proposed system.

LIGHTING, LANDSCAPING, BUFFERING, FENCING

10. Lighting of the parking lot will include Apex lighting fixtures which will provide a clear cutoff to prevent glare toward the residential neighbors. Originally, sixteen foot tall light poles were proposed, but revised plans reflect 12 foot high poles to better address neighbor concerns. There will be a fence and landscaping in front of the proposed lights. Professional engineer John Martucci then presented the photometric plan, showing the use of full cutoff LED lights. The photometrics were based on the proposed elevations. The new parking lot will be approximately three feet higher than the existing grade in order to create a parking area that does not drain toward the neighbors.
11. Sara Ungemack McCool, Landscape Architect, said that she has prepared the Planting Plan and has included additional evergreen trees and deciduous trees. She said that the new evergreen trees will grow up to 40 feet tall and that they are using arborvitae because they are fast growing and will fill in the voids. Arborvitae will be used in the shade of the existing maple trees and they will grow well. She said that a solid fence has been proposed on the east and south boundaries of the property to provide separation of the business parking area from the nearby residential neighbors. It will be six or eight feet high. She said that in the front of the building, two cherry trees and two dwarf trees will be installed near the sidewalk. Mrs. Cameron asked if it was possible to remove the Norway maple trees because those are now considered an invasive species.

NEIGHBOR CONCERNS

12. At the public hearings on this matter, neighbors voiced their concerns regarding the proposal, including, but not limited to concerns regarding the size of the trees, when they are to be planted, and the size and nature of fencing and buffering. Ms. Lisa Cerussi of Ring's End Road said that she would prefer a six foot high fence. She asked about the height of the proposed trees, when planted. She asked that a thirty foot buffer be required along her shared lot line.
13. 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.

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14. The nature of the proposed changes and uses are such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
15. The site plan has been reviewed by the Commission and is in general compliance with the intent, purposes and objectives of Section 1020.
16. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
17. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
18. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
19. The location and size of the use conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.

NOW THEREFORE BE IT RESOLVED that Business Site Plan Application #289-A/Special Permit and Land Filling & Regrading #351-A are hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction and other site development activity shall be in accordance with the following plans as required to be modified herein:
 - Demolition & Erosion Control Plan prepared for Jon Vaccaro 1950 Post Road, Darien, Connecticut, scale 1"=20', by LBM Engineering, LLC, last revised 10/24/2015, Sheet 1 of 6.
 - Stormwater Management Plan prepared for Jon Vaccaro 1950 Post Road, Darien, Connecticut, scale 1"=20', by LBM Engineering, LLC, last revised 10/24/2015, Sheet 2 of 6.
 - Utility Plan prepared for Jon Vaccaro 1950 Post Road, Darien, Connecticut, scale 1"=20', by LBM Engineering, LLC, last revised 10/24/2015, Sheet 3 of 6.
 - Site Photometric Calculation, 1950 Boston Post Road, Apex Lighting Solutions, dated 10/25/15, Sheet SL-1C, Sheet 4 of 6.
 - Site Photometric Calculation, 1950 Boston Post Road, Apex Lighting Solutions, dated 10/25/15, Sheet SL-1C, Sheet 5 of 6.
 - Town Details prepared for Jon Vaccaro 1950 Post Road, Darien, Connecticut, scale 1"=20', by LBM Engineering, LLC, last revised 8/19/2015, Sheet 6 of 6.
 - Proposed Plantings 1950 Boston Post Road, Darien, CT Ungemack-McCool Landscape Assoc., dated 8-10-15.
 - 1950 Boston Post Rd, by James Schettino Architects, Sheet A1.0 through A3.2.

The final plans shall be revised and coordinated, and shall specifically call out the following:

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- A 30 foot wide planted buffer on the east property line.
 - Twelve foot high pole lights with LED lighting
 - A six foot high solid stockade fence in the rear and side of the property. If in the determination of Planning & Zoning Department staff and the neighbor, the applicant may increase that to an eight foot high fence.
- B. The Planning and Zoning Commission is not requiring a bond for the proposed public improvements (sidewalk, lampposts and fire hydrant), since a Certificate of Occupancy cannot be obtained until these are properly constructed pursuant to the plans in Condition A, above. A new sidewalk shall be provided along the entire frontage of this property and shall be constructed in accordance with Town Model Block Standards.
- C. All utilities serving this property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring.
- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans in Condition A, above, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, 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.

STORMWATER MANAGEMENT

- E. By January 24, 2016 (within the next 60 days) and prior to the issuance of Zoning or Building Permits for the new building, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. This plan shall include the proposed drainage system. After approval by the two Directors, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 1950 Boston Post Road to maintain the on-site drainage facilities, and will alert future property owners of the on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit and within 60 days of this approval.
- F. 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 any negative impacts upon the adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- G. Rough site work for the project may commence once the sediment and erosion controls and other environmental protection measures are in place. Around the work area, the storm water runoff must be addressed on a temporary, during construction, basis. This includes limiting the

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potential for erosion, capturing sediment that does get created, and providing for the flow of storm water in a manner that will not create any problems for adjacent or downstream properties.

AS-BUILTS AND CERTIFICATIONS REQUIRED

- H. Section 602 of the Darien Zoning Regulations requires Planning and Zoning Commission review and approval of any proposed first floor tenant to determine that the proposed use "...shall be compatible with the character of the immediate neighborhood and shall principally serve the local neighborhood..."
- I. Prior to issuance of the Certificate of Occupancy (CO) for this project, the applicant's engineer shall provide a certification that the stormwater management system is installed in full compliance with the approved plans.
- J. Once the construction work is complete and prior to the issuance of a Certificate of Occupancy, the applicant shall submit verification from the project engineer that all aspects of the site grading, building construction and the storm water management (drainage) system have been completed in compliance with the approved plans and the flood damage prevention regulations.
- K. Also prior to the issuance of a Certificate of Occupancy, an as-built photometric plan (including, but not limited to, showing the location of the on-site lighting), is required to ensure that the property is developed according to plan and does not create impacts from lighting to surrounding neighboring properties.
- L. All aspects of the construction, including, but not limited to: stormwater management, site improvements (the installation of the Model Block sidewalk, associated lampposts), fire hydrant, buffering, fencing and landscaping must be completed prior to any use or occupancy.
- M. 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 includes, but is not limited to, the requirement for Zoning and Building Permit applications, and a Sewer Disconnection (as part of the demolition) and a Sewer Connection Permit from Darien Sewer Services for the new building. A Street Opening Permit from the State of CT DOT is required for the proposed driveway and other work on and near Boston Post Road/Route 1.
- N. 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 the permit as it deems appropriate.
- O. 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 of the approved plan within one year of this action (November 24, 2016). This approval may be extended as per Sections 858, 1009 and 1025.

All provisions and details of the plan, as required herein to be amended, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the

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signing of the final documents by the Chairman. All completed requirements and materials shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void. A Notice of Drainage Maintenance Plan and Special Permit form must be filed prior to the issuance of a Zoning or Building Permit.

Mrs. Cameron read the next agenda item:

Flood Damage Prevention Application #7-A, Peter & Megan Franchetti, 18 Waverly Road.

Proposal to construct a replacement single-family residence and to perform related site development activities within a regulated area.

Mrs. Cameron pointed out that due to the location of the property, the Commission needs to focus on water quality, not on water quantity. Mr. DiDonna mentioned the condition in the resolution regarding the need for an Electrical Permit and screening and soundproofing of the air conditioning units and generator, which will be on a platform. Mr. DiDonna then made a motion to adopt the resolution as amended. That motion was seconded by Mr. Sini, and approved by a vote of 5-0. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 24, 2015**

Application Number: Flood Damage Prevention Application #7-A

Street Address: 18 Waverly Road
Assessor's Map #55 Lot #22 & #23

Name and Address of Property Owner: Peter & Megan Franchetti
18 Waverly Road
Darien, CT 06820

Name and Address of Applicant
And Applicant's Representative: Chad Nehring
Nehring + Assoc. Architecture
152 Deer Hill Avenue, #304
Danbury, CT 06810

Activity Being Applied For: Proposal to construct a replacement single-family residence and to perform related site development activities within a regulated area.

Property Location: The subject property is located on the west side of Waverly Road, approximately 300 feet south of its intersection with Shipway Road.

Zone: R-NBD

Date of Public Hearing: November 10, 2015

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

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Publication of Hearing Notices

Dates: October 30 and November 6, 2015

Newspaper: Darien News

Date of Action: November 24, 2015

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
December 4, 2015

Newspaper: Darien News

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

- the proposed use and activities must comply with all provisions of Sections 410 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 detail in the application, the submitted redevelopment plans, 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.
- 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. This application is to construct a replacement single-family residence and to perform related site development activities within a regulated area. The proposed residence will have four bedrooms and a playroom over the garage. It will be served by public water and public sewer service.
2. As shown on the Drainage Plan and architectural plans, the house will have a finished first floor of at least elevation 15.0, which is at least one foot greater than the FEMA Flood Insurance Rate Maps (FIRM) which went into effect in July 2013. All mechanical units will be at or above elevation 14.0, which will also comply with the FIRM which went into effect in July 2013.
3. The existing house is at elevation 9.2, and will be razed. The first floor of the new replacement residence will be at elevation 15.0. It will have masonry stairs for access. A masonry pad will be constructed for associated mechanical equipment, which will be placed at elevation 14.0. The new house will have a crawl space with smart vents. The propane tank will be buried, and strapped down in order to meet the flood regulations. There will be minor changes to the grade—a maximum of one foot in any one location. A stormwater management plan has been prepared, and includes 100 linear feet of Cultec units. A Drainage Maintenance Plan will be submitted.
4. The property will have two or three air conditioning units on the mechanical pad, and a generator. Mechanical units will have to be placed on a platform in order to comply with the

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flood regulations. The applicant has proposed screening on three sides of those units and soundproofing around the units in order to minimize potential impacts.

5. 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.

NOW THEREFORE BE IT RESOLVED that Flood Damage Prevention Application #7-A is hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction of the replacement single-family residence and other related site development activity shall be in accordance with the plans entitled:
- Franchetti Residence 18 Waverly Road, Proposed Architectural Site Plan & S& E Controls, by Nehring + Associates Architecture, LLC, dated 10.15.15, Sheet L-1.
 - Franchetti Residence 18 Waverly Road, Proposed Crawlspace; Foundation Specifications; Vent Specifications, by Nehring + Associates Architecture, LLC, dated 10.15.15, Sheet A-1.
 - Franchetti Residence 18 Waverly Road, Proposed Floor Plans and Elevations, by Nehring + Associates Architecture, LLC, dated 10.15.15, Sheets A-2 through A-6.
 - Drainage Plan, Peter Franchetti, 18 Waverly Road, by Artel Engineering Group., LLC, dated 10/16/15, Sheet 1 of 2.
 - Details, Peter Franchetti, 18 Waverly Road, by Artel Engineering Group., LLC, dated 10/16/15, Sheet 2 of 2.
- B. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- C. Because this application is located within the bottom 1/3 of the watershed, the Commission hereby waives the requirement to address water quantity. Only water quality is addressed.
- D. As part of this application, a Drainage Maintenance Plan shall be submitted for the record. This Drainage Maintenance Plan requires the property owner and all subsequent property owners of 18 Waverly Road to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to address water quality. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records prior to the start of any work.
- E. Accompanying the Zoning and Building Permit applications and prior to commencing construction, a certification shall be submitted from a licensed architect and/or engineer that verifies that the final design of the replacement house complies with the applicable flood damage prevention requirements.
- F. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the Drainage Plan, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, shall be installed and maintained to minimize any adverse impacts during the

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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.

- G. Once the construction work is complete and prior to the issuance of a Certificate of Occupancy, the applicant shall submit verification from the project engineer or architect that all aspects of the site grading, and building construction have been completed in compliance with the approved plans and the flood damage prevention regulations. Also prior to a Certificate of Occupancy, a final as-built survey shall be submitted by a licensed Land Surveyor certifying the final construction meets all building setbacks and building coverage maximums, and the finished floor elevation of the residence is at or above elevation 15.0, and the elevation of all mechanical units is at or above elevation 14.0, and final work is in compliance with local regulations.
- H. The applicant will need a separate Electrical Permit for the generator and air conditioning units, which are shown to be on a platform approximately seven to eight feet high, in order to comply with the flood regulations. They must be at or above elevation 14.0, but may be slightly higher. The submitted application materials show that the units have been screened and soundproofed, in order to minimize potential visual impacts and to comply with the Town and State noise ordinances. Evidence of the installed screening and soundproofing shall be submitted to the Planning & Zoning Department prior to the issuance of a Certificate of Occupancy.
- I. 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 the permit as it deems appropriate.
- J. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to: a Demolition Permit; Zoning and Building Permit applications; and a Sewer Disconnection and Connection Permit from Darien Sewer Services for the disconnection of the existing residence and the connection for the proposed residence.
- K. This permit shall be subject to the provisions of Section 858 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (November 24, 2016). This may be extended as per Section 858.

All provisions and details of the plans 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 Drainage Maintenance Plan must be filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit.

Mrs. Cameron then read the next agenda item:

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Flood Damage Prevention Application #350, Rodman & Susan Benedict, 15 Plymouth Road.

Proposal to construct a replacement single-family residence and to perform related site development activities within a regulated area.

Mrs. Cameron mentioned a change to Condition G, related to stormwater management. Mr. Sini then made a motion to approve the adopted resolution as amended. That motion was seconded by Mr. Cunningham, and approved by a vote of 5-0. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 24, 2015**

Application Number: Flood Damage Prevention Application #350

Street Address: 15 Plymouth Road
Assessor's Map #55 Lot #74

Name and Address of Property Owner: Rodman & Susan Benedict
And Applicant: 15 Plymouth Road
Darien, CT 06820

Name and Address of Applicant's Representative: Neil Hauck, AIA
Neil Hauck Architects
859 Boston Post Road
Darien, CT 06820

Activity Being Applied For: Proposal to construct a replacement single-family residence and to perform related site development activities within a regulated area.

Property Location: The subject property is situated on the east side of Plymouth Road approximately 75 feet south of its intersection with Baywater Drive.

Zone: R-NBD

Date of Public Hearing: November 10, 2015

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

Publication of Hearing Notices
Dates: October 30 and November 6, 2015 Newspaper: Darien News

Date of Action: November 24, 2015 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News
December 4, 2015

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

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- the proposed use and activities must comply with all provisions of Sections 410 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 detail in the application, the submitted redevelopment plans, and the statements of the applicant's representative 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 careful review of the submitted application materials and related analyses, the Commission finds:

1. This application is to construct a replacement single-family residence and to perform related site development activities within a regulated area. The residence is now served by public water and public sewer service.
2. As shown on the submitted Site Development Plan, the replacement house will have a finished first floor of at least elevation 15.0, which is at least one foot greater than the FEMA Flood Insurance Rate Maps (FIRM) which went into effect in July 2013. All mechanical units will be at or above elevation 14.0, which will also comply with the FIRM which went into effect in July 2013.
3. At the public hearing, the applicant's representative noted that the plans show a one foot high stone wall near the perimeter of the proposed residence. He said that after some consideration, the property owner has decided to eliminate that wall from the plans and replace it with grading. Since the grading is close to the house, and less than six inches in change of grade, a formal filling and regrading application and permit is not required. The Commission finds that this modification will not change the runoff patterns on the property.
4. The Site Development Plan shows a raised masonry terrace proposed behind the residence at elevation 15, about seven feet above grade. Under current zoning regulations, this would not count towards building coverage maximum.

NOW THEREFORE BE IT RESOLVED that Flood Damage Prevention Application #350 is hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction of a replacement single-family residence and other site related development activity shall be in accordance with the plans entitled:
 - Site Development Plan, Plan prepared for Susan S. & Rodman W. Benedict by McChord Engineering Associates, Inc., dated October 29, 2015, Sheet SE-1.
 - Benedict Residence 15 Plymouth Road, by Neil Hauck Architects, dated 11/10/15, Sheets A1-A5.

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The only modifications to these plans are those described by architect Neil Hauck at the public hearing to eliminate the one foot high stone wall around the house, and change that to grading.

- B. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- C. Accompanying the Zoning and Building Permit applications and prior to commencing construction, a certification shall be submitted from a licensed architect and/or engineer that verifies that the final design of the new replacement house complies with the applicable flood damage prevention requirements.
- D. As part of this application, a Drainage Maintenance Plan shall be submitted for the record. This Drainage Maintenance Plan requires the property owner and all subsequent property owners of 15 Plymouth Road to maintain the on-site drainage facilities (the proposed underground detention system), and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to address water quality. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records prior to the start of any work.
- E. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the Site Development Plan, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, 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.
- F. Once the construction work is complete and prior to the issuance of a Certificate of Occupancy, the applicant shall submit verification from the project engineer or architect that all aspects of the site grading, and building construction have been completed in compliance with the approved plans and the flood damage prevention regulations. Also prior to a Certificate of Occupancy, a final as-built survey shall be submitted by a licensed Land Surveyor certifying the final construction meets all building setbacks and building coverage maximums, and the finished floor elevation of the residence is at or above elevation 15.0, and the elevation of all mechanical units is at or above elevation 14.0, and final work is in compliance with local regulations.
- G. Because this application is located within the bottom 1/3 of the watershed, the Commission hereby waives the requirement to address water quantity pursuant to Section 880. Only water quality is addressed as part of this application.
- H. The applicant will need a separate Electrical Permit for the generator and air conditioning units, which are shown to be on a platform approximately eight feet high, in order to comply with the flood regulations. They must be at or above elevation 14.0, but may be higher. The submitted application materials show that the units have been screened and soundproofed in order to minimize potential visual impacts and to comply with the Town and State noise ordinances.

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Evidence of the installed screening and soundproofing shall be submitted to the Planning & Zoning Department prior to the issuance of a Certificate of Occupancy.

- I. 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 the permit as it deems appropriate.
- J. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to: Zoning and Building Permit applications; and possibly a Sewer Disconnection and Connection Permit from Darien Sewer Services for the disconnection of the residence and the connection for the proposed new residence.
- K. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (November 24, 2016). This may be extended as per Sections 858 and 1009.

All provisions and details of the plans 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 Drainage Maintenance Plan must be filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit.

Mrs. Cameron then read the next agenda item:

Deliberations ONLY regarding:

Proposed Amendments to the Darien Zoning Regulations put forth by the Darien Planning & Zoning Commission (COZR #2-2015). Proposing to amend the Darien Zoning Regulations as follows: Defining Building Coverage; Modifying how side lot lines are defined; Modify Section 230 to allow Monument Signs and to allow such signs in certain non-residential zones; Modify Section 334 and 385 regarding building lots which have at least 50% of the required Lot Width and Depth; Modify Section 371—Height of Buildings or Structures (clarify Building Height relative to cupolas and mechanical equipment.); clarify Section 384; Modify Section 406 #7—Eliminate the Total of Two side yards requirement; Modify Section 406f regarding detached accessory structures, to not allow finished space in detached accessory structures which do not meet the principal setbacks; Modify Section 575 Area and Bulk Requirements DCR Zone; Modify Inclusionary Zoning Regulations (Sections 583, 588a through 588e); Modify Section 572 to refer to the DMR Zone, when it should refer to the DCR Zone; Modify Section 577 to reference signs allowed in the DCR zone; Modify Section 625 Item 15 to be Maximum Average Floor Area of All Dwelling Units; and Modify Section 873. to reflect updated report name and date.

Mr. Ginsberg outlined each of the items in the proposal, and some of the Commission's comments and concerns voiced during the public hearing. He reviewed them in reverse order, and noted that items 11-14 seemed straightforward. He explained the proposed change to item #10, regarding the inclusionary zoning regulations. Commission members agreed that changing the requirement to

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80% of SMI, rather than 110% of AMI was appropriate. Mr. Ginsberg then reviewed items #9, #8, #6, #3, and #2, and mentioned that these proposals seemed to be well received, and not too complex. It was acknowledged that many of these proposed changes were in response to the ZBA.

Mr. Ginsberg then reviewed some of the more contentious and more complex proposals. Regarding item #7 (total of two side yard setbacks), Mr. Ginsberg mentioned that one option would be to have all NEW construction comply with the setbacks. This would ignore any existing conditions. Commission members agreed that this would be an appropriate solution to this matter. Mr. Ginsberg said that item #5 was regarding Building Height, both with regards to mechanical units on a roof, as well as cupolas. Mr. Ginsberg said that there is no urgency in resolving the cupola question—the ZBA now gets about one application per year regarding cupolas, and the existing Department policy will remain in effect if the Regulation is not changed. The Commission was not in favor of changing the standard for cupolas, owing to the potential for building height to be well beyond the 30 foot limit.

With regard to item #4 (Lot Width), Mr. Ginsberg said that one suggestion during the public hearing was to have the percentage change from 50% to 75%. Commission members seemed amenable to the 75%. Commission members were also in agreement regarding item #1 (Definition of Building Coverage). Commission members asked Mr. Ginsberg to prepare a draft resolution for their review in January, which reflects their comments and views this evening.

Approval of Minutes

October 27, 2015 Public Hearing

Mrs. Cameron had some minor changes to the minutes. Mr. Voigt, Mr. DiDonna and Mr. Sini also had minor changes. Mr. Voigt made a motion to approve the minutes as amended. That motion was seconded by Mr. Sini, and approved by a vote of 4-0-1, with Mr. Cunningham abstaining, since he was not at the meeting.

November 3, 2015 General Meeting

Mr. Sini had some comments about the minutes, including a question regarding the date of a letter referenced in the minutes. Mr. Ginsberg said that he would correct the inconsistency. Mr. DiDonna also questioned a reference on page 4. Mr. DiDonna then made a motion to approve the minutes as amended. That motion was seconded by Mr. Voigt, and approved by a vote of 4-0-1, with Mr. Cunningham abstaining, since he was not at the meeting. Mr. Ginsberg will make the appropriate changes, and run them by Mr. Sini to confirm that all of the changes were properly made.

November 10, 2015 General Meeting/Public Hearing

A comment was made by Mr. Sini regarding changes to page 1 of the minutes. Mr. Cunningham also had a change to pages 33 and 35. Mrs. Cameron wanted to confirm that staff has a copy of the lease for 13 Grove Street. Mr. Sini made a motion to approve the minutes as amended. That motion was seconded by Mr. Voigt, and unanimously approved.

Discussion of upcoming schedule.

Mr. Ginsberg explained that the first final draft of the Town Plan of Conservation & Development has been prepared by Mr. Chalder, and is about 170 pages. It will be discussed with the Commission at a Special Meeting to be held on December 8, 2015. This should cover the first ½ of the document, and the remainder is scheduled to be covered at the Commission's January 12, 2016 meeting.

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Mr. Ginsberg said that the draft has been posted on-line, and is available for review in the Planning and Zoning office.

There being no further business, the following motion was made: That the Planning & Zoning Commission adjourn the meeting. The motion was made by Mr. DiDonna, seconded by Mr. Olvany and unanimously approved. The meeting was adjourned at 10:05 P.M

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director

11.24.2015min