

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
JULY 17, 2012**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Spain, Hutchison, Cameron, Voigt, Cunningham

STAFF ATTENDING: Ginsberg, Keating (arrived at 9:30 p.m.)

RECORDER: Syat

CHANNEL 79

Chairman Conze opened the meeting at 8:00 P.M., and read the first agenda item:

PUBLIC HEARING

Special Permit Application #15-M/Site Plan, Wee Burn Country Club, 410 Hollow Tree Ridge Road. Proposing to demolish and reconstruct the existing warming hut, install a patio area adjacent to the hut, demolish one existing paddle tennis court, and install three new additional paddle tennis courts with associated lighting. The subject property is located on the north side of Hollow Tree Ridge Road approximately across from its intersection with Hanson Road, shown on Assessor's Map #7 as Lot #66, R-2 Zone.

Attorney Robert F. Maslan Jr. of Maslan Associates submitted a booklet of photos and a map/air photo showing the distance from the proposed activity to the nearest properties. He explained that the paddle courts are near the existing maintenance facility. There are now six paddle courts and an associated warming hut. He proposed to remove one court and replace the hut and add paddle courts. He then reviewed the photographs in his book of photos. The new court will have lighting like the existing paddle courts do. The lights will have shields on them. Mr. Conze noted that the paddle tennis courts are at elevation from 172 to 174. They are below the grade compared to the first fairway. He explained that the nearby closest property is higher in elevation than the proposed courts. Mr. Cunningham then confirmed with Mr. Maslan how many new courts are being proposed as part of this application. Mr. Maslan noted that there is a net of two new courts and one is being displaced by the warming hut and moved.

Architect Dan Conlon then showed renderings of the proposed warming hut. He reviewed the floor plans with the Commission, noting that they propose to finish a portion of the basement for use by caddies. The warming hut will have a footprint of about 1,900 +/- square feet. There will be an associated masonry terrace with an outdoor fireplace. Mr. Conlon mentioned that the Architectural Review Board has approved the warming hut.

Professional Engineer Holt McChord explained that they propose to replace one of the courts and relocate it. They are also realigning the existing driveway. Rain water now flows through the surface of each court to the ground below the paddle court and thus that is not considered an impervious surface. They propose a new rain garden, which will be connected to a storm drain. Mr. Ginsberg noted that the Environmental Protection Commission approved this application. A copy of the June 6, 2012 approval was included in the Commission members packets.

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Mr. David Genovese, a member of the Club, then distributed details of the proposed lights. They will all be less than 20 feet in height. He noted that they added light shields over time and there have been no complaints over these paddle court lights. He noted that the lights are heavily buffered. Mr. Hutchison asked about the hours of use of the paddle court lights. Mr. Maslan noted that there are currently no fixed hours. Mr. Bruce Ferguson, a member of the Club, added that night time paddle court play is rare, and usually completed by 10:30 P.M.

There were no further comments or questions by Commission members. There were no comments by members of the general public. Mr. Spain then made a motion to close the Public Hearing on this matter. That motion was seconded by Mr. Cunningham and unanimously approved. At about 8:25 p.m., Chairman Conze then read the following agenda item:

Land Filling & Regrading Application #145-C, Gene & Tracy Sykes, 5 Homewood Lane. Proposing to spread pond dredging on-site, to install stone slab steps to replace timber steps, and to perform related site activities. The subject property is located at the northwest corner formed by the intersection of Cross Road and Homewood Lane, shown on Assessor's Map #65 as Lot #3, R-1 Zone.

Ed Figura of Benedek & Ticehurst was present to discuss the application. He noted that the Sykes propose to dredge the existing pond on their property, enlarge it and spread the material on-site. The material will be stockpiled to de-water it. They may rototill the material into the existing top soil on the premises. They do not foresee bringing in any new material. Mr. Figura noted that they propose to place three inches to four inches of fill maximum in any one location. They are not looking to change the contours, and they are not looking to change the existing run off patterns. It was noted that the Environmental Protection Commission approved this application for dredging on their meeting of June 6, 2012.

There were no questions or comments from Commission members, and no questions or comments from anyone in the general public. Mrs. Cameron made a motion to close the Public Hearing on this matter. That motion was seconded by Mr. Hutchison and unanimously approved.

At about 8:30 P.M., Chairman Conze then read the following agenda item:

Amendment of Subdivision Application #581-A, Land Filling & Regrading Application #276, Stephen & Tracey Culliton, 225 Brookside Road & George & Jill Sullivan, 235 Brookside Road. Proposing to modify the existing driveway, install a rain garden, and perform related site development activities, as well as increase the size of the Conservation Easement. The subject properties are located on the west side of Brookside Road directly across from its intersection with Three Wells Lane, and are shown on Assessor's Map #5 as Lots #17-2 (Culliton) and #17-3 (Sullivan), in the R-2 Zone.

Kate Throckmorton of Environmental Land Solutions (ELS) was present to discuss the application. Mr. Ginsberg noted that the Environmental Protection Commission (EPC) closed the Public Hearing on this matter and sent an associated July 12, 2012 memo to the Planning & Zoning Commission. He said that any final EPC report can be received by this Commission post-hearing. Mrs. Throckmorton explained that this application is desired by the property owner to establish guest parking and some

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privacy. There is now an existing wall in front of their house and a portion of that wall will be moved over. The application includes associated drainage improvements. The existing drains will be cut back and a rain garden will be established. The existing part lawn will be raised up. A portion of the existing driveway will be pervious pavers. There will be no net increase in the amount of impervious area. Mrs. Cameron noted that at the site 10 trees were flagged to be removed, including four tupelo trees. Mrs. Throckmorton said that the plan has been slightly revised and only eight trees will be removed, seven of which are within the existing Conservation Easement.

Mrs. Throckmorton noted that there is an existing Conservation Easement, and there will be some infringement into the easement as part of this application. An area of compensatory Conservation Easement will be established as shown on submitted plans. They also plan on re-planting the four tupelo trees and a red maple with some associated underbrush. A specific construction sequence is important and has been incorporated into this submitted plan.

There were no further questions or comments from Commission members and no comments from the general public. Mrs. Cameron made a motion to close the Public Hearing on this matter subject to receipt of the final action by the EPC. That motion was seconded by Mr. Spain and approved by a vote of 6-0. Chairman Conze then opened the General Meeting and read the following agenda item:

GENERAL MEETING

Amendment to Coastal Site Plan Review #258, Robert Stewart, 24 Cross Road, R-1 Zone.
Request to install a pool and related patio within a regulated area.

Mr. Ginsberg summarized the proposed plans for a swimming pool and pool terrace at the Stewart property at 24 Cross Road. He noted that the swimming pool is proposed for the backyard. Although it is within the Coastal Area Management area it is not within the Flood hazard zone. Mr. Ginsberg explained that the pool has been approved by the Environmental Protection Commission (EPC). When the applicant applied for a Zoning and Building Permit, Mr. Keating noted that it would be appropriate for the Commission to act upon this as an amendment of the previous Coastal Site Plan. There were no questions from Commission members. Mr. Spain made a motion to approve the pool as shown on the submitted plans. That motion was seconded by Mr. Hutchison and approved by a vote of 6-0.

Chairman Conze then read the following agenda item:

Amendment of Coastal Site Plan Review #226-A, PL Partnership, 3 Purdy Lane.
Request to remove tree.

Mr. Ginsberg said that an arborists report had been submitted noting that this Copper Beech tree is in poor health. Mr. Spain mentioned that the property is likely to be re-developed soon, and it would not be appropriate to require a replacement tree to be planted at this time. Other Commission members concurred that since the exact development details are not yet known, a replacement tree would be premature. It was agreed that the property owner could "owe" the Commission a replacement tree. Mr. Conze confirmed that it would need to be an appropriate sized tree, but obviously not the size of the Copper Beech tree being removed. All Commission members were in agreement. Mrs. Cameron made a motion to authorize removal of the one tree. Mr. Spain seconded that motion, which was approved by a vote of 6-0.

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Chairman Conze then read the following agenda item:

Deliberations and possible decision on the following closed public hearing items:

Amendment of Special Permit #42-H/Site Plan, Parklands Office Park, LLC, 3 Parklands Drive. Request for modifications to Site Plan and Special Permit to: 1) construct a 460+/- square foot terrace; 2) relocate Dumpster with associated fence/screen; and 3) revise the previously approved landscaping plan. *PUBLIC HEARING CLOSED 6/5/2012. DECISION DEADLINE: 8/9/2012.*

Mr. Hutchison recused himself on this matter and left the meeting room. Mr. Cunningham made a motion to waive the reading of all of the Draft Resolutions aloud. Mr. Spain seconded that motion, which was approved by a vote of 5 to 0.

Mr. Conze started by noting that one of the issues to be discussed is the location of the Dumpster behind 3 Parklands Drive (Building Two). He noted that it had been moved from where the Commission originally approved it, and believed that the position which would have the least impact on the neighbors would be where it was placed behind 3 Parklands Drive (Building Two) within the parking lot. He believed that this is a more appropriate location than in the parking lot directly between Building One and Building Two, which, in his opinion, would have more of an impact on more neighbors.

Mrs. Cameron noted that the Commission cannot count on the existing Property Manager to do the right thing. She agreed that it would be appropriate to move the Dumpster for Building Two to be behind that building rather than in the middle of the parking lot between the two buildings. She noted that one of the requirements of the Resolution is that the dumpster be enclosed with a screen fence. She noted the importance to keep the 7:00 A.M. pick-up time as noted in the Resolution and have the Dumpster locked when not in use.

It was noted that the Dumpster location for Building One was shown on the approved 1984 Plan. Commission members agreed that it should be placed in that previously approved location.

Mr. Conze noted that locking the Dumpsters is highly important. It shall be locked until 7:00 A.M. and, if there is an on-site maintenance person, he can unlock it at that time. This will guarantee that dumpster pick-up is not earlier than that hour. By having the dumpsters locked, it will also eliminate use by others in off hours. This relates to Paragraph G in the Draft Resolution.

Mrs. Cameron and Mr. Spain noted that they both had some typographical corrections on the draft Resolution.

Mrs. Cameron then made a motion to adopt the Resolution with the modifications discussed by the Commission this evening, including the typographical corrections put forth by Mrs. Cameron and Mr. Spain. That motion was approved by a vote of 5 to 0. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 17, 2012**

Application Number: Amendment of Special Permit #42-H/Site Plan
Parklands Office Park, LLC, 3 Parklands Drive

Street Address: 3 Parklands Drive
Assessor's Map #35 Lot #34

Name and Address of Applicant &: Wilder G. Gleason, Esq.
Applicant's Representative: Gleason & Associates, LLC
455 Boston Post Road, Suite 201
Darien, CT 06820

Name and Address of: Parklands Office Park, LLC.
Property Owner:

Activity Being Applied For: Request for modifications to Site Plan and Special Permit to:
1) construct a 460+/- square foot terrace; 2) relocate Dumpster with associated fence/screen; and
3) revise the previously approved landscaping plan.

Property Location: The subject property is at the terminus of Parklands Drive.

Zone: DOR-5

Date of Public Hearing: May 22, 2012 continued to June 5, 2012

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

Publication of Hearing Notices

Dates: May 11 & 18, 2012 Newspaper: Darien News

Date of Action: July 17, 2012 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News
July 27, 2012

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

- the proposed use and activities must comply with all provisions of Sections 700, 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 plan, and the statements of the applicant whose testimony is

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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 proposal is to Request for modifications to Site Plan and Special Permit to: a) construct a 460+/- square foot terrace; b) relocate Dumpster with associated fence/screen; and c) revise the previously approved landscaping plan.
2. The 3 Parklands building was constructed in the mid-1980s. It was the second office building constructed within the development, thus on the old drawings and plans it is referred to as Building 2 (but the actual address is 3 parklands Drive). The southern part of the property now contains a Conservation Easement (Volume 498 Page 587 of the Darien Land Records). A copy of that Easement was submitted for the record in this matter.

a) AT-GRADE PATIO/TERRACE

3. The patio is 20' x 23', and is accessed only through the CEO office of one of the first floor tenant spaces. When it was installed in 2011, the ground level was filled and raised to create a flat site for the patio. A retaining wall was built to hold the fill under the patio surface. Now the patio/terrace is at grade, but this was achieved by raising the previous level of the ground. It is proposed that the patio / terrace be used solely at the CEO's discretion. The retaining wall surrounding the patio / terrace has been painted taupe, the same as the rest of the building.
4. At the June 5, 2012 public hearing, the applicant put forth a one-page List of Patio Restrictions.
5. At the public hearing, a plan was submitted by the applicant showing the "Executive Outdoor Patio" showing an additional proposed retaining wall to be constructed to the outside of the existing retaining wall that encloses the patio / terrace. Approximately 10 cubic yards of additional fill will be added between the existing retaining wall and the proposed retaining wall. According to the applicant, this new work would alleviate the need for a Building Permit for the at-grade patio/terrace which had been constructed without permits.

b) DUMPSTER RELOCATION

6. The 1984 Planning and Zoning Commission approval for 3 Parklands Drive showed a Dumpster directly behind the 3 Parklands Drive building between the entrance and exit to the parking garage. Sometime after that (most likely between 2000 and 2007), without required site plan or Special Permit approval, the Dumpster was moved to another area on the property, within the existing parking lot closest to the air conditioning chiller unit behind 3 Parklands Drive. The applicant has suggested relocating the Dumpster to an area behind 1 Parklands Drive and 3 Parklands Drive, and screening it with a fence, locking it when not in

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use, and restricting the hours of garbage pickup. Based upon the submitted marked-up copy of the 1984 Commission-approved plan, it appears that the new Dumpster location would be 80-90+/- feet from the property line, and at least 15 feet away from the Conservation Easement.

7. The Dumpster has been moved, and the applicant has agreed to lock the Dumpsters when not in use. In order to minimize impacts on neighbors, and in response to concerns raised at the public hearing, the applicant has agreed to put a screen fence around the Dumpsters, and have all on-site garbage pickup after 7 a.m.

c) REVISE THE PREVIOUSLY APPROVED LANDSCAPING PLAN

8. The final part of the application is to modify the previously approved landscaping plan for the property. Since the approval of 3 Parklands Drive, the landscaping has been modified. Much of this consists of supplemental plantings. For example, plantings have been added to the south of the air chiller unit to screen it.
9. At the public hearing, the Grading and Utility Plan from 1984 was submitted for the record—when 3 Parklands Drive (Building 2 on the plan) was proposed to the Planning & Zoning Commission. That plan shows that the southeast side of Building 2 is over 100 feet from the nearest property line. It shows that 3 Parklands Drive building façade as 50+/- feet from the Conservation Easement.
10. The Commission specifically finds that the terrace/patio will not affect the amount of traffic to the site. It will not result in any effect or sensation perceptible beyond the exterior of the building.
11. 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.
12. 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.
13. 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.
14. 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.

NOW THEREFORE BE IT RESOLVED that Amendment of Special Permit #42-H/Site Plan is hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

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- A. The Commission hereby approves the patio/terrace use as described in the application materials. This includes the List of Patio Restrictions put forth by the applicant on June 5, 2012:
1. Access only thru the executive office;
 2. No access to/from patio from surrounding ground area;
 3. Maximum occupancy by 10 persons per Fire Marshal;
 4. No exterior light on building or patio;
 5. No built in speakers on building or patio;
 6. Use of patio restricted from 7:00 a.m. to 10:00 pm. No use of the patio after 10:00 p.m.
- B. In order to minimize impacts to neighbors, the Commission only allows use of the patio/terrace from April 1 to November 1. The Commission notes that Section 706g specifically allows the Commission to regulate hours of operation as part of any Special Permit.
- C. Since Section 706c of the Zoning Regulations does not allow “external storage of materials and equipment”, the only items that can be stored on the patio/terrace are: table(s) which may each have an umbrella); and up to ten chairs (or seating for up to 10), and up to two potted plants. All items must be removed by November 1 of each season. They may again be placed out no earlier than April 1.
- D. The additional regrading shown on the submitted plan shall be implemented within the next sixty (60) days which may result in the patio / terrace avoid not needing a Building Permit. The area between the existing retaining wall and the proposed retaining wall shall include the necessary fill and shall be landscaped with plantings to the satisfaction of the Director of Planning to soften the view of the retaining walls and the use and activities on the patio / terrace (limited though they will be).
- E. By September 5, 2012, the applicant or property owner shall remove all exterior air conditioning/HVAC units on the ground except for the cooler specifically approved in 1985. No other outdoor air conditioning/HVAC units have received site plan or special permit approval. Thus, they must all be placed in the existing parking garage or on the roof of the building, suitably shielded.
- F. The Conservation Easement shall be clearly marked in the field by the land surveyor, using iron pins, or monuments of cement or stone. This will assist in confirming that the patio/terrace is not within the conservation easement. It will also allow the current and any future property owner to be clear on the exact location of said easement.
- G. The outdoor trash facility areas shall be as follows: the Dumpster for Building 1 (1 Parklands Drive) shall be placed in the location shown on the 1984 Grading and Utility Plan and 1984 Layout, Planting & Lighting Plan approved by the Planning and Zoning Commission. The Dumpster for Building 2 (3 Parklands Drive) shall be placed in the pink shaded area shown on the applicant’s colored Layout, Planting & Lighting Plan. This shall include the installation of new fences (either white or green); and the relocation of the existing Dumpsters. The Dumpster enclosure areas shall be neatly maintained, and the doors shall remain closed AND LOCKED at all times that someone is not loading or unloading garbage. The applicant is responsible for maintaining the trash areas, including ensuring that they are emptied frequently enough to

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minimize odors. Trash pickup shall be scheduled for no earlier than 7 a.m. Although the trash facility areas are shared for use by each office building, the property manager or landlord shall be responsible for the upkeep and maintenance of the areas. If another Dumpster is needed in the future to accommodate the volume of waste, the property owner shall request an amendment of this Site Plan/Special Permit prior to the installation of any additional facilities.

- H. Once the Dumpsters and HVAC units have been relocated, an as-built survey shall be prepared by a licensed land surveyor to confirm that the property meets all of the requirements of the Zoning Regulations, as well as this and all previous site plan approvals. This survey shall include a zoning chart, which lists the existing conditions relative to the DOR-5 standards and dimensions in Section 705. The surveyor shall also confirm that it complies with Section 706e. Said survey shall be submitted to the Planning and Zoning Office by September 30, 2012. This will enable the Commission to ascertain and confirm that the patio/terrace meets all of the setback requirements. **Only after the Dumpsters have been relocated and screened, the HVAC units relocated, and the as-built survey submitted to the Planning and Zoning office, can the outdoor patio/terrace be used.**
- 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 Special Permit does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. The question of whether the at-grade patio/terrace requires a Building Permit is not for the Commission to decide. That determination would be up to the Building Official.
- K. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan as noted herein. This may be extended as per Sections 1009 and 1028.

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, the signing of the final approved plans by the Chairman, and filing of the Special Permit form in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

It was noted that Mr. Hutchison had abstained from this application and was not present. Mr. Hutchison then returned to the room. Mr. Conze then read the next agenda item:

Business Site Plan #146-C/Special Permit, Anthony's Coal Fired Pizza, 319 Boston Post Road. Proposal to install additional parking with related landscaping and stormwater management; to install outdoor dining on a proposed terrace in front of the existing restaurant; and to perform related site development activities. NOTE: Outdoor dining request has since been withdrawn.
DECISION DEADLINE: 8/9/2012.

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Mrs. Cameron had comments on the Draft Resolution. Mr. Spain said that he also had comments, including changes to Condition E. Mr. Hutchison noted the fact that the applicant had proposed doors out to the patio and outdoor dining. Since the patio and outdoor dining have been withdrawn, no associated doors are being approved herein.

Mr. Conze noted his concern with the landscaping in the northwest corner of the property. The Commission members agreed that it would be appropriate to include a requirement for “beefing up” the landscaping in the northwest corner in order to minimize the visual impact of the proposed additional parking spaces.

Other typographical corrections were suggested by Commission members. Mr. Hutchison then made a motion to adopt the Resolution as amended this evening. That motion was seconded by Mr. Spain and approved by a vote of 6 to 0. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 17, 2012**

Application Number: Business Site Plan #146-C/Special Permit
Anthony’s Coal Fired Pizza 319 Boston Post Road

Assessor's Map #13 Lot(s) # 1 and #2

Name and Address of Applicant: Anthony’s Coal Fired Pizza
1660 NW 19th Ave
Pompano Beach, FL 33069

Name and Address of Applicant’s Representative: Nick Aivalis, AIA
Nick Aivalis Architects
66 Fourth Street
Stamford, CT 06905

Name and Address of Property Owner: Joseph Sandolo
22 Long Ridge Road
Stamford, CT 06905

Activity Being Applied For: Proposal to install additional parking with related landscaping and stormwater management; (to install outdoor dining on a proposed terrace in front of the existing restaurant –withdrawn); and to perform related site development activities.

Property Location: The subject property is located on the north side of Boston Post Road, at the northeast corner formed by its intersection with Birch Road.

Zone: SB-E & R-1/2

Date of Public Hearing: April 24, 2012 continued to May 22, 2012 and June 12, 2012

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

Publication of Hearing Notices

Dates: April 13 & 20, 2012

Newspaper: Darien News

Date of Action: July 17, 2012

Action: WITHDRAWN IN PART AND
GRANTED IN PART WITH
STIPULATIONS AND MODIFICATIONS

Scheduled Date of Publication of

Action: July 27, 2012

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 670, 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 development 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. The original application proposed to: a) install additional parking; b) install related landscaping and stormwater management; c) install outdoor dining on a proposed terrace in front of the existing restaurant; and to perform related site development activities. At the June 12, 2012 public hearing, the applicant withdrew the portion of the application for outdoor dining and the proposed outdoor terrace. Thus, the remaining part of the application for the Commission to act upon is a) additional parking; and b) landscaping and stormwater management.
2. The subject property is split-zoned. The area within 150 feet of the Boston Post Road is zoned Service Business East (SB-E), and the remainder of the property is zoned Residential ½ acre (R-1/2). The lots to the north (the rear) of this property are zoned R-1/2. This includes lots on both Birch Road and Point O' Woods Road South which have existing single family residences on them, and are located on properties directly adjacent to this subject property.
3. Section 671 of the Darien Zoning Regulations includes the Background and Purposes of the Service Business East Zone (SB-E). It reads as follows:
"This zone is located on the north and south sides of the Boston Post Road between Birch Road and the Norwalk municipal line and is intended to provide for certain types of business uses which serve a community need or convenience requiring external storage or activity or are automobile-oriented. It is the intention of these Regulations to protect and preserve this SB-E Zone for the

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continued provision of such services in a manner which will not be detrimental to the surrounding residential area... The specific design standards incorporated into this zone are needed due to the unique location of this district which adjoins residential areas and due to existing and projected traffic conditions on this section of the Boston Post Road."

This section clearly states that the business uses shall not be detrimental to the surrounding residential area. It also notes the unique location of the district adjacent to residential zones, and traffic conditions, both of which are issues to be considered in this application.

4. The restaurant use is allowed by Special Permit in the Service Business East (SB-E) Zone under Section 674b. of the Darien Zoning Regulations. There has been a restaurant on this site for over thirty years.

REQUEST TO INSTALL ADDITIONAL PARKING

5. Mr. Aivalis, the applicant's representative, noted that they are proposing to add five spaces in the back, nine in total, as four extra spaces will be created by reconfiguring the remainder of the parking lot. There will be two new spaces in front of the building for very short term parking for pick up/take out.
6. It was noted that the restaurant differs from the previous on-site restaurants (Centro's and Harper's), in that it has a larger take-out component, and a more substantial bar business. This has resulted in the potential for the need for more parking spaces to accommodate these characteristics.
7. At the public hearing, it was asked whether the proposed extra parking is solely to accommodate the outdoor dining. Mr. Aivalis said that they primarily are trying to minimize existing parking problems with the restaurant. There are now 39 parking spaces and two handicap spaces.
8. In a February 15, 2012 decision as part of ZBA Calendar #2-2012, Zoning Board of Appeals (ZBA) granted setback variances to allow for the approval of five added parking spaces. That decision is hereby incorporated by reference.
9. It was mentioned that the applicant/property owner could reach out to the dry cleaner across Birch Road to allow parking on that property. Mr. Cunningham inquired if the staff could park at that location. Mr. Aivalis mentioned that at times, the staff does park there. But it does park on the subject site most of the time.
10. At the public hearing, both the applicant and the neighbors acknowledged that due to limited parking on-site, restaurant employees, and to a lesser extent, patrons of the restaurant, park at the cleaners across the street from the restaurant. Safety issues were presented by the nearby residents regarding Anthony's Coal Fired Pizza patrons crossing Birch Road at nighttime. Although the applicant was willing to construct a fence so that patrons would cross at the intersection of Birch Road and Boston Post Road, safety is still a concern. Another condition which affects traffic circulation on the subject property is the fact that there is no turn-around area for vehicles if patrons find that the parking lot is full.
11. Mr. Conze summarized by noting that the Commission wants the restaurant to succeed, and that they should probably have staff park off-site in order to allow more on-site parking for

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customers. The largest parking needs are from noon to 2 P.M. and from 5 P.M. to 8 P.M. After 8 P.M., generally parking spaces are available.

12. The Commission is greatly concerned about the safety of the staff crossing the street from the dry cleaner property. It was noted at the public hearing that the maximum fence height along the road could only be four feet. It was agreed that such a fence might help direct pedestrians toward the sidewalk along the Boston Post Road and deter people from parking on Birch Road.
 13. Parking is a priority of this application, and overall the applicant is proposing to gain nine on-site spaces. Centro's (a prior restaurant at this site) had 80 seats within the restaurant. There are now 51 seats in the restaurant and 10 at the bar, which totals 61. Mr. Aivalis noted that they almost have an agreement in place with the owners of the dry cleaners across Birch Road. Their lawyers are currently reviewing the agreement. This would allow them to gain 10 additional spaces for employees.
 14. It was confirmed that five spaces are proposed to be added to the northwest corner of the property and four more spaces are proposed through reconfiguration on site and they are now asking for ten spaces across the street for staff parking.
 15. Anthony's Coal Fired Pizza has a standalone bar business and a significant take out business, thus there is more traffic now than there was when the restaurant was Centro's or Harper's. Some neighbors opposed outdoor seating at this site and noted concerns about noise, safety, landscaping and potential future tenants.
 16. It was asked about the extra parking in the northwest corner of the property and the potential of a split rail fence with associated landscaping to help screen the cars to be parked. Mr. Aivalis acknowledged that they can certainly add landscaping in this area. Mr. Lenny D'Andrea explained that the plantings can be extended and that they can add more evergreens to the northeast corner of the property, behind the building.
- b) *REQUEST TO INSTALL RELATED LANDSCAPING AND STORMWATER MANAGEMENT*
17. Relative to drainage, water from Birch Road now flows into the applicant's 319 Boston Post Road property. They are also correcting an existing erosion problem.
 18. At the public hearing, a Commission member asked how the restaurant hopes to get rid of the existing Japanese Knotweed in the back of the property. The applicant proposes to remove this existing Japanese Knotweed, which is an invasive species. Another Commission member noted that that a landscaper should write up a proposal, which could include a split rain fence along Birch Road. The Public Hearing was continued to allow that additional information to be submitted. This split rail fence may help minimize patrons and or staff from crossing Birch Road at places other than the intersection.
 19. It was also suggested at the public hearing to have a bond for the landscaping, which would assure that it is properly installed and maintained.
 20. A Landscape Plan was prepared by licensed Landscape Architect Matt Popp of Environmental Land Solutions. This plan shows the installation of a split-rail fence, as requested by the

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Commission at the public hearing. It also shows the removal of two non-native Norway Maples in the rear of the property.

21. The Commission finds that the proposed landscaping, as required to be revised herein, will accomplish the following: along with the split rail fence, reduce the likelihood of pedestrians coming to the restaurant from crossing Birch Road at a location other than the Boston Post Road intersection; AND will minimize the visual impact of the restaurant and its added parking from nearby Birch Road residences.

c) REQUEST TO INSTALL OUTDOOR DINING ON A PROPOSED TERRACE IN FRONT OF THE EXISTING RESTAURANT.

22. The residents who live at nearby residential properties strongly opposed the establishment of outdoor dining. These concerns included issues regarding potential noise, odors, and parking and traffic circulation. At the public hearing, both adjacent residents and others in the neighborhood complained about the existing problems which are currently being generated by the restaurant.
23. The outdoor patio was proposed to be 300 square feet and contain 6 tables, which could have each seated up to four. The request to install the patio and to establish outside dining was withdrawn by the applicant during the June 12 public hearing. As part of this application, doors would have been established leading to the patio with outdoor dining. Those doors which were proposed are not approved, since the proposed patio and related outdoor dining have been withdrawn by the applicant.
24. During the public hearing on this matter, it became apparent that there have been recent issues with management at the site: 1) outdoor speaker issue; 2) using the parking to the rear when they were not supposed to; 3) new areas of intrusive lighting from both inside and outside; and 4) early morning garbage pickup.
25. Mr. Hutchison asked whether there is any parking lot lighting proposed. Mr. D'Andrea responded that there is not. Mr. Hutchison asked about the neighbor comments about garbage pickup being 5 A.M. Mr. Aivalis responded that they can try to adjust garbage pickup to minimize impact on neighbors.
26. The presence of a directly adjacent residential zone, and adjacent single-family residences directly behind and adjacent to Anthony's Coal Fired Pizza clearly distinguishes it from other restaurants in Town. These factors are major differences between other restaurants and Anthony's Coal Fired Pizza and are extremely significant.
27. 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.
28. The nature of the proposed use is such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.

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29. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
30. 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 #146-C/Special Permit is hereby granted in part with stipulations (and as mentioned previously herein, the outdoor dining request has been withdrawn by the applicant):

- A. The creation of additional parking, and landscaping and stormwater management shall be in accordance with the following plans, as required to be modified herein:
- Anthony's Coal Fired Pizza "Construction Plan" Prepared for Anthony's Coal Fired Pizza, located at 319 Boston Post Road, Darien, Connecticut, prepared by Rocco V. D'Andrea, Inc., numbered 1 of 1 and last revised 5-17-12. NOTE: the proposed concrete patio is not approved (this plan to be only used for the parking spaces, and stormwater management and its associated grading)
 - Landscape Plan, Anthony's Coal Fired Pizza, by Environmental Land Solutions, last revised 5/25/2012, Drawing No. SP.1. (the proposed concrete patio is not approved, this plan to be only used for landscaping)

This Landscape Plan includes Note 13, with specific details on the proposed removal of the existing Japanese Knotweed. This plan also shows the proposed split rail fence extending near the west property line. The purpose of this split rail fence is to minimize the likelihood of customers and restaurant employees from not crossing Birch Road at the sidewalk. This landscape plan shall be revised to include two additional plantings (such as rhododendron) to be installed to the west of the split rail fence (between the fence and the property line) between the existing lilac and the 30" pine tree near the end of the fence. These two plantings (rhododendron or similar) will assist in minimizing the visual impact of the parking lot. Additional plantings shall be installed in the northwest corner of the property to minimize the light wash from the parking lot. The revised Landscaping Plan shall be submitted for review by the Planning & Zoning Director. Associated doors on the front of the building were proposed to the lead to the patio/outdoor dining. Those doors are not approved, since the patio/outdoor dining has been withdrawn by the applicant.

- B. Although the landscaping, stormwater management, and parking are separate but related aspects of this application, they are all required to be completed herein.
- C. No additional parking lot lighting is shown on the plans, and no additional lighting is approved herein. At the public hearing, it was noted that the outdoor speakers have been disconnected completely and permanently. There has been no request for outdoor music or outdoor speakers, and similarly, no outdoor music or outdoor speakers are allowed. In order to minimize impacts on adjacent residential properties, no garbage pickup shall occur between midnight and seven a.m. In response to concerns raised by the neighbors at the public hearing, a letter from Leonard C. D'Andrea, PE confirms that blinds will be placed on the kitchen windows as soon as possible, and the restaurant will be cleaned before 1 a.m. or after 7 a.m. The Commission hereby stipulates that those be done.

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- D. The Commission hereby requires that a \$3,000 performance bond for the stormwater management and landscaping work be posted with the Town of Darien prior to the start of the stormwater and landscaping work. The applicant can request that \$2,000 of the bond be returned, once a Certificate of Zoning Compliance has been issued by the Zoning Officer. In October 2013, after the plantings have been installed for about a year, Anthony's Coal Fired Pizza may request from the Commission that the remainder of the bond be returned.
- E. There is no formal written shared parking agreement with a nearby property as part of this application. The Commission strongly urges the property owner/applicant to continue to pursue such an arrangement. This will allow on-site parking spaces now used by restaurant staff to be freed up for customers. Specific accommodations and arrangements shall be made for off-site parking for staff.
- F. The proposed site plan shows two parking spaces in front of the building for "Take-Out only". This should allow for more efficient pick-up/take-out, without such patrons having to search for a parking space. Except for standard handicap designations, these are the only on-site spaces that can be reserved or signed in any way.
- G. The creation of the parking spaces, stormwater management and landscaping shall be installed per the approved Landscape Plan and other Plans listed in Condition A above, prior to the issuance of a Certificate of Zoning Compliance or a Certificate of Occupancy for the new parking area. The proposed concrete patio is not approved because it was withdrawn from consideration.
- H. A final as-built drawing and certification shall be submitted by a professional engineer confirming that the entire project, including the required stormwater management, parking, landscaping, and other site development features have been properly completed per the approved plans, as noted in Condition A, above.
- 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 Site Plan and Special Permit approval does not relieve the Applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies.
- K. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (July 17, 2013). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan, as required to be revised herein, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations, the signing of the final approved plans by the Chairman. All completed requirements and materials, including, but not limited to: revised plans and the filing of the Special Permit form and Notice of

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Drainage Maintenance Plan in the Darien Land Records, shall be submitted to the Planning and Zoning Department within 60 days of this action.

At about 9:00 P.M., Mr. Conze then read the next agenda item:

Coastal Site Plan Review #257-C, Flood Damage Prevention Application #289-C, Land Filling & Regrading Application #245-C, Dale & Hillary Miller, 5 Tokeneke Beach Drive. Proposing to raze the existing residence and demolish the existing pool, and to construct a new single-family residence and pool and to perform related site development activities within regulated areas. *DECISION DEADLINE: 8/9/2012.*

Mr. Hutchison noted his comments with Finding No. 7 and Condition B and C on Page 4 of the Draft Resolution.

Mrs. Cameron mentioned the sensitivity of the subject property, and suggested a requirement to “beef up” the proposed sediment and erosion controls due to the sensitivity of the site. She suggested modifying Paragraph A to require additional core logs and/or hay bales subject to a recommendation from a professional engineer. She suggested that the final, revised Sediment and Erosion Control Plan be submitted to the Planning & Zoning Director for his review and action prior to the issuance of a Zoning or Building Permit.

Mr. Hutchison said that there is now a dilapidated house on the property, and any redevelopment of the property requires significant activity. Mr. Conze noted the importance of sending the Resolution with the approved plans for the Building Department as these plans have a specifically sized septic system relative to the specific number of bedrooms being put forth.

Mrs. Cameron then made a motion to adopt the Resolution as modified this evening. That motion was seconded by Mr. Spain and approved by a vote of 5 to 1, with Mr. Conze voting against.

Mr. Conze explained that he is opposing this application because he believes that the subject plans are an over-building of the site and creating an artificial site. He said that this will be a massive building which will be in clear public view from the surrounding waters. He noted that the subject property has “squishy land” which is below the flood elevation and surrounded by phragmites. Mr. Conze said that he hopes the Commission does not see a series of applications for this area similar to this application. He believed that the size of the house is intrusive, and that the geometry is overbuilt. He did not believe that the proposed residence is sensitive to the existing site and believed that the property owners are pushing the envelope.

Mr. Hutchison said that he felt the same way. Mr. Conze noted that the house is on the margin with respect to coastal area management issues. He said that there is no sensitivity of the design relative to the existing conditions of the property and that the entire site is below the flood elevation and has wetlands on it. He is greatly concerned about the precedent it may set within coastal areas.

The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 17, 2012**

Application Number: Coastal Site Plan Review #257-C
Flood Damage Prevention Application #289-C
Land Filling & Regrading Application #245-C

Street Address: 5 Tokeneke Beach Drive
Assessor's Map #67 Lot #67

Name and Address of:
Property Owner: Dale & Hillary Miller
5 Tokeneke Beach Drive
Darien, CT 06820

Name and Address of Applicant &
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 raze the existing residence and demolish the existing pool, and to construct a new single-family residence and pool and to perform related site development activities within regulated areas.

Property Location: The subject property is located on the east side of Tokeneke Beach Drive approximately 500 feet south of its intersection with Contentment Island Road.

Zone: R-1

Date of Public Hearing: June 5, 2012

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

Publication of Hearing Notices
Dates: May 25 & June 1, 2012 Newspaper: Darien News

Date of Action: July 17, 2012 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: July 27, 2012 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 400, 810, 820, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.

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- 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. The application is to raze the existing residence and demolish the existing pool, and to construct a new single-family residence and pool and to perform related site development activities within regulated areas. Part of the plan will be to replace the on-site septic system with a new system. There is now an existing asphalt driveway extending from Tokeneke Beach Drive to the existing residence. The proposed driveway will remain in generally the same location and grade elevation.
2. The entire subject property is within the flood zone as well as within the Coastal Area Management Area. The proposed new residence will have a first floor elevation of 13.5.
3. The Darien Environmental Protection Commission (EPC) approved the project on May 15, 2012 as part of EPC #10-2012. That approval is hereby incorporated by reference.
4. Some of the proposed work will involve filling and regrading around the proposed structure so that the structure will no longer be in the Flood Zone. The work proposed as part of this application is also within the 1,000 foot regulated area established by the Coastal Area Management Program.
5. Based upon the submitted plans, the existing footprint appears to be approximately 2,100 square feet. The proposed footprint would be approximately 5,700 square feet.
6. Testimony was received at the public hearing from two nearby property owners—Sally Knowlton Keen and Todd Robbins. Both voiced their concern regarding the nearby water body.
7. The existing house is located in the Flood Hazard Zone and the new construction proposed would be “substantial,” as defined by the Regulations. Thus, the result of this substantial renovation would require that the entire house be brought into compliance with the Flood Damage Prevention Regulations. In this case, the proposed regrading will result in the house location no longer being within the flood hazard area. Development activity has been pulled into the central portion of the site to the extent possible so that the areas closest to the shoreline will remain or be restored to more natural conditions. Due to low ground elevations, nowhere on the property can be built upon without involving significant filling and regrading within the Flood Hazard Zone. Even though the grades around the house will be raised so that the house will no longer be within the Flood hazard Zone, much of the site, including the access driveway will remain at a flood prone grade elevation.

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8. As part of this application, proposed underground culvert units are proposed to address stormwater quality. The Commission notes the need for the applicant or property owner(s) to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners and/or tenants of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential stormwater impacts.
9. The application has been reviewed by the Commission and as required to be modified herein, is in general compliance with the intent and purposes of Sections 850 and 1000.
10. The Commission finds that the proposed activities, if properly implemented, are not contrary to the goals, objectives and policies of the Coastal Area Management Program.
11. 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.
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.
14. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #257-C, Flood Damage Prevention Application #289-C, and Land Filling & Regrading Application #245-C are hereby modified and granted 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 submitted to the Commission:
 - Zoning Location Survey Prepared for Dale E. Miller Hillary B. Miller 5 Tokeneke Beach Drive, by William W. Seymour & Associates, scale 1"=30', dated June 27, 2006 and last revised to June 25, 2009.
 - Planting Plan, by Wesley Stout Associates, dated May 16, 2011 last revised March 16, 2012, Sheet L-1.0.
 - Proposed Site Plan Dale & Hillary Miller, 5 Tokeneke Beach Drive, by GHD, Inc., dated 3/15/12, Drawing No. G-1.
 - The Miller Residence 5 Tokeneke Beach Drive, by Robert A. Cardello Architects, last revised 2/14/12.

The submitted Zoning Location Survey shows the use of porous pavement to minimize the sheet flow of storm water runoff, which is hereby required for that location. Due to the sensitivity of the site, the Sediment and Erosion Control Plan shall be revised to include corelogs and/or haybales. This revised plan shall be prepared by a professional engineer. The final, revised

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Sediment and Erosion Control Plan shall be submitted for review and action by the Planning and Zoning Director prior to the issuance of a Zoning or Building Permit for the proposed new residence.

- B. The Zoning and Building Permits for the foundation only for the proposed residence shall be issued upon proper application. Once the foundation has been installed and the regrading around the foundation has been accomplished, an as-built survey illustrating the location and elevation of the foundation and the regrading around the foundation shall be submitted to verify that no part of the house or new foundation are within the flood hazard zone. Only then can the Zoning and Building Permits be obtained for the house above the foundation level. The applicant is responsible for obtaining the Letter of Map Revision (LOMR) or similar approval from FEMA. The applicant shall provide a copy of this approval to the Commission for the file prior to the use of, or request for the issuance of a Certificate of Occupancy for the proposed residence.
- C. During the filling, regrading, and site work, the applicant shall utilize the sediment and erosion controls illustrated on the Site Drainage Plan and Details & Notes Plan referred to in Item A above, and any additional measures as may be necessary due to site conditions, including tree protection measures, as may be necessary. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading 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, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. The Commission hereby waives the requirement for a performance bond. However, to assure that the project is being implemented in strict accordance with the approved plans, during the construction and regrading process, the applicant's consulting environmentalist and/or engineer shall conduct frequent on-site inspections and shall submit detailed written, monthly reports to the Commission about the status of the sediment and erosion controls and related environmental protection measures to safeguard the natural resources in close proximity to the site work. The reports shall be submitted to the Commission staff by the first of each month and shall be sent to the owner and all involved contractors. Any cited deficiencies in the environmental protections shall be corrected by the contractor(s) immediately. Failure to submit the reports and/or to properly install and maintain the protection measures and/or to correct the deficiencies shall be cause for the Commission to declare this approval null and void.
- E. To minimize the potential impact upon the septic system, which will be located within a Flood Hazard portion of the property which extends up to elevation 12, the Commission requires the deletion of the bathroom in the garage, and the second floor bathroom off the playroom due to the sensitivity of the site. Revised floor plans shall be submitted reflecting these changes.
- F. To better accomplish the goal of preserving and enhancing the shoreline and minimizing impacts upon the water edge natural resources, to better soften the regrading that involves raising the level of the house and to better assure the long term survivability of the landscape plants that will be installed, submit within 60 days, a revised landscape plan to increase the

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number of natural type plantings at the perimeter of the site, increase the size and number of plants at the perimeter of the house and revise the proposed planting list to include more salt tolerant plants. The revised planting plan shall be subject to review and action by the Director of Planning & Zoning with advice from the staff to the Environmental Protection Commission.

- G. As part of this application a Drainage Maintenance Plan was submitted for the record. This Drainage Maintenance Plan requires the property owner and all subsequent property owners of 5 Tokeneke Beach Drive 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 minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well, within 60 days of this approval and prior to the start of any filling or regrading work.
- H. The applicant shall install the stormwater management system as shown on the submitted Site Drainage Plan (in Condition A, above). 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 property(ies). If such problems do become evident in the future, the owner of the property shall be responsible for remedying the situation at such owner's expense and as quickly as possible.
- I. Prior to the use of the house or the request of the Certificate of Zoning Compliance / Certificate of Occupancy, all of the site work, septic system, drainage work, soil stabilization and landscape planting, and other site development activities shall be completed. Once the project is complete, and prior to July 24, 2013, the applicant shall certify in writing and/or photographs, and with an 'as-built' survey map that all work has been properly completed in accordance with the approved plans. This shall include written certification by the project's professional engineer that the drainage facilities have been installed according to the approved plans, and that the construction complies with the Flood Damage Prevention Regulations.
- J. 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.
- K. 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, approval from the Darien Health Department and a Demolition Permit from the Darien Building Department.
- L. 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 (July 24, 2013).

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records

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within 60 days of this action and prior to the start of any filling or regrading work, or this approval shall become null and void.

Mr. Conze read the next agenda item:

Discussion and deliberation ONLY on the following items:

Proposed Amendment to the Darien Zoning Regulations (COZR #2-2012) put forth by the Darien Junior Football League (DJFL). Proposing to modify subsection 405b(3) of the Darien Zoning Regulations to allow temporary lighting of outdoor recreational facilities to be up to thirty (30) feet high. *PUBLIC HEARING CLOSED: 6/26/2012. DECISION DEADLINE: 8/30/2012.*

Commission members then reviewed the July 12, 2012 memo from Jeremy Ginsberg, Planning & Zoning Director which was considered a starting point for discussion. Mr. Conze then read aloud the proposed new part in the memo which is the proposal to amend Section 405b of the Darien Zoning Regulations.

Mr. Conze noted that finding the optimum location is critical for this process. This will be a managed process and the geometry fully analyzed. Mr. Conze said that the first three weeks of lights could be an experimentation period which can be codified in the plan. Technical modifications to the lights (shielding) was not addressed.

Mr. Spain noted that the Wee Burn Country Club paddle tennis court lights, which were discussed earlier this evening, are directed downward. Mrs. Cameron noted that a major difference is that the Wee Burn lights are lighting a smaller area – a paddle tennis court. Mr. Spain acknowledged that DJFL may need more lights to cover an appropriate area.

Mr. Hutchison suggested that a change be made to Subsection 405b, proposed number 3c changing the word “neighborhood” to “property”. Mrs. Cameron said that she would suggest adding a proposed number 4 dealing exclusively with temporary lights. Mr. Spain acknowledged that the phrase “best practices” is vague. Mr. Conze emphasized that experimentation is the key part of any approval here.

Mr. Voigt mentioned that in 1980, this Zoning Regulation section 405b was first established and it was geared toward lighting of tennis courts. Mr. Spain agreed that a smaller area of lighting was originally envisioned by the Commission when they established the Regulations. Mr. Voigt noted that there is no need to duplicate the existing 405b(2) in a proposed Section 405c(3).

Mrs. Cameron said that it would be important to put appropriate standards in any Special Permit issued and not to put standards and conditions within Zoning Regulations. Mrs. Cameron mentioned that her suggested changes would include a separate paragraph number 4, which deals exclusively with temporary lights.

Special Permit Application #188-B(1)/Site Plan, Darien Board of Education, Darien High School, 80 High School Lane. Proposing to utilize six (6) portable lights at the Darien High School Stadium Field for seasonal fall use by Darien High School fall sports teams from Fall 2012-Fall 2016. *PUBLIC HEARING CLOSED: 6/26/2012. DECISION DEADLINE: 8/30/2012.*

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Mr. Conze mentioned that at the end of Year 1 of the issuance of any Special Permit, the Commission may wish to hear from neighbors within a report. They could ask for an amendment to the Special Permit if additional lights are desired.

Mr. Conze then read aloud Paragraph 3 on the second page of Mr. Ginsberg's memo, noting the desire to move, adjust, relocate, tilt and angle the lights as needed. Mr. Conze believes that the Planning & Zoning Commission could review that final plan, not only the Director. This will allow everyone to see the final plan which was determined by DJFL to be the plan of least impact. Mr. Conze suggested that, at the end of the first year, feedback can be received from both the neighbors and DJFL.

Mr. Ginsberg explained that if the Commission wishes to adopt both the zoning change and the Site Plan/Special Permit, the zoning change would need to take effect first. The Site Plan/Special Permit for the lighting would need to take effect after the Zoning Regulation amendment.

Mr. Spain also noted that one possibility would be for the Commission to grant a one year Special Permit approval to see how 30 foot approved lights work for one year.

Mr. Conze confirmed that the Commission in the Special Permit could approve up to 30 feet while there is no requirement that the DJFL install them at that height. He is looking for a field-adjusted optimal plan and for DJFL and the Board of Education to create a sketch in the field and then to "lock in" that sketch.

Mr. Spain confirmed that the Commission should allow at least what was approved by the Commission last year for DJFL and the Board of Education as a base minimum. Mr. Hutchison believed that it would be beneficial to have the lights tweaked in the field to come up with the best plan possible. Mr. Cunningham then asked about the suggestion of including a required contact phone number. Mr. Conze believed that it would be appropriate to have that phone number be that of the Planning & Zoning Commission so any complaints can come to the Planning & Zoning office and that there be a central contact for such.

It was noted that if the Special Permits were to be issued, the Board of Education and DJFL decisions would be similar. Mr. Spain asked that Mr. Ginsberg check the times requested by each application to ensure consistency. Mr. Hutchison confirmed that that should be a condition of approval. If additional lights are desired by the applicant, it would need to come back before the Commission.

Discussion and deliberation ONLY on any public hearings closed on July 17, 2012.

Wee Burn Country Club

Commission members had no significant comments. Mr. Ginsberg will draft a Resolution for their consideration in the near future.

5 Homewood Lane

Mrs. Cameron wanted it noted that the applicant proposed no additional soil to be brought onto the site.

DARIEN PLANNING & ZONING COMMISSION
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Approval of Minutes

June 26, 2012 Public Hearing/General Meeting

Mr. Voigt and Mr. Spain each had minor comments on the June 26, 2012 minutes. Mr. Spain then made a motion to approve the minutes as amended this evening. That motion was seconded by Mr. Voigt and approved by a vote of 5 to 0, with Mr. Cunningham abstaining since he wasn't at that meeting.

Any Other Business (Requires two-thirds vote of Commission)

Mr. Ginsberg mentioned that he had one item under "Other Business", which is the Mesot property at 11 Queens Lane. Commission members unanimously voted to go into "Other Business" to discuss that matter.

Mr. Ginsberg noted that he met with the architect, Mr. Blanc, earlier today and Mr. Blanc mentioned that they hope to change the house location plan one to two feet from where the replacement house was recently approved by the Commission. The Commission members noted that this would have no impact on coastal management areas or flood damage prevention areas and, therefore unanimously approved such a change.

There being no further business, the meeting was then adjourned at 10:07 P.M.

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director

07.17.2012min