

**PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING  
OCTOBER 23, 2012**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:  
Conze, Spain, Hutchison, Cunningham, Voigt

STAFF ATTENDING: Ginsberg, Keating  
RECORDER: Syat  
CHANNEL 79

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Chairman Conze opened the meeting and read the following agenda item:

**PUBLIC HEARING**

**Coastal Site Plan Review #138-D, Flood Damage Prevention Application #140-D, Land Filling & Regrading Application #283, Gavin & Melissa Baiera, 26 Shipway Road.** Proposing to construct a pool, and related pool terrace; install pool equipment and rain garden, and perform related site development activities within regulated areas. The subject property is located at the north side of Shipway Road, approximately 300 feet east of its intersection with Plymouth Road, and is shown on Assessor's Map #57 as Lot #43, in the R-1 Zone. *TO BE OPENED AND IMMEDIATELY CONTINUED TO NOVEMBER 20, 2012.*

Chairman Conze announced that the Public Hearing was opened and immediately continued to the meeting on November 20, 2012.

Chairman Conze then read the following agenda item:

**Continuation of Public Hearing regarding Land Filling & Regrading Application #281, Shay Homes, LLC, 569 Middlesex Road.** Proposing to construct new single-family residence with associated driveway and perform related site development activities. The subject property is located on the north side of Middlesex Road approximately 500 feet east of its intersection of Ox Ridge Lane, and is shown on Assessor's Map #2 as Lot #2A, R-2 Zone.

Mr. Ginsberg said that the issues discussed at the previous session of the Public Hearing included the drainage at the rear of the house, and the concern of the neighbor who wanted more time to review the plans. He said that a revised drainage plan has been submitted by professional engineer Doug DiVesta. This revised plan includes two more infiltrator units or galleries to be installed in the backyard. Mr. Ginsberg read an e-mail from Mr. DiVesta describing the revisions.

Sean Shay, the property owner, said that there is approximately a 200 feet distance between the property line and the neighbor's house, and that the water should be absorbed in that area. None the less, he added that the engineer improved the drainage system by adding two more galleries to dissipate the water. He said the original design had resulted in a reduction of the stormwater runoff toward the neighbor but adding more galleries would be acceptable if it is what is needed to get the project approved.

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Rhett and Everett Drugge explained that they are property owners to the west of the subject property and that the current flow of stormwater comes from the east (Mr. Shay's property) toward their land. In the past, they needed to install a curtain drain to pick up the stormwater runoff. The drainage ditch directs the water toward an open space area. They expressed their concern that the septic system design is on the edge of Mr. Shay's property and immediately abutting the neighbor. They suggested that it would be appropriate to relocate the drainage system away from the property line and allow the existing drainage ditch to remain. They said this is part of the Stony Brook drainage area that flows downhill into the Noroton Heights area, and any further development could make drainage on Heights Road even worse.

Mr. Shay said that he has already obtained a permit for the house construction and this plan is to regrade a portion of the property near the property line so that the direction of the garage doors can be reoriented. This will allow the garage doors to be on the side of the house, so it will not face the front. He said that this application has to do with regrading for the garage modification, and has nothing to do with the septic system design or location.

There being no further comments, the following motion was made: That the Planning & Zoning Commission close the Public Hearing regarding this matter, and will make a decision at a future meeting. That motion was made by Mr. Spain, seconded by Mr. Cunningham and unanimously approved.

Chairman Conze read the following agenda item:

**Continuation of Public Hearing regarding Coastal Site Plan Review #252-A, Land Filling & Regrading Application #278, Hans Mende (253 Long Neck Point Road, LLC), 253 Long Neck Point Road.** Proposing to raze the existing residence and construct a new single-family residence and perform related site development activities within a regulated area. The subject property is located at the east side of the terminus of Long Neck Point Road, and is shown on Assessor's Map #61 as Lot #13-4, in the R-1 Zone. *PUBLIC HEARING OPENED ON 9/18/2012. DEADLINE TO CLOSE HEARING: 10/23/2012, UNLESS EXTENSION IS GRANTED BY APPLICANT.*

Attorney Wilder Gleason explained that the Public Hearing had been opened regarding this matter and had been continued at the request of a neighboring property owner. Additional materials were submitted to the Planning & Zoning Commission on October 19, 2012. These materials included a detailed letter from the engineer, LBM Engineering LLC, and a revised site plan map. Mr. Ginsberg indicated that the neighboring property owner has withdrawn their opposition to the proposal. He said that the stormwater management plan is not to detain stormwater; rather, it is to deal with stormwater quality before it is discharged to Long Island Sound, which is immediately adjacent to the subject property.

There were no comments from the public regarding the application, and no questions or comments from Commission members. The following motion was made: That the Planning & Zoning Commission close the Public Hearing regarding this application and make a decision at a future meeting. The motion was made by Mr. Cunningham, seconded by Mr. Spain and unanimously approved.

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Chairman Conze then read the following agenda item:

**Proposed Amendment to the Darien Zoning Map (COZM #1-2012) put forth by the Nielsen Company and One Thorndal Circle Inc., 1, 22, 28, 16 and 20 Thorndal Circle.** Proposing to amend the Darien Zoning Map to rezone the subject properties and a portion of the Hecker Avenue, Thorndal Circle, and I-95 rights-of-way from DOR-1 (Designed Office Research-1 Acre) to Office Business (OB). The subject properties are located on the north side of Boston Post Road, approximately 650 feet north of its intersection with Thorndal Circle, and are shown on Assessor's Map #39 as Lots #18, #17B, and #11, now located within the DOR-1 Zone.

Attorney William Hennessey explained that he represents both property owners and that the subject property is currently in the DOR-1 Zone. This zone allows for executive and administrative office uses but does not allow for professional office uses, such as doctors, dentists, lawyers and accountants. The application is to re-zone the existing office park to the Office Business (OB) Zone, which allows for both Executive and Administrative Offices and Business and Professional Offices. Attorney Hennessey said that the current office park has some vacancies and it is always difficult to fill the vacant spaces given the Executive and Administrative office limitations of the (DOR-1) Zone. He said that there will be no increase in the size of the buildings or the office park. He said that the differences between the DOR Zone and OB Zone are the number of tenants allowed in the building (which is restricted in the DOR-1 Zone) and the fact that Business and Professional Offices are not allowed in the DOR-1 Zone. He said changing to the Office Business Zone would allow professional office uses with no limit on the number of tenants within a particular building. He said that the parking requirement is the same whether the office use is an Executive and Administrative office use or a business and professional office use. He said that simple observation of the site on numerous occasions indicates that there is plenty of on-site parking available to accommodate the existing and potential tenants.

Attorney Hennessey said that several years ago the applicant requested that the Planning & Zoning Commission change the zone for only the office building on Thorndal Circle which is closest to the Boston Post Road. That office use became the imaging center and experience has indicated that there is sufficient on-site parking for that use. In response to questions, Mr. Hennessey said that the existing executive and administrative office uses will not leave as a result of the zone change. He said that most of them will stay at least until their leases expire and some will obviously want to renew their lease. Others will want to downsize or relocate, and the change to the Office Business Zone will allow the landlord to fill any vacant spaces with Executive and Administrative offices or Business and Professional offices. The change of zone gives the owner the flexibility to get the best possible tenant with the most space. Mr. Hennessey said that the 2005 zoning map amendment with respect to the front building on Thorndal Circle was somewhat of a test to see if there would be an impact on the traffic and parking.

In response to questions, Mr. Ginsberg explained that the Design Office and Research (DOR-1) Zone appears to have been created in the 1970s or 80s to encourage the development of executive and administrative office buildings for single or few tenants within each large building. The DOR-1 or DOR-5 Zones are located remote from the Central Business District and are frequently adjacent to residential zones. The use of the space in the DOR-1 Zone generally does not create much traffic, except for the workers within the building because there are few visitors to the DOR office uses. He

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said that other DOR Zones are located on Parklands Drive off of Old King's Highway North and on Tokeneke Road to the east of the Turnpike.

Mr. Hennessey said that the 1995 Plan of Development seems to indicate that the DOR Zone was somewhat antiquated. Mr. Conze said that the DOR Zone had been created at a time when there was an encouragement of corporate office type uses. Mr. Spain said that the DOR Zone had a limit of maximum of three tenants or occupants within a particular building, and at a times there was a minimum square footage that each tenant needed to occupy. He also said that he is concerned about the increase of traffic to and from the existing office buildings if many of the executive and administrative offices became business and professional offices resulting in client or customer visits throughout the day. There is no traffic signal on the Boston Post Road at the intersection of Thordal Circle.

Assistant Director David Keating said that the DOR Zones were created as office uses that could be near residential neighborhoods because they were generally operated from 9 A.M. to 5 P.M. and had a very low number of vehicular trips into and out of the site. If the change to the Office Business Zone results in more traffic going into and out of the site, then it might be necessary to install a traffic light in the future and at the expense of the property owner. The installation of a traffic light would not be appropriate at this time because the traffic would not yet warrant that expense. Mr. Hennessey said that their traffic consultant had already recommended that the stop bar for vehicles exiting Thordal Circle at the Boston Post Road should be modified so that it is out closer to the flow of traffic on the Boston Post Road. The traffic consultant did not yet recommend the installation of a traffic light.

Mr. Ginsberg said that the Southwestern Regional Planning Agency (SWRPA) has been studying traffic in the area. If the zone is changed and if the business and professional office uses create more traffic of clients into and out of the site then there may be the need for traffic light installation in the future.

Commission members and staff reviewed the existing DOR-1 zoning requirements and OB zoning requirements. Dimensionally those requirements are very much the same, the main differences are the number of tenants allowed in the OB Zone and the fact that the OB Zone does allow for the business and professional uses in addition to executive and administrative office uses.

There being no further comments, the following motion was made: That the Planning & Zoning Commission close the public hearing regarding this application and make a decision in November. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze read the following agenda item:

**Coastal Site Plan Review #156-B, Flood Damage Prevention Application #268-A, Land Filling & Regrading Application #282, Contentamiento, LLC, 12 Shennamere Road.** Proposing to: construct additions to the existing residence; install new components to the septic system; update the stormwater management system; and perform related site development activities within regulated areas. The subject property is on the east side of Shennamere Road approximately 400 feet south of its intersection with Contentment Island Road, and is shown on Assessor's Map #68 as Lot #5, in the R-1 Zone.

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Attorney Robert Maslan represented the property owners and explained that this is a 4.2 acre site immediately adjacent to Long Island Sound. There is an inland pond on the property with an old ice house immediately adjacent to that pond. There is a detached four car garage located several hundred feet away from the main house. The main house is located adjacent to Long Island Sound and is partially within the Flood Hazard Zone. Mr. Maslan submitted a booklet including an authorization letter from the client, photographs of the site, and a letter of support from the neighbor.

Mr. Maslan explained that the purpose of the project is to build a large garage addition on the south and southwest side of the house. The bottom of the addition will be in the Flood Hazard Zone and will be a large garage area which is permitted to be below the expected flood level. The middle level of the addition will be comparable to the first floor of the house and is above the expected flood elevation. Because some of the house will be in the V Flood Zone, which is impacted by wave velocities, some modifications must be made to the existing house to make it compliant with the Flood Damage Prevention Regulations. In order to accommodate this proposed addition, they will need to revise the septic system. Stormwater runoff from the addition will be managed and treated for water quality before it is discharged to Long Island Sound. The existing detached four bay garage on the property will remain.

Todd Ritchie, Professional Engineer from GHD Engineering, explained that the runoff from the existing house, the proposed addition and the modified driveway will be managed before it is discharged to Long Island Sound. Portions of the existing driveway must be regraded in order to make way for the new septic system and access to the new two level garage. He said that the Health Department has reviewed the septic system plan and he is working on technical details to get final approval from the Health Department. He said that the existing septic system is more than 20 years old and the revised septic plan allows for the relocation of the driveway and bringing the septic system into compliance with the current Health Code. Mr. Ritchie said that part of the drainage modifications will disconnect the existing roof drains currently directed from the house toward the fresh water pond. This should improve the quality of water within that pond.

John Roberge, Professional Engineer, explained that the current flood zone is designated as V-16, which expects the crest of the waves to be at elevation 16 at the southeast and southwest exposures of the house. In order to deal with this, they will create break away panel type walls in those portions of the house. The lower levels will not be finished occupied space, but will be garage and storage areas at elevation 9.4. He said that special floor will be installed to avoid any uplift that might be created by the wave impact or flooding.

Mr. Roberge said that he has reviewed the draft revision of the flood maps as produced Federal Emergency Management Agency (FEMA). He said that the proposed designation for this area is AE 15, which is that the still water would be up to elevation 15 but it would not be affected by wave velocities. This is because the waves that crash into shore will break before they reach the house. He said that FEMA's revised map may or may not be accurate but his design is proposed to be more stringent than the minimum requirements that FEMA would have. He said that some portions of the house will be modified to meet the FEMA requirements to make sure that potential flood damage is minimized.

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Director of Planning Jeremy Ginsberg said that the draft FEMA maps are not yet effective and they might become effective in the spring of 2013. He said the application being reviewed today must comply with today's regulations and requirements. If the FEMA maps are revised then the applicant can retrain to the Commission to request a modification of the restricted or stringent requirements. Attorney Maslan suggested that the Commission could approve the application as submitted and if the FEMA amendment is adopted then the Commission's approval could automatically authorize the applicant to incorporate the less stringent FEMA requirements.

The architect for the project reviewed the plans. It was noted that the ten car garage on the lower level would be accessed from the southwest side of the house. The three car garage on the first floor level would be accessed from the northwest side of the house. A second floor addition over the existing house would be constructed over the existing house and over the proposed garage. He said the proposed building height would be 29 feet, 9 ½ inches and would therefore comply with the 30 foot maximum height limitation.

Commission members asked whether the regrading of the site would require any blasting or hoe-ramming. Tim DeBartelomeo, Professional Engineer, said that the applicant does not anticipate the need for any blasting but will instead use hoe-ramming to remove any rock that must be regraded in the vicinity of the proposed addition or driveway. Mr. Conze said that hoe-ramming has been a problem and that the Commission would rather have the applicant use one or two blasts rather than long term ramming of the stone, which causes considerable nuisance to the neighbors. He said that the applicant would need to prepare a detailed plan of how the existing rock would be removed. Mr. DeBartelomeo said that in some locations it would be possible to bring the concrete floor down to natural rock level but not into the rock.

Mr. Ginsberg asked about the planting plan and if there would be any plantings located on the water side of house. Mr. Maslan referred to Exhibit C in the application which is the tree removal plan and Exhibit D which is the planting plan. Mr. Ritchie said that the plan is not to alter the coast line area and that they would increase a number of plants if that was the Commission's desire. He said that the intent is to have a minimal impact on the coastal resources of the area.

Mr. Ginsberg said that he referred the plans to the Office of Long Island Sound Programs of the Connecticut Department of Energy & Environmental Protection (CT DEEP). They have not responded to the referral.

There being no further comments, the following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and make a decision at a future meeting. The motion was made by Mr. Cunningham, seconded by Mr. Spain and unanimously approved.

Chairman Conze then read the following agenda item:

**Coastal Site Plan Review #277, Land Filling & Regrading Application #279, Chris & Christine Barkley, 5 North Road.** Proposing to construct an addition to the existing residence, install a new driveway, and perform related site development activities within a regulated area. The subject property is located on the west side of North Road, approximately 450 feet north of its intersection with Butler's Island Road, and is shown on Assessor's Map #67 as Lot #71, in the R-1 Zone.

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Tom Ryder of Land-Tech Consultants explained that this property is abutting Butler's Island Creek and a portion of the addition is within 100 feet of mean high water. The proposed addition is to the west side of the existing house and includes a two car garage at the lower basement level, and a kitchen and family room addition on the first floor level. They will also be adding a new driveway on the west side of the property. The driveway on the east side of the property will remain intact. The elevation of the proposed new garage is 18 feet and the existing flood zone in the area is only up to 11 feet, thus the proposed addition is not within the flood hazard zone. A deck will be constructed on the north or water side of the proposed addition and it will connect with the existing deck on part of the existing house. Stormwater runoff from the roof area will be directed into a splash pad and then will flow down into Butler's Island Creek. Mr. Ryder said that there will be no disturbance or work close to the water's edge.

Mr. Ginsberg said that the proposed new driveway will involve a 6 or 7 foot deep cut into a rocky area. He asked how this would be accomplished and Mr. Ryder said he believes that a hoe ram will be used to remove 65 to 75 cubic yards of rock. He anticipates that the hoe ram would take a maximum of two day's work to accomplish this. Mr. Conze said that hoe-ramming has been a problem and that the Commission would rather have the applicant use one or two blasts rather than ramming of the stone, which causes considerable nuisance to the neighbors. Mr. Ginsberg said that the Commission could require that the applicant notify all the neighboring property owners prior to the use of the hoe ramming. Mr. Spain said that it might be appropriate to cap the amount of time at two days so that the hoe ram does not become a nuisance to the neighbors. Mr. Ryder said that the Barkers will be living on the site during the time that the work is taking place. They would be as bothered by the hoe ramming as anyone.

Mr. Ginsberg said that he had referred the application to SWRPA. He read their response which indicates that it is not likely that the project would have any inter-municipal impacts.

Questions were raised regarding the stormwater management for the new driveway. Particularly, the fact that the new driveway would slope toward the street and discharge its stormwater runoff into the narrow part of the street, the water would then flow down the street toward the neighbors. The plan shows a catch basin to be above a drywell, but no outlet or piping.

In response to questions, Mr. Ryder said that there would be no new air conditioner units or generators. Mr. Hutchison said that his concern that the second driveway is being created on a very narrow part of the road that is already substandard. He did not know whether adding an additional driveway would make things better or worse. Mr. Ryder said that the driveway design is keeping the existing knoll area and working around it. He is not sure whether this new driveway would become the primary driveway used by the owners and visitors or whether it would be secondary.

There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission closes the Public Hearing regarding this application and will render a decision in a future meeting. The motion was made by Mr. Spain, seconded by Mr. Cunningham and unanimously approved.

Chairman Conze read the following agenda item:

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**Business Site Plan #86-D/Special Permit, Bob Bantle, 365 Boston Post Road.** Proposing to remodel/renovate the existing 365 Boston Post Road building formerly occupied by United Rentals, and to establish a new personal service use with related retail sales and office use. The subject property is located on the north side of Boston Post Road, approximately 250 feet west of its intersection with Birch Road, and is shown on Assessor's Map #14 as Lot #50, in the DB-2 Zone.

Jeff McDougal of William W. Seymour Associates Land Surveyors represented property owner Bob Bantle, and explained that this proposal involves changing the use of the site to one that is less intensive than the previous rental center use. Mr. Bantle's company has developed and distributes golf equipment and provides training on a one to one basis. He said that they are not proposing to change the shape of the building but will re-use portions of the building for various uses. The existing parking area between the Boston Post Road and the building will be re-used. They anticipate that there will be 6 to 8 cars at most at any given time. This includes employees and customers. Mr. McDougal said that the uses will involve the retail sale of the training equipment; the one-on-one training of clients on how to use the equipment; a storage facility for inventory of the equipment; and office use in connection with the business and Mr. Bantle's personal offices. Mr. Ginsberg confirmed that the DB-2 Zone does allow for personal service use. Mr. McDougal said that the exit from the driveway on to the Boston Post Road has a somewhat obstructed sight line of vehicles coming from the east (the Norwalk side). Mr. Bantle has spoken with the neighboring property owner about removing part of the stockade fence. This will improve visibility. Mr. Bantle will also keep the existing front landscaping at a low level so that motorist exiting the site will see over the vegetation.

Mr. Conze noted that the submitted application materials do not include any floor plans of the proposed use or how the existing building will be converted to those uses, nor a landscaping plan, no location of Dumpsters and other materials. Commission members agreed that they will continue the Public Hearing on November 13, 2012 in order for the applicant to provide the necessary information and for an opportunity for various Town departments and commission members to review the information prior to the Public Hearing

Zoning Enforcement Officer David Keating said that the Planning & Zoning Commission's previous approval for this site was for a business that rented small equipment and party supplies. Since that approval had been granted in the 1960s or 1970s, a number of additions had been constructed on the building without any permits or approvals. Part of the applicant's current plan appears to be to re-use some of those additions that were built (contrary to the previous approval by the Commission). Also, the large enclosed area on the east side of the building is specifically designated as storage. He understands that that would now become the retail sales and training facilities. This would appear to require an amendment of a previous Zoning Board of Appeals variance that had allowed the storage area to be created in that location.

The applicant must address all of these issues before the Public Hearing is continued on November 13, 2012.

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There being no further business, the following motion was made: That the Planning & Zoning Commission adjourn the meeting. The motion was made by Mr. Cunningham, seconded by Mr. Spain. All voted in favor, and the meeting was adjourned at 10 P.M.

Respectfully submitted,

David J. Keating  
Assistant Planning & Zoning Director

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