

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
January 11, 2011**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

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

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

TELEVISED BY: Channel 79

PUBLIC HEARING

Land Filling & Regrading Application #250, Michael & Caterina Pond, 8 McLaren Road.

Proposing to construct an extension of the existing driveway, with associated filling and regrading and retaining wall, and perform related site development activities. The subject property is located on the south side of McLaren Road, approximately 75 feet north of its southernmost intersection with McLaren Road South, and is shown on Assessor's Map #17 as Lot #44, in the R-1/2 Zone.

Dan Mazabras of Odd Job Company explained that the property is located on McLaren Road and it is dangerous to back out into this very busy street. They obtained approval from the Darien Department of Public Works to create an additional curb cut so that they could create a second egress driveway. The work on the driveway was started and then they were told that they needed a Special Permit from the Planning & Zoning Commission due to the regarding necessary near the property line. They have stopped work on the project until they can get this matter resolved.

Mr. Mazabras explained that a 36 inch high retaining wall will be constructed approximately six feet into the property in order to retain the soil in that area. The storm water retention area has been designed to accommodate the additional runoff water being created by the expanded driveway.

Mr. Ginsberg explained that the work has stopped at the request of the Commission's staff and that the new driveway surface area is less than 1,000 square feet. He noted that this new plan includes numerous plantings to be added to the site. He confirmed that the Public Works Department has approved the project.

Mr. Mazabras said that the regrading has resulted in approximately 50 cubic yards of excess soil being removed from the site. They will need to bring into the site approximately 10 cubic yards of back fill and new material. He said that no water from the new driveway will be allowed to head toward the neighboring properties.

Mr. Ginsberg said that he had to go out and see the site to determine whether a permit was necessary. He confirmed that all the neighbors had been notified and that no comments had been received from neighbors.

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When asked if there might be a problem with respect to the ground water in the area, Mr. Mazabras said that he did not anticipate any ground water problem and that he had already excavated in the area and not found any ground water issues.

There were no comments from the public regarding the application. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Voigt, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze read the following agenda item:

Coastal Site Plan Review #201-A, Joan Barksdale, 27 Tokeneke Trail. Proposing to construct an addition to the existing residence and perform related site development activities within a regulated area. The subject property is on the south side of Tokeneke Trail approximately 1,500 feet southwest of its intersection with Runkenhage Road, and is shown on Assessor's Map #69 as Lot #40, in the R-1 Zone.

Sean O'Kane, Project Architect, explained that the proposed work involves construction of a conservatory type structure on top of an existing foundation. He said that the stone house was built in the early 1900s and that the stone foundation encloses an existing terrace area that is slightly within the 100 foot coastal area management boundary. Thus, they need Planning & Zoning Commission approval for this construction project. He said the conservatory will measure approximately 12' x 15' and will be a one story, 10 foot high structure. He said no excavation or earth moving activities are necessary. Mr. O'Kane explained that they had obtained approval from the Darien Health Department and that they have contacted neighboring property owners. He said that none of the neighbors have raised any concerns or objections.

Mr. Ginsberg said that the Planning & Zoning Commission had approved site modifications and renovation work several years ago. He said that this work is in the CAM area and was referred to the Connecticut DEP, but they have opted not to comment on the proposal.

There were no comments from the public regarding the project. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Hutchison, seconded by Mr. Voigt and unanimously approved.

Chairman Conze read the following agenda item:

Flood Damage Prevention Application #296, Raoul & Ingeborg Tschbull, 8 Silver Lakes Drive. Proposing to construct a 6' x 7' elevator shaft addition to the existing residence and perform related site development activities within a regulated area. The subject property is on the east side of Silver Lakes Drive approximately 450 feet north of its intersection with Tokeneke Road, and is shown on Assessor's Map #37 as Lot #14, in the R-1/2 Zone.

Mr. Tschbull explained that he is proposing to construct an elevator on the rear side of the existing house. He said that the house is located on the fringe edge of the flood zone and therefore, the elevator structure needs approval under the Flood Damage Prevention Regulations. He said that he has had the addition of the elevator designed by an architect. He referred to the architect's certification regarding the structural strength of the proposed elevator shaft structure. He said that

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the elevator shaft would be constructed of solid walls. He said that all the neighbors have been notified and no neighbors have commented to him.

Mr. Spain commented that not much of this elevator structure would be within view of any of the neighboring properties because the addition is proposed to the rear of the house. In response to questions, Mr. Tschbull said that the elevator structure will allow access from the garage level up to the main living level and the kitchen.

There were no comments from the public regarding the application. The following motion was made: That the Commission close the public hearing regarding this matter. That motion was made by Mr. Hutchison, seconded by Mr. Voigt and unanimously approved.

Mr. Conze then read the first general meeting agenda item:

GENERAL MEETING

Mandatory Referral #1-2011, Board of Selectmen, 8 Midbrook Lane.

Request for granting of easement on a Town right-of-way to 8 Midbrook Lane property owner to accommodate an existing private well.

Mr. Ginsberg explained that in 1977, the owner of the property at 8 Midbrook Lane installed a well providing water to the house. It was recently discovered that the well had been installed within the Town's street right-of-way, although it is located several feet away from the travel portion of the road. The property owner has requested an easement from the Town to allow the well to be maintained within the Town property.

Mr. Spain said that it is normal for a lot in this neighborhood to have a well because public water is not provided in this area. It appears that when the well was installed, it just happened to be installed in the wrong place.

Attorney Amy Zabetakis represented the property owner and explained that from all the records that can be found, it appears that the well was installed where the Health Department had instructed the applicants to install it. It is located 15+/- feet away from the paved portion of the street, but it happens to be within the Town's right-of-way.

Mr. Hutchison said that this is an unusual situation and that the Commission should draft a positive report making it clear that the property owners have the right to repair and maintain the well until such time as public water is available in the area. The Commission instructed the Director of Planning to draft a report for action at a meeting later in the month.

Chairman Conze then read the following agenda item:

Discussion, deliberation and possible decisions regarding the following:

Coastal Site Plan Review #229-A, Flood Damage Prevention Application #293, Foster Kaali-Nagy, 125 Five Mile River Road. Proposing to install a pier, ramp and float, and perform related site activities within regulated areas. *PUBLIC HEARING CLOSED: OCTOBER 26, 2010. DECISION DEADLINE: JANUARY 11, 2011.*

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Mr. Ginsberg explained that this application had been withdrawn and that the owners may re-apply for the proposed pier and ramp and float.

Chairman Conze then read the following agenda item:

Coastal Site Plan Review #230-A, Flood Damage Prevention Application #294, KRK, LLC, 129 Five Mile River Road. Proposing to install a pier, ramp and float, and perform related site activities within regulated areas. *PUBLIC HEARING CLOSED: OCTOBER 26, 2010. DECISION DEADLINE: JANUARY 11, 2011.*

Mr. Ginsberg explained that a revised draft Resolution had been prepared at the Commission's request. Mrs. Riccardo said that the Commission should clarify the language in the draft regarding the lighting. She also wondered whether the Resolution should contain a provision reciting the history of the site and the adjacent property at 125 Five Mile River Road indicating that a similar request at 125 had been withdrawn and that consistent with the current Town Plan of Conservation & Development, the property owners could share a dock rather than constructing two separate docks.

Commission members noted that if the property at 125 is the subject of a future application for a dock, then some sort of restriction could be added into that Resolution for 125 Five Mile River Road. Mr. Voigt said that it would be appropriate to move the first third of draft Condition D into the findings of fact rather than making it one of the stipulations of this approval for 129 Five Mile River Road.

Mr. Conze said that if the Commission wants to limit the number of docks or require property owners to share a dock, then they should formally adopt a policy and then in order to implement such a policy, give a grace period and then inform applicants before they apply for a dock.

After further discussion, the following motion was made: That the Commission adopt the following revised Resolution to approve the proposed pier and ramp and float at 129 Five Mile River Road. The motion was made by Mr. Hutchison, seconded by Mr. Voigt and unanimously approved. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 11, 2011**

Application Number: Coastal Site Plan Review #230-A
Flood Damage Prevention Application #294

Street Address: 129 Five Mile River Road
Assessor's Map #67 Lot #3A

Name and Address of Applicant &:
Applicant's Representative: Wilder G. Gleason, Esq.
Gleason & Associates, LLC

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455 Boston Post Road, Suite 201
Darien, CT 06820

Name and Address of: KRK, LLC
Property Owner: 129 Five Mile River Road
Darien, CT 06820

Activity Being Applied For: Proposing to install a pier, ramp and float, and perform related site activities within regulated areas.

Property Location: The subject property is on the east side of Five Mile River Road approximately 950 feet south of its intersection with Davis Lane.

Zone: R-1/2

Date of Public Hearing: October 26, 2010

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

Publication of Hearing Notices
Dates: October 15 & 22, 2010 Newspaper: Darien News

Date of Action: January 11, 2011 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News
January 21, 2011

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 and 820 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted 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 owner proposes to install concrete steps on the water ward edge of the concrete landing platform; a 4' x 26' fixed timber pier, a 3' x 30' aluminum gangway; and a 3' x 5' ramp support float and a 5' x 17' floating dock with associated support pilings. A related application for a

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dock on the adjacent 125 Five Mile River Road property was heard by the Commission the same night.

2. As noted at the public hearing, the applicant received approval from the State of Connecticut Department of Environmental Protection (DEP) in Permit #200904019-KF for this work. Notice of said DEP approval came via an August 17, 2010 letter to Mr. Alex Kaali-Nagy.
3. The amount of work within Planning and Zoning Commission jurisdiction is shown on Sheet 5 of 5 (Proposed Cross Section Map). This map shows that the following is within local jurisdiction: three-four proposed steps to be placed on a pre-existing concrete landing; the attachment of the fixed pier to the landing; and three proposed piles. All other work associated with this project is at a lower elevation, and solely within the jurisdiction of the State of Connecticut DEP.
4. The Darien Environmental Protection Commission (EPC) submitted comments via an e-mail dated October 22, 2010. That e-mail read as follows: *“The Environmental Protection Commission discussed the following dock referrals at their October 6 meeting and determined that they will not involve removal of substantial amounts of material or vegetation, and considers them uses incidental to the enjoyment of a residential property. Also, since the DEP has reviewed the actual dock locations within tidal waters, they have no additional comment. Coastal Site Plan Review #229-A Foster Kaali-Nagy, 125 Five Mile River Road
Coastal Site Plan Review #230-A KRK, LLC, 129 Five Mile River Road
Coastal Site Plan Review #237-B Abigail Knott, 70 Five Mile River Road”*
5. Due to the subject property’s location, this application was referred to the Southwestern Regional Planning Agency (SWRPA). They sent comments via e-mail dated October 5, 2010, noting that “...there is not likely to be any adverse inter-municipal impacts.” At the public hearing on this matter, it was noted that page 9-3 of the 2006 Town Plan of Conservation & Development states, “Property owners should be encouraged to share docks and floats in order to minimize the impacts to Long Island Sound from a multitude of such facilities.”
6. The Commission notes that a dock for an adjacent property at 125 Five Mile River Road was heard the same night as this application. These two properties, at 125 and 129 are currently owned by members of the same family, although they are technically in separate ownership. The application for 125 Five Mile River Road was subsequently withdrawn.
7. The potential adverse impacts of the proposed activity upon coastal resources, as designed are minimal and are therefore acceptable.
8. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.

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9. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
10. The proposed activity, as modified within this resolution, is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would minimize any adverse impacts by the proposed activity on coastal resources.
11. 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 #230-A and Flood Damage Prevention Application #294 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Work shall be in accordance with the plans entitled:
 - Proximity Map prepared for Alex Kaali-Nagy 129 Five Mile River Road, by William W. Seymour & Associates, dated April 1, 2008, Sheet 2 of 5.
 - Proposed Conditions Map 129 Five Mile River Road prepared for Alex Kaali-Nagy, by William W. Seymour & Associates, dated April 1, 2008, Sheet 4 of 5.
 - Proposed Cross Section Map 129 Five Mile River Road prepared for Alex Kaali-Nagy, by William W. Seymour & Associates, dated April 1, 2008, Sheet 5 of 5.
- B. The proposed activity is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.
- C. Any lights on the dock shall be turned off by 11 p.m., except in emergency situations.
- D. Due to the location of the subject property and the scope, nature and amount of work proposed within the application, the Commission hereby waives the requirement for stormwater management per Sections 888a(1) and 888a(3) of the Darien Zoning Regulations.
- E. During construction, the applicant shall utilize any sediment and erosion controls and additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- F. Prior to January 11, 2012, as-built maps, surveys and/or other documentation shall be submitted to the Commission to verify that the dock has been installed and completed in accordance with the approved plans. No deviation or alterations from the approved plans shall be permitted

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except with the prior written permission of the Commission. The applicant shall submit verification that the location of the dock complies with Section 403e of the Darien Zoning Regulations, and meets the 15 foot side yard setback.

- G. 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.
- H. 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.
- I. This permit shall be subject to the provisions of Section 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (January 11, 2012). This may be extended as per Section 829f.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman.

Chairman Conze read the following agenda item:

Special Permit #66-I, Darien YMCA, 2420 Boston Post Road.

Review and action on 2011 Special Events Schedule.

Mr. Ginsberg noted that he had reviewed the 2011 Schedule and compared it with 2010. He said that there are slightly less activities due to the YMCA's anticipated construction schedule.

Mr. Voigt said it would be interesting to know the actual numbers of people that participate in the Special Events compared with the estimated number of people at those events. It was noted that in some instances that would be difficult because people are not at the event for the entire time.

The Commission members reviewed the Schedule of Special Events for 2011 and the following motion was made: That the Commission approve the Special Events Schedule for the YMCA for the year 2011. The motion was made by Mr. Hutchison, seconded by Mrs. Riccardo and unanimously approved.

Chairman Conze read the following agenda item:

Business Site Plan #248, Day Street Development, LLC, 1015 Boston Post Road/13 Grove Street

Request for extension of time to commence project.

Commission members noted that a previous extension had already been granted and that the applicant is now requesting an extension until the end of 2011. They noted that changes in the circumstances of the neighborhood and the parking conditions thereof might make it appropriate to

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reconsider the whole project at some point in the future. At this point, an extension for one year seems appropriate, but at some point in the future, the matter should be re-considered in greater depth. The following motion was made: That the Commission grant the extension until December 31, 2011 for the completion of the project. The motion was made by Mr. Voigt and seconded by Mrs. Riccardo. All voted in favor, except for Mr. Hutchison, who abstained, to avoid any perception of a potential conflict of interest. The motion passed by a vote of 5 to 0 to 1.

Chairman Conze read the following agenda item:

Discussion and deliberation only on any public hearings closed on January 11, 2011.

Commission members asked the staff to draft resolutions to approve each of the items discussed earlier in the evening (the driveway on McLaren Road, the conservatory on Tokenke Trail and the elevator on Silver Lakes Drive). Each resolution is to contain the appropriate conditions and stipulations. The resolutions will be considered for action at a future meeting.

Approval of Minutes

The Commission decided to postpone the consideration of the minutes until a future meeting.

November 23, 2010 Public Hearing
November 30, 2010 Special Meeting--Public Hearing
December 7, 2010 Special Meeting--Public Hearing
December 15, 2010 Special Meeting--Executive Session/General Meeting

There being no further business, the following motion was made: That the Commission adjourn the meeting at 8:50 P.M. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved. The meeting was then adjourned at 8:50 P.M.

Respectfully Submitted,

David J. Keating
Assistant Planning & Zoning Director

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