

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
MARCH 22, 2011**

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Spain, Cameron, Hutchison, Riccardo, Voigt

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

Chairman Conze called the meeting to order at 8:00 P.M. and read the following agenda item:

GENERAL MEETING

Discussion, deliberation and possible decisions regarding:

Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street. Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. *PUBLIC HEARING WAS CLOSED ON 1/18/2010. DECISION DEADLINE: 3/24/2011.*

The following motion was made: That the Commission waive the reading aloud of the draft resolution because each member has received the draft and had the opportunity to contact staff with recommended changes. The motion was made by Mrs. Cameron, seconded by Mrs. Riccardo and unanimously approved. At the Chairman's request, Mr. Ginsberg summarized the resolution by reading the following:

The Commission has thoroughly reviewed the subject application, including the information submitted during the public hearing process by the applicants, neighbors, various experts and others. There were 4 public hearing nights, consisting of over nine hours of testimony. The Commission in its resolution has outlined and reviewed the evidence. The resolution also includes an exhibit showing the Proposed Site Plan Modifications.

The Commission grouped its findings into several subject areas.

- I. THE SUBJECT APPLICATION-- Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street**
- II. THE SUBJECT PROPERTY AND EXISTING PROPERTY CONDITIONS**
- III. THE PROPOSED BUILDING AND ASSOCIATED RELATED DEVELOPMENT**
- IV. CONSULTANTS AND COMMENTS**
- V. ADDITIONAL HEALTH AND SAFETY CONCERNS**
- VI. AFFORDABLE HOUSING IN DARIEN**
- VII. DETERMINATION**
- VIII. DECISION TO GRANT THE APPLICATION WITH STIPULATIONS AND MODIFICATIONS**

In this case, because the project is an 8-30g affordable housing application under the State Statutes, the standard is different than for other P&Z applications.

The appropriate standard is found in Section 8-30g(g), which reads as follows:

(g) Upon an appeal taken under subsection (f) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record.

The commission shall also have the burden to prove, based upon the evidence in the record compiled before such commission, that

(1) (A) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider;

(B) such public interests clearly outweigh the need for affordable housing; and

(C) such public interests cannot be protected by reasonable changes to the affordable housing development,

In this specific case, the Commission has concluded that it cannot approve the plans as submitted because it is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; AND (B) such public interests clearly outweigh the need for affordable housing.

The Commission has then gone to the next step as required by the Statutes, and MODIFIED the project, and GRANTED the project WITH STIPULATIONS AND MODIFICATIONS.

The modifications include, *but are not limited to*, the following:

A. **THE APPLICATION SHALL BE MODIFIED TO ADDRESS THE VESTED PRIVATE PROPERTY RIGHTS IN A 25 FOOT REAR SETBACK.** Modify plans to address private property right to a 25 foot rear setback. Modify application to comply with 25 foot rear yard setback as required in the original subdivision map and declaration of deed restrictions as noted by Attorney Robert Fuller, and specify the original subdivision map and declaration of deed restrictions on the revised plans.

B. **THE APPLICATION SHALL BE MODIFIED TO ADDRESS TRAFFIC SAFETY REQUIREMENTS:** Modify plans to address *traffic safety issues*:

- 1) Move proposed driveway to south by at least 10 (ten) feet—thereby eliminating need to have radius of that driveway extend beyond the extension of the northerly property line. Moving the driveway will eliminate the need to get an easement or approval from the property owner to the north. It will also allow for increased planting space for the proposed trees along the north property line, and more space to place and construct any needed retaining wall(s).
- 2) Provide parking ratio of 2 spaces for each unit, plus one handicapped-accessible space. This will avoid any unsafe parking off-site.
- 3) Emergency egress for fire equipment onto Hoyt Street—should be composed of grass pavers.
- 4) In its current configuration, the bypass area cannot be approved due to traffic and pedestrian safety concerns. The applicant shall reduce the number of units to a maximum of four (with at least 30% of those units being affordable), thereby eliminating ConnDOT's requirement for the bypass area. or submit an alternative plan to the Commission which does not compromise the safety of pedestrians and the traffic emerging from Echo Drive.

B. THE APPLICATION SHALL BE MODIFIED TO ADDRESS FIRE SAFETY REQUIREMENTS OF DARIEN FIRE MARSHAL: The Darien Fire Marshal stated in his September 30, 2010 and January 14, 2011 memoranda that the plans needed to be revised to:

- 1) Increase fire access along the south and east sides of the building. There should be additional room around all sides of the building to give the Fire Department more appropriate and improved room to operate. The building setback on the south and the eastern property lines shall be increased to at least 25 feet along the east property line to address the vested private property rights issues addressed by Attorney Fuller, and 15 feet along the south property line to address the concerns of the Fire Marshal outlined in his September 30, 2010 memo, as well as to comply with the side setback restrictions of the described property rights.
- 2) When revising the plans per this decision, the proposed building shall conform to existing building height regulations. Reduction in density and building coverage will improve fire safety, by allowing fire access all around the proposed building. This height limitation is reasonably connected to legitimate public safety concerns. The Commission acknowledges that the peak of the building can be higher than 30 feet above the average finished grade, however the “calculated” height cannot exceed 30 feet. The Commission strongly believes that the 30-foot height limitation is necessary to protect substantial interests in health and safety and that the risk of such harm clearly outweighs the need for affordable housing. This limitation on height is especially important given the topography at this location and the small size of the property.
- 3) Any proposed retention area and/or underground stormwater management system must be capable of sustaining the weight of fire apparatus;
- 4) Building to be fully sprinklered;
- 5) Fire hydrant to be added;
- 6) No blocking of access to Dumpster enclosure by parking spaces. The dumpster shall be screened with a six foot high fence. The property owner(s) is responsible for maintaining this shared trash area, including ensuring that it is emptied frequently enough to minimize odors.
- 7) Standpipe system to be added.

D. THE APPLICATION SHALL BE MODIFIED TO ADDRESS STORMWATER REQUIREMENTS. *Modify plans regarding stormwater management/potential flooding and other public interests, as follows:*

- 1) Show proper size of Vortechinics, as required by Mr. Canas.
- 2) Assure that the Vortechinics or other underground facilities beneath the parking lot can withstand the weight of the Fire Department’s heaviest apparatus.

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- 3) Add new deed restriction concerning location of outdoor grills as agreed by applicant on January 18, 2011 in language satisfactory to Town Counsel.
- 4) Prior to planting, all landscaping shall be field-sited with the Darien Fire Marshal as agreed by applicant on January 18, 2011. Widen the planting area along the north property line by at least three feet, in connection with moving the driveway to the south. See VII B(1) page 32 of the resolution.
- 5) Modified plans shall have a note that CU (Cornell University) structural soil, which is specifically made to accommodate heavy compaction, will be used near the trees.
- 6) Prior to issuance of a Zoning or Building Permit, the applicants shall obtain a written commitment from the gas utility that it will supply this building. If this commitment cannot be submitted, applicants shall further amend the revised Grading and Utility Plan to show the full location and dimensions of all fuel tanks and pipes that will service the site, including depth and distance measurements from all nearby structures, pipes, conduits, and equipment. The Fire Marshal shall approve these changes before any Zoning or Building Permit is issued.

So in conclusion, the Commission's decision identified the public health and safety issues of the submitted proposal and determined that they clearly outweigh the need for affordable housing, and then modified and granted the project with stipulations by making reasonable changes to the proposed development to remedy those health and safety issues.

Mr. Conze said that the Commission had requested that the applicants grant an extension of time to act on this matter. That request had been denied. The staff has pulled together the resolution. Mrs. Cameron said that intensive development with considerable ground coverage well over 20% of the land area does lead to degradation of water quality. The proposed underground storm water detention system will require considerable maintenance and, even the applicants' engineer noted such maintenance is not often performed. With respect to the need for on site parking, she noted that this site is considerably different from the 397 Boston Post Road site, which involved the repurposing of an existing office building and that site has sidewalks and is on a bus line and there are stores and businesses across the street.

Mr. Spain said that the number of units that could be placed on the site without the DOT requiring a bypass lane was determined from information provided by Mrs. Kelly who had spoken with at least one DOT official, and by Mr. Spear, the applicants' traffic consultant, who indicated that a single family home would not need a bypass lane, but the DOT might or could require a bypass lane above 3 or 4 units. If the bypass lane is installed, it would result in the fast-moving southbound traffic being too close to the sidewalk. There are photos in the file of other sidewalks, but they are not comparable to what would result from the installation of the bypass lane as here proposed. He said that the Commission needs to protect against the creation of a dangerous situation. He also noted that there are no sidewalks on the site side of Hoyt Street, thus the senior residents of this site would need to cross Hoyt Street to reach a sidewalk, but there is no signal or crosswalk for their safety.

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Mr. Hutchison said that the Commission needs to balance affordable housing needs with safety aspects of the proposal. The Commission acts in a fact finding role based on the record of the proceedings. A Traffic Study was clearly necessary and the applicants did not submit one with the application. The neighbors hired their own traffic expert who needed to perform more than just a peer review, they needed to provide facts to the Commission that the applicants should have provided.

Mr. Conze said that Hoyt Street, Route 106, is the easternmost access from the Merritt Parkway into downtown Stamford. This means that there is lots of traffic traveling through the area. He also noted that the applicants were asked if they ever built anything like what is here proposed and the answer was no. They have no experience with building anything.

The following motion was made: That the Commission adopt the resolution to approve with stipulations and modifications the applicants' project on Hoyt Street. The motion was made by Mr. Voigt, seconded by Mrs. Riccardo and unanimously approved. The Adopted Resolution is:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 22, 2011**

Application Number: Affordable Housing Application Under CGS 8-30g (#1-2010),
Site Plan Application #277, Land Filling & Regrading Application #247

Site Location Street Address: **57 Hoyt Street**
Assessor's Map #27 as Lot #168-1

Name and Address of Property Owners: Christopher & Margaret Stefanoni
And Applicants: 149 Nearwater Lane
Darien, CT 06820

Activity Being Applied For: Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities.

Property Location: The subject property is located on the east side of Hoyt Street approximately 100 feet south of its intersection with Echo Drive.

Zone: R-1/3 Zone

Date of Public Hearings:
*NOVEMBER 2, 2010 AND CONTINUED TO NOVEMBER 23, 2010 AND DECEMBER 7, 2010
AND JANUARY 18, 2011.*

Deliberations held on: February 8, 2011, March 1, 2011, March 8, 2011, March 22, 2011

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

Publication of Hearing Notices

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Dates: October 22 & 29, 2010

Newspaper: Darien News

Date of Action: March 22, 2011

Actions: **GRANTED WITH STIPULATIONS AND MODIFICATIONS**

Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247: to construct age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities.

Scheduled Date of Publication of Action:
April 1, 2011

Newspaper: Darien News

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

- 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 applicants, 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, all the testimony and materials submitted at each session of the public hearing, and related analyses, the Commission finds:

I. THE SUBJECT APPLICATION-- Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247

- A. The Application Request. The aforementioned application seeks approval to construct 16 units of age-restricted housing on the subject property (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities.
- B. The Submitted Project Plans. The last revisions of each of the submitted plans are entitled:
 - Map of Property prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated June 1, 2010, Sheet 1 of 6.
 - Proposed Site Plan prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated July 12, 2010 and last revised November 19, 2010, Sheet 2 of 6.
 - Proposed Site Plan with Sight Line Analysis prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated July 12, 2010, Sheet 3 of 6.
 - Grading and Utility Plan Design of Storm Drainage System prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated July 12, 2010, last revised December 23, 2010, Sheet 4 of 6.

- Soil and Erosion Control Plan prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated July 12, 2010, Sheet 5 of 6.
- Planting Plan prepared for Hoyt Street, 57 Hoyt Street, by PRE/view Landscape Architects, scale 1"=20', dated 10 May 2010 and last revised 22 Nov 2010. (considered to be Sheet 6 of 6, as it was attached to the other 5 sheets as part of the original submittal)
- Proposed Widening of Shoulder West Side of Hoyt Street, South of Echo Drive prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', last revised December 23, 2010.
- Hoyt Street Senior Residences, Hoyt Street, Darien, CT, by Stein | Troost architecture, dated 5.24.10, and received Aug 20, 2010. Six 11" x 17" pages showing floor plans and elevations.

II. THE SUBJECT PROPERTY AND EXISTING PROPERTY CONDITIONS

As shown on the June 1, 2010 Map of Property prepared by Hammons LLC (sheet 1 of 6) submitted by the applicant, the subject property is .5103 acres (22,230 square feet) in size and is now vacant. There is no curb cut presently from the subject property onto Hoyt Street.

- A. Location. The subject property directly abuts a bidirectional single lane arterial street and State Highway—Route 106/Hoyt Street, with the closest intersections being Hoyt Court, which is 100+/- feet to the south across the street, and Echo Drive 70+/- feet to the north and across the street. There are “stop” signs at the end of these and all the streets that enter Hoyt Street in this vicinity. The submitted “Proposed Site Plan” shows that there are no sidewalks on the east side of Hoyt Street, where the proposed project is located, though it shows that there is a sidewalk across the street on the west side of Hoyt Street. The sidewalk on the west side runs north from Hoyt’s intersection with Middlesex Road, about .3 miles to the south of the site, past the site, to the corner of Lynn Court, .5 miles north of the site. One would need to walk from the subject property across State Route 106/Hoyt Street to get to that sidewalk. As noted during the public hearing, the Middlesex Club is at the end of Echo Drive to the west, and Holmes Elementary School is to the south—both across the street from the subject property. Route 106 is the first of three access/arterial roads off of the Merritt Parkway into downtown Stamford from the north.
- B. Zoning. The subject property is located within an R-1/3 (single-family residence) Zone. Setback and other lot requirements of that zone are on page 9 of this Resolution, shown in comparison to the proposal put forth by the applicants.
- C. Inland Wetlands. As noted on pages A8-A10 of the applicant’s “Hoyt Street Senior Residences” submittal received August 20, 2010, there are no inland wetlands on the subject property. A March 28, 2010 Soil Investigation Report prepared by soil scientist Otto Theall was submitted for the record. This evidence was not disputed during the public hearing process.
- D. Utilities. The proposed building would be served by public water and sewer. As shown on the submitted Site Plan, all utilities would be underground from Hoyt Street. These connections are subject to approval from the public authorities in charge. During the public hearing, some members of the public challenged the ability of the natural gas main passing the

site to supply the proposed building's needs. No evidence of this availability was submitted by the applicants. Because the proposed site plan is so tightly packed, some adjustments would be needed if fuel tank(s) needed to be added to the plans.

- E. Topography. As shown on the submitted Map of Property, the subject property slopes gently from north to south. The elevations range from elevation 86+ near the northern property line, to elevation 80 near the southern property line, about 100 feet away. The submitted Grading and Utility Plan shows that most of the proposed regrading is near the north and south property lines, with associated retaining walls proposed. The Grading and Utility Plan shows cutting or reducing the height of the grade on the north side of the site and filling on the south side of the site. Both of the retaining walls are proposed to be three feet or less in height. There is also a proposed retaining wall along a portion of the eastern property line (adjacent to a separate Dedicated Open Space parcel which is shared by the subject property and the adjacent property at 53 Hoyt Street).
- F. Open Space. The Proposed Site Plan shows "Dedicated Open Space (shared)" in the rear of the property. The open space measures approximately 108.3' wide by 25' deep. That open space was required as part of a subdivision of a larger parcel of land into two building lots consisting of this property, the adjoining property located at 53 Hoyt Street, and the shared open space parcel. This subdivision was approved by the Planning and Zoning Commission in 1995, and is shown on Map #4575 in the Darien Land Records, Volume 760 Page 513. The Open Space parcel is fairly wooded with no lawn area. This area was specifically excluded from the 22,230 square foot lot size shown on the plan.
- G. Vested Property Right in Existing Setback Requirements. The 1995 subdivision approval for this property was reviewed by Attorney Robert Fuller during the application process. His review noted that a vested private property right attached to the existing setback requirement as a result of the particular restrictive covenants that were part of the 1995 subdivision proceeding.

III. THE PROPOSED BUILDING AND ASSOCIATED RELATED DEVELOPMENT

- A. Building Size/Square footage. Page 3 of the applicants' "Hoyt Street Senior Residences" submittal received August 20, 2010, as well as their submitted plans explain and show that the proposed building will have three levels of living space. No basement was shown on the submitted plans.
1. Page 17 Schedule A of the Hoyt Street Senior Residences bound submittal application and the architectural plans prepared by Stein | Troost architects show the following:
- The first floor of the building would be 5,941 square feet, and contain 4 two-bedroom units, with one of those being affordable. The "market rate" units range in size from 934 square feet to 965 square feet. The one first floor affordable unit would be 965 square feet.
 - The second floor of the building would be 7,266 square feet, and contain 6 two-bedroom units, with two of those being affordable. The "market rate" units range in size from 965 square feet to 1,073 square feet. The two second floor affordable units are 965 square and 1,020 square feet in size.

- The third floor of the building would be 7,003 square feet, and contain 6 two-bedroom units, with two of those being affordable. The “market rate” units range in size from 932 square feet to 1,028 square feet. The two third floor affordable units are 993 square and 995 square feet in size.
- All sixteen units proposed are two-bedroom units. Overall, they range in size from 932 square feet to 1,073 square feet, with a total of 20,210 square feet of gross square feet according to Stein | Troost architects. The average size of all units is 981 square feet. The average of the proposed affordable units is 979.6 square feet.

B. Building Height. According to the submitted plans, the proposed multi-family building will be three stories in height. The first floor will have 5,941 square feet; the second floor will have 7,266 square feet; and the third floor will have 7,003 square feet—a total of 20,210 gross square feet. The height from the ground to the peak of the building is 42 feet, with a “calculated building height” according to the Town’s Zoning Regulations of 36.33 feet. In the R-1/3 zone, the maximum building height is 2-1/2 stories and 30 feet and in the Darien multi-family housing zones the maximum height is 2-1/2 stories and 28 feet.

C. Density proposed. With sixteen proposed units, the project would have a density of 31.3 units per acre. The current zoning district now allows a maximum of 3.0 (three) units per acre. The subject application is requesting a 10-fold increase in density over what is currently allowed under the existing R-1/3 zoning regulations and substantially more than has been approved under other Darien multi-family zoning regulations. For example, the density approved for the mixed income AvalonBay rental development submitted under CGS 8-30g (called Avalon Darien) in the DMR zone is six (6.0+/-) units per acre. In the DBR zone, the permitted density is eight (8) units per acre. For 100% affordable housing developments such as Clock Hill Homes in Darien, the approved density is 13.6+/- units per acre. For 100% affordable housing at Allen O’Neill in Darien, the approved density is 10.1+/- units per acre. The Commission recently granted with stipulations and modifications a proposal from the same applicants at the corner of Tokeneke Road & Pheasant Run. The approved density for that project is somewhat undefined, but will be less than 28.5 units per acre. The magnitude of 31.3 units per acre on this site in this three story building would require violating existing vested property rights and would create several serious public safety concerns. Thus the need for reasonable modifications of the proposed project.

D. Proposed Generator/Transformer. The “Proposed Site Plan” does not show a generator or transformer. That fact was noted by the neighbors’ professional engineer from Redniss & Mead, Brian McMahon, in his first submission to the Commission. In his January 18, 2011 letter, Mr. McMahon notes that although a transformer has been added to the plans, it was proposed to be located in a snow disposal area. The Commission believes that the installation of a generator is an essential component of the subject application, since it is an age-restricted complex, which relies on an elevator for access to upper floors.

E. Proposed on-site open space/recreation space. As noted, on the submitted Site Plan, the subject application proposes a building which covers 34.4% of the subject property. The asphalt drive and parking area would cover 10,307 square feet or 46.3%+/- of the subject property, resulting in a total impervious surface area of about 75%+ being proposed (because part of the building overhangs proposed parking, the proposed impervious surface is less than the building footprint and parking area simply added together). The submitted Grading and Utility Plan shows the

location of catch basins and associated drainage pipes to the south of the building with a retaining wall, as well as a proposed retaining wall along the northern property line. Thus, there is extremely limited on-site open space for active or passive recreational use by the building's residents.

1. *No public open space available.* Given the location of the proposed site, there are no easily accessible public areas for open space, fresh air, recreation and exercise available to occupants of the site except on the parcel itself. Recreational walking off the site, while possible, is not a practical option unless a signalized crosswalk were established across Hoyt Street, a heavily traveled State highway.
2. *On-site Open Space Needed.* With public recreational facilities distant from the subject property, some space must be provided on-site to meet the senior residents' recreational and social needs, even if that results in a reduction of space available for the building, parking or other support areas. There are substantial public interests in assuring that there is sufficient open space on residential properties to provide for healthful light and air on-site and for neighboring sites, and safe access for emergency responders. The Commission has consistently adopted regulations for all of the Town's residential zones to serve these substantial public interests. Such regulations establish setback lines, generally limit building coverage to 20% of lot size, and require on-site open space.
3. *Recreational space.* Provisions of recreational space outside the building to serve these needs must be part of any final modification of this proposed development that might be approved by this Commission. The Commission notes that the open space parcel in the rear of the property is not usable by the occupants of the applicants' parcel, and therefore, is not appropriate as recreational space.

F. Plantings/Landscaping. Mr. Stuart Sachs, the applicants' Landscape Architect, reviewed his submitted Planting Plan at the public hearings on this matter. The neighbors submitted information from Gerald Gallagher from Designs by Lee. In response to concerns raised during the public hearings and within submitted letters, Mr. Sachs explained that CU (Cornell University) structural soil will be used near the trees, which is specifically made for heavy compaction. He noted that this is a construction document detail.

G. Age Restricted Housing. The applicants propose to impose strict age limitations on those who may reside in the building. No one under age 62 will be permitted to live in the units. Children will not be allowed to live in the development. Representations concerning age restricted housing are set forth in the applicants' application materials. The Commission notes that any deed restrictions regarding age would have to be filed in the Darien Land Records, and an independent management company would need to be designated and made responsible for strictly enforcing said deed restrictions. See Section VIII, page 37 for Affordability Compliance Certification.

H. The Proposed Bypass Area Required by ConnDOT. The applicants noted that ConnDOT has mandated that a "bypass area" must be installed before it will approve the required driveway entrance to the proposed development from Hoyt Street/Route 106. This area was also referred to as the "bypass lane", "widening of the shoulder", or "swerve lane". It became evident during the public hearing that ConnDOT would require the bypass area in order to allow

vehicles traveling southbound on Hoyt Street to move past any vehicles waiting to turn left into the proposed development. The proposed bypass consists of the following:

- A proposed relocation of the existing four foot wide sidewalk on the west side of Hoyt Street—this will push the sidewalk to be directly adjacent to (within a foot of) the stone wall dividing the historic Leeds Cemetery from Hoyt Street;
- Elimination of 4.5' shoulder—that portion of the paved roadway that lies between the traveled way and the existing curb line;
- Elimination of the existing 7 foot +/- grass area between the existing sidewalk and the cemetery;
- The relocation of the curb line and sidewalk six feet to the west;
- The creation of an additional paved area on Hoyt Street along the west of the regular traveled way for southbound vehicles right along the new curb line.

See Exhibit E (page 15) to “Neighbors Letter” dated December 3, 2010.

At the January 18, 2011 public hearing, the applicants’ engineer showed the plan entitled, “Proposed Widening of Shoulder West Side of Hoyt Street, South of Echo Drive prepared for Hoyt Senior Residences #57 Hoyt Street”, by Hammons, LLC, scale 1”=20’, last revised December 23, 2010. This plan showed the proposed bypass area. Analysis of the bypass area is reviewed later in this Resolution in Section IV pages 16-17.

The Commission notes that Paul Holmes of the Connecticut Department of Transportation reviewed the proposed driveway location in his letter to the applicants dated July 30, 2010.

- I. On-Site Snow Storage Areas/Snow Removal. At the December 7, 2010 public hearing, Mr. McMahan, the neighbors’ professional engineer, said that snow removal will be a problem due to the density of the development. At the January 18, 2011 hearing, Mr. Sachs, the applicants’ landscape architect, responded that they can require a maintenance company to take the snow off-site during/after large snowstorms. He noted that a snow blower rather than a plow must be used to clear some areas of the site. As proposed, there is insufficient space for snow storage to allow proper and regular clearing of cumulative snow while maintaining full access to parking and to the on-site travel corridors.
- J. Sidewalks. The Proposed Site Plan submitted by the applicants show the existing asphalt sidewalk across the street from the subject property, generally parallel to the west side of Hoyt Street. The Proposed Site Plan does not show any existing or proposed sidewalks on or adjacent to the east side of Hoyt Street (the project side), or alongside the frontage of the subject property.
- K. Comparisons with Existing Zoning Regulations and Building Coverage
1. Comparison with existing zoning regulations. The chart below summarizes some of the information above, while comparing both the current R-1/3 standards in the Darien Zoning Regulations with the submitted application.

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	<u>R-1/3</u>	<u>Proposed</u>
1. Minimum Lot Area (Square Feet)	14,520 (1/3 acre)	22,230 s.f. (.51 acre)
Minimum Width	80'	106'
Minimum Frontage	50'	106'
Minimum Depth	100'	207'
Minimum Front Yard	30'	66.9'
Minimum Side Yard: Least One	10'	10.3'
Minimum Side Yard: Total of Two	25'	43.9'
Minimum Rear Yard	25'	5.3'
Accessory Structures	30'	N/A
9A. Minimum Distance from Front Lot Line	5'	N/A
9B. Minimum Distance from Side Lot Line	5'	N/A
9C. Minimum Distance from Rear Lot Line	5'	N/A
10. Maximum Height in Stories	2-1/2	3
11. Maximum Height in Feet	30	36.33
12. Maximum Building Coverage	20%	34.4%
13. Impervious Site Coverage	No maximum	Over 75%*

Sources: "Map of property" and "Proposed Site Plan" prepared for Hoyt Senior Residences by Hammons LLC.

**Estimate of Impervious Site Coverage from Darien Planning and Zoning Office based upon submitted plans.*

2. **Building Coverage.** The subject property is located in an R-1/3 single family residential zone. The maximum Building Coverage permitted in that zone is 20% of the lot area. That 20% maximum allowed Building Coverage is the zoning standard in the following zoning districts in Darien: R-2, R-1, R-1/2, R-1/3, R-1/5, R-NBD, DMR, DCR, NB, DC, SB, SB-E, DOR-1, and OB. DOR-5 has a 15% maximum Building Coverage. The maximum is 25% in the 3.7AH zone and 35% in the Noroton Heights Redevelopment Zone (an overlay commercial/mixed use zone). In DB-1 and DB-2, maximum Building Coverage is determined by floor area ratio. In the CBD (commercial) Zone (downtown) there is no maximum Building Coverage limit. Maximum building coverage in 15 of the 19 Darien zoning districts, which are not overlay districts, is 20% or less.
 - a) With the exceptions of the DB-1 and DB-2 zones, in Darien, the Building Coverage maximum is not a floor area ratio (FAR). Rather, it is a directly overhead bird's eye view of the portion of a property that is covered by all structures. A Building Coverage requirement is needed to assure that there is sufficient room on the property for necessary ancillary uses such as on-site parking, maneuvering room for emergency and service vehicles, utilities and mechanical equipment, recycling and garbage bins, dumpsters, and yard areas, landscaping, snow storage, screening, and emergency access to the building, as well as the needs of the residents for open space

as noted in paragraph III E, above. When considering this or any site, the Commission must consider some type of building coverage limitation so that the ancillary uses can fit on the site in a safe and workable manner. Public health, safety, welfare and other needs require that some limitation on Building Coverage be set as the Commission defines the parameters which will apply for any new use at this location.

IV. CONSULTANTS AND COMMENTS

A. Vested Property Rights. Attorney Robert Fuller was hired by the Commission to review several site specific property rights issues and to address questions relative to the submitted application. After reviewing the facts, he submitted a letter with his comments on January 18, 2011, and also explained his interpretations of the relevant documents, most of which were on file in the Darien Land Records. In his letter, Mr. Fuller reviewed three issues specific to this application: 1) jurisdiction over access to Hoyt Street, a state highway; 2) whether this application, which invokes CGS 8-30g, can override vested property rights established when the subject property was created by subdivision in 1995; and 3) the effect, if any, of the Commission's 2007 modification of the 1977 subdivision provisions applicable to a nearby property owned by Mr. and Mrs. Carlo.

1. Concurrent jurisdiction over access to Hoyt Street, a state highway. In his January 18, 2011 letter, Mr. Fuller noted that, "...a zoning commission can consider traffic problems at the site and impose reasonable limitations which are related to safe access to the state road, provided that they do not conflict with the preemptive authority and jurisdiction of the STC [State Traffic Commission] or the DOT [State of Connecticut Department of Transportation]." He concluded that in his opinion, the local planning and zoning authority has "...concurrent jurisdiction with the state agencies..."
2. Existing vested property rights require that the application be modified to observe a 25 foot rear yard setback requirement established in the subdivision approval that created the subject property in 1995, rather than the 5 foot setback proposed by the applicants. The prior 1995 two lot subdivision that created the subject parcel, as shown on recorded Map #4575, established a 25 foot setback from a designated open space area, which is jointly owned by the owners of the two parcels. That setback is reiterated in a table of zoning data set forth on the Map itself. The two parcels, including the subject property are subject to a declaration of deed restrictions recorded in Volume 760 at page 513 (February 22, 1995). That declaration refers to Map #4575, and Section 6 states that "the restrictions may not be modified without the joint approval of the Lot owners and the Darien Planning and Zoning Commission." The declaration of restrictions runs with the land.

Mr. Fuller stated that he had reviewed the 1995 two-lot subdivision regarding the subject property, and the Land Records pertaining to the subject property going forward. In his letter, he observed that the subject property was conveyed by warranty deed to Paul Kreuch, Jr. and Eleanor Kreuch in 2003 with reference to Map #4575, and subject to the restrictions, easements and encumbrances of record. The Kreuchs conveyed the property to the applicants by warranty deed in December 2009. The conditions in that deed refer to the February 1995 declaration of deed restrictions and Map #4575, adding that the "[e]ffect, if any, of Setback Line and Notes shown on Map 4575 ...is not to be construed

as a private restriction or private restrictive covenant imposed by the grantors.”
(Condition #4)

Mr. Fuller observed that the last phrase of Condition #4 was not in the original deed to the lot or subsequent deeds in the chain of title, and that the grantors (meaning the Kreuchs) could not eliminate or change the legal effect of encumbrances on the title imposed by former owners. Citing the controlling authorities, Mr. Fuller noted that “[w]here a deed conveying property makes reference to a map, it is incorporated into the deed and includes the conditions and what is shown on the map.”

He then concluded that “As a result of the history of the property, including the map itself and the declaration provision, namely both public and private restrictions on the use of the property, it is my opinion that the Commission can insist on the rear setback even though this is an affordable housing application. Accordingly, the Commission can require the applicants to observe a 25 foot setback for the structures at the rear of the lot and have them [the applicants] revise the application accordingly.”

Mr. Fuller explained at the hearing that by the same analysis, the side and front yard setbacks that are set forth in the Map #4575 table of zoning data and imposed by the deed restrictions would also apply to the applicants’ parcel.

3. The effect of the modification of the Carlo subdivision application. The applicants’ submitted a memorandum dated December 7, 2010 contending that the Commission’s approval of a modification of a nearby two lot subdivision granted in 1977 means the Commission should not enforce the 25 foot rear setback for the subject property. Mr. Fuller reviewed the applicants’ memorandum and the relevant subdivision map (Map #3969).

The address of the property cited by the applicants is 65 Hoyt Street. It is now owned by John and Joan Carlo. Map #3969 delineates a rectangle within the Carlo parcel as the “limits of buildable area for main dwelling” which conforms to the setbacks for the zone on the northern and eastern sides. There is no zoning table on Map #3969. None of the notes on the map refer to an adjacent open space created with the subdivision, though there is a declaration of restrictions for the subdivision parcels which runs with the land.

On October 9, 2007, the Commission approved an application filed by Joan Carlo to allow construction of a deck on the southern side of the house and outside of the limits on the buildable area delineated on Map #3969. The deck complies with the zoning setback for the southern side.

In light of the factual differences between the applicants’ proposal and the Carlo approval (namely that Map #3969 does not include a zoning table or refer to the declaration of restrictions covering the parcels on the map, as is the case with Map #4575; and that, unlike the subject application, the 2007 Carlo approval maintains the applicable zoning setbacks), Mr. Fuller concluded that the Commission is not precluded from maintaining the 25 foot rear setback for the subject property.

- B. Comments from the Darien Environmental Protection Commission (EPC). In Darien, the EPC also serves as the Inland Wetland Agency, Flood and Erosion Control Board, and Conservation Commission. The EPC submitted a four-page report/memo dated December 27, 2010 concerning this application. That memo set forth seventeen concerns/comments. These include the following: the large amount of impervious surface and possible surface flooding; lack of usable open space; potential adverse impacts on downstream water quality; the long-term viability of the underground stormwater management structures; the need for operation and maintenance plans for the stormwater detention system and the oil water separators, as well as “as built” drawings; the cumulative adverse impacts of parking lot runoff and the removal of 27 mature trees; bonding for the stormwater management system; bonding for the planting plan; need for test pit data and information on whether the building will have a basement or a crawl space; concern about the quality of “backfill” to be brought onto the site; management and discharge of water collected by a sump; light pollution caused by proposed outdoor lighting of the parking areas; and the possibility that the construction of a bypass lane may encroach on the historic Leeds Cemetery. The EPC also encouraged LEED-certified design.
- C. Comments from Darien Police Department Traffic Division. A September 6, 2010 one-page memo was submitted by Lieutenant Donald B. Anderson regarding the subject application. Among the comments outlined in that memo, he notes that “The LTA [local traffic authority] should require that all signs and markings related to this development be fully MUTCD [Manual on Uniform Traffic Control Devices] compliant and that property owner(s) agree to maintain said markings and signage to updated MUTCD standards in the future.”
- D. Comments from Darien Fire Marshal. The Darien Fire Marshal sent comments in two memoranda. The first was dated September 30, 2010. Among the 12 comments, the assurances sought by that memorandum were: the provision of a 47’ minimum turning radius; adequate access to all rescue windows for Fire Department ground ladders; the installation of a fire sprinkler system for the entire building; the provision of a fire hydrant near the entry driveway; including an exterior door for the west stairway; the installation of a standpipe system; verification of adequate water supply for firefighting; acceptable operating space and turn around for fire apparatus; increasing the setback distance on the east side of the building from the 5 feet proposed (*N.B.*, a 25 foot setback is required by the applicable land records. See Section IV, pages 11-13.); increasing the setback distance on the south side of the building from the 10 feet proposed; and field siting the building perimeter plantings with the Fire Marshal to ensure that ladder access to the upper floor egress windows will not be obstructed.

A November 19, 2010 response from professional engineer Barry Hammons on behalf of the applicants noted that “A minimum 47’ turning radius has been provided...no access to #53 Hoyt Street was intended, and a fire hydrant at the entry driveway will be provided.”

The Fire Marshal sent a second memorandum, two pages long dated January 14, 2011 with eight additional comments, regarding a letter from Joan and John Carlo dated December 7, 2010, and the revised plans submitted by the applicants during the public hearing process. The Fire Marshal sought assurances that: the proposed retention area is capable of sustaining the weight of fire apparatus; emergency lighting will be provided at all means of egress; and there will be fifteen feet between the east side wall along the property line and the building.

At the January 18, 2011 public hearing, the applicants submitted a letter from Timothy Pelton of Ultimate Outcomes, LLC in response to the Fire Marshal's comments. In his letter, Mr. Pelton recommended that gas grills, picnic tables and lawn furniture be prohibited between the south side of the building and the property line. He suggested referencing these prohibitions within any lease agreement or within a deed restriction to be filed in the Land Records.

The building's distances from the south and east property lines are deficient and need to be set at a minimum of fifteen feet to the south and 25 feet to the east (as required by deed restriction).

- E. Hiring of outside consultants to review the subject application. The Commission hired Joseph Canas, a professional engineer from Tighe & Bond to review the application from an engineering/drainage standpoint, and Michael Galante, traffic engineer and Executive Vice President of Frederick P. Clark, Associates, Inc., to perform a peer review of the submitted materials regarding parking, traffic and sight lines. As noted above, Attorney Robert Fuller of Wilton was asked by the Commission to review legal issues specifically related to the application.
- F. Drainage/engineering/stormwater management. Mr. Canas reviewed the applicants' drainage report and plans, which were prepared by Mr. Barry Hammons of Hammons, LLC. Mr. Canas sent an October 13, 2010 four-page letter with his comments on that submission, along with his credentials. In November, Mr. Hammons submitted revised drainage plans. Mr. Canas then submitted a December 7, 2010 two-page letter reviewing those revised plans. Mr. Hammons responded to Mr. Canas' December 7, 2010 letter with supplemental information. Mr. Canas submitted a final letter dated January 18, 2011, with two remaining concerns, namely: 1) whether there is sufficient space for the external bypasses related to the proposed Vortechnic stormwater treatment unit; and 2) whether the proposed retaining wall for the northern property line, can be constructed in a stable and safe manner without encroaching on the adjacent property.
- G. Stormwater Management/Drainage. As noted above, the applicants have submitted plans which cover 75%+ of the subject property with the proposed building, and paved surfaces for parking and driveways. Included in the proposed plans are designs for a stormwater containment system which gathers rain water from surface flow, the roofs, driveways and other impervious areas and feeds it through underground chambers where suspended solids are removed. Some water infiltrates into the ground, but most of it passes out into a ConnDOT storm sewer conduit in the street.

Concerns were expressed at the hearings about the need for regular, skilled maintenance of the stormwater containment system, and the ensuing damage to the environment if untreated stormwater from the site simply flows through the storm drain system. The final proposed design continues to include underground chambers which require frequent and regular (at least annual) inspections, cleaning and maintenance, for the project's stormwater management system to operate effectively and as designed.

H. Comments received from Michael Galante of Frederick P. Clark, Associates.

1. Applicants Failed to Submit Traffic Study: Mr. Galante's October 6, 2010 letter focused on the fact that the applicants failed to submit a traffic study as part of the originally submitted application. He also noted within that letter that the bypass area proposed by ConnDOT is part of the submitted application. He pointed out the need for an easement or approval from the adjacent property owner to the north for sight line reasons, and because the proposed driveway radius improperly flares out in front of the property line for that property.
2. Galante Comments in November 23, 2010 letter: Mr. Galante wrote a subsequent letter dated November 23, 2010. In that letter, he reviewed the applicants' submitted Traffic Statement prepared by DLS Traffic Engineering, LLC. He noted that the bypass area as proposed, does not meet ConnDOT's current standards. In his letter, Mr. Galante stated that the bypass area creates a public safety hazard by reducing the amount of buffer between pedestrians on the sidewalk and vehicular traffic.
3. Galante Comments at Hearings. During his November 23 testimony, Mr. Galante pointed out that the full dimensions of the proposed bypass area had still not been shown to the Commission. He also said that the hedges proposed by the applicants along the front property line had to be kept low due to the need to maintain full sight lines for drivers emerging from the driveway of the proposed site. At the December hearing, he observed that if a bypass is created along the west side of Hoyt Street, the safety of drivers emerging from the site and turning left will be significantly compromised because if there is a southbound vehicle stopped and waiting to turn left into the site, the vehicle will block the emerging driver's view of possible southbound traffic behind the turning-in vehicle.
4. Third Galante letter. Mr. Galante's final letter was dated January 17, 2011. That letter responded to the additional information submitted by the applicant since his November 23, 2010 letter was issued.

I. Comments Received From Experts Retained by the Neighbors. Included among the materials submitted by the neighbors and experts they retained were comments from Brian McMahon of Redniss & Mead, a professional engineer and Adler Consulting, traffic engineers.

1. Comments from Redniss & Mead. In a ten-page letter dated December 3, 2010 Mr. McMahon highlighted concerns with 1) drainage; 2) aspects not shown on the site plan; and 3) the on-site filling and regrading, with associated retaining walls. A subsequent six-page letter dated January 18, 2011 was also submitted.
 - a) Concerns regarding Bypass Area. Mr. McMahon said that the bypass lane on Hoyt Street is included in several of the drawings; but they show only some of the existing and proposed conditions. Mr. McMahon also submitted a plan showing the bypass area. It was entitled, "Hoyt Street Bypass Exhibit (Hoyt Senior Residences)", by Redniss & Mead, dated 12/7/10, Drawing No. EXH-4. He noted that southbound vehicles using the bypass will be right up against the relocated sidewalk, and there will be no buffer or green space between the new sidewalk and the travel lane or the stone wall. Mr. McMahon said that the proposed bypass area is unsafe, as it

eliminates the existing 4.5' shoulder which now protects/buffers pedestrians from southbound vehicles. He added that the bypass area will encourage drivers to maintain their speeds (which often exceed the posted speed limit), as drivers can "swerve" around vehicles queuing to get into the subject property. At the December 7, 2010 public hearing, Mr. McMahan said that the Connecticut Department of Transportation apparently believes that the bypass lane is needed for this project due to its density.

- b) Concerns regarding other aspects of the proposal. In his December 3, 2010 letter, Mr. McMahan noted concerns, including but not limited to: drainage; the need for and possible location of a generator; the location of any proposed transformer; deficiencies about the placement of the proposed retaining walls and the proposed light poles.
2. Comments from Adler Consulting. Bernard Adler and Michael P. O'Rourke, professional engineers of Adler Consulting, submitted letters dated December 3, 2010 and January 18, 2011 regarding traffic and related issues. Their letter included the result of a full traffic and speed measurement during November 2010 and a pedestrian count along the Hoyt Street sidewalk.
- a) Concerns with Bypass Area. In their January 18, 2011 letter, Adler and O'Rourke noted that the proposed bypass area puts vehicles much closer to pedestrians than the current road and sidewalk configuration because the existing shoulder will be eliminated. In their December 3, 2010 letter, they noted that ITE (the Institute of Transportation Engineers) recommends that sidewalks be five feet wide and be adjacent to a planting strip that is one to three feet wide.
 - b) Concerns with Sight Lines. Adler and O'Rourke's December 3, 2010 letter, also noted that the proposed bypass area will decrease safety by reducing the sight lines for traffic emerging from Echo Drive. Sight lines at Echo Drive do not meet required design minimums now. The bypass area would exacerbate that condition. Table 1 on page 6 of this letter helped the Commission in understanding the effects of the bypass area on Echo Drive sight lines.
 - c) During his testimony at the hearings, Mr. Adler explained that the drivers currently emerging from Echo Drive and seeking to turn in either direction have a very short sight line for traffic approaching from the left. However, because there now is a shoulder area on the roadway where traffic does not flow, it is possible for drivers to creep a few more feet out past the Echo Drive stop sign, to get a better view of southbound traffic coming from their left and northbound traffic coming from their right. This improved, but still deficient sight line will be no longer possible as southbound drivers will be using that shoulder space as their bypass area.

Table 1. Stopping Sight Distance comparison at Echo Drive on Hoyt Street

	Sight Distance to the left (feet)		Sight Distance to the right (feet)	
	Available	Required	Available	Required
Existing Conditions Entering/Exiting Echo Drive (for 40 mph speed On Hoyt Street)	220	305	190	305
With By-pass Conditions Entering/Exiting Echo Drive (for 40 mph speed On Hoyt Street)	160	305	125	305

Source: Page 6 of Adler Consulting letter dated December 3, 2010.

Adler and O'Rourke re-emphasized this point in their January 18, 2011 letter, by saying, "The proposed by-pass is expected to further deteriorate safety and operating conditions since the additional roadway width would reduce the available sight distances for Echo Drive even further."

- J. Comments received from the general public. Both written and verbal comments were received from the general public on this matter. These include written comments received from Marc Gregory, Stephen Olvany, John and Joan Carlo, Gary Bernhardt, Dot Kelly, architect Joseph Cugno, Kristin Wenzel George, Joseph A. Bernardo, Jr. Nicole Bernardo, Eugene Coyle, and the Holmes School PTO.
1. Mr. Marc Gregory submitted two letters with attachments. His first letter was in bound form, with exhibits, and dated October 29, 2010. In that letter, he discussed the deed restriction on the subject property. The Commission hired attorney Robert Fuller to review that issue. See Section IV A on pages 11-12. Mr. Gregory also referred to the October 6, 2010 letter from Michael Galante of FP Clark, noting that, "...the northerly radius extends beyond the extension of the northerly property line and that typically such a radius requires an easement or approval from the adjacent property owner.", which applicants have not obtained. Mr. Gregory also submitted a letter dated January 18, 2011 to supplement his first letter.
 2. Mr. Stephen Olvany submitted a letter dated December 7, 2010. In that letter, he noted that he and other neighbors had hired experts to review the proposed application. Those experts were Adler Consulting and Redniss & Mead.
 3. In the five-page letter with attachments from John and Joan Carlo dated December 7, 2010, Mr. Carlo noted his experience as a 20+ year Stamford firefighter. The Carlos questioned whether heavy fire apparatus can safely park on top of the proposed underground stormwater management system (the cultec units). Mr. Carlo also noted that

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a fire engine cannot turn into the proposed front parking area when approaching the property from the south. Also there was deficient space on the site for the multiple responders that would always come to a fire at a multi-family senior building.

4. Mr. Gary Bernhardt, in his January 13, 2011 letter detailed his concerns with the calculation of snow storage on-site. Stuart Sachs, landscape architect, responded for the applicants in a 13 Jan 2011 one-page letter. Mr. Bernhardt followed-up with a January 18, 2011 three-page letter, with his associated credentials. In that letter, he concluded that the project lacks sufficient snow storage area, and largely is relying on the nearby dedicated open space set aside, which the applicants do not control.
5. In a two-page letter dated December 7, 2010 Dot Kelly reported that she recently had spoken with Mr. Ernie LaGoja of ConnDOT. She noted that, "Mr. LaGoya [sic] commented that if the applicant had requested a four unit building, then no by-pass area, or modification to the current roadway, would be required." The applicants did not challenge Ms. Kelly's evidence; nor did they contend that some number of units greater than four could be built on the site and not cause ConnDOT to require the bypass area as a condition of approval.
6. Architect Joseph Cugno submitted a letter dated November 28, 2010. His letter expressed concerns with the size of the proposed planting areas; the ability to store snow on-site; the lack of usable open space; fire safety; and trash removal.
7. Kristin Wenzel George of 63 Hoyt Street submitted a letter dated January 18, 2011 to declare that as the abutting northern neighbor, she will not give the applicants an easement or approval to flare their proposed access driveway into the front of her property.
8. Like Ms. George, Mr. Joseph A. and Nicole Bernardo of 53 Hoyt Street own property that abuts the subject property. They are co-owners (with the applicants) of the designated open space parcel to the rear of their and the subject properties. Each of the Bernardos submitted a letter dated January 18, 2011 stating that they are unwilling to provide any easements or approvals to assist the applicants. The Bernardos added that they intend to install a stockade fence along the property line that they share with the applicants (the applicants' southern property line).
9. Mr. Eugene Coyle stated that he is a senior citizen living on Echo Drive. He described the difficulty now in making a turn out of that street in either direction onto Hoyt Street due to short sight lines to the north (the left). He can improve things a bit by edging out into the shoulder, but not if the shoulder is eliminated by the bypass area modification.
10. The Holmes School PTO sent a two-page letter dated December 14, 2010. That letter noted concerns with safety, parking and traffic, especially emphasizing pedestrian safety along Hoyt Street.
11. A large group of neighbors to the site prepared a documented letter with exhibits pointing to the many safety issues, especially to pedestrians, to drivers emerging onto Hoyt Street from Echo Drive and to the need for full parking availability on the site given the

narrowness of nearby streets and the long distances of the site from shopping and public transit. The “Neighbors Letter” is dated December 3, 2010.

K. Inadequate Parking. As shown on the submitted plans, 24 parking spaces are proposed for the building’s 16 units—a ratio of 1.5 spaces per unit. All of the parking is proposed to be outside and at-grade. One of the 24 parking spaces would be handicapped van accessible. There is no off-site parking allowed on Hoyt Street, nor are there any nearby municipal or private parking lots which could be considered or used by residents or guests.

1. Existing parking regulations for multi-family housing are for sites that are close to services, shopping, and public transit. Existing parking regulations require 2.5 spaces for two bedroom units. The Commission now needs to determine the appropriate amount of parking for the proposed project’s residents as well as the impact of parking needs on the surrounding community.
2. No off-site parking is available. Given this location, the heavy traffic on Hoyt Street, and the narrowness of nearby streets, there is no doubt that all the needed parking for this proposed multi-family building must be provided on site. Indeed, at no place in the presentations or submissions did the applicants suggest that any part of the parking needs of this project could or would be filled by off-site parking.
3. 1.5 on-site parking spaces for two bedroom units are inadequate at this location. The applicants have asserted that occupancy will be limited and restricted to people who are 62 years old or older. Assuming but not determining that such limitations can lawfully and practically be enforced in either a rental building or a condominium ownership building, the Commission notes that each proposed apartment will have two bedrooms and two full baths and could be occupied by two people. At age 62, both members of a married couple, who occupy one apartment may have full or part-time jobs and need separate vehicles. , A fully retired couple may have two cars and use them both regularly. Given the site’s distance from shopping, services, and public transit, it can be expected that residents will need vehicles. Overnight parking for two occupants’ vehicles per apartment may not be sufficient, given the periodic likelihood of guests, nurses, and other overnight visitors. During the day, when some residents are likely to be out, visitors, service personnel, and others can use vacated parking spaces.
4. It is against this realistic assessment of the needs of the residents of a building of this nature and at this specific location that the Commission must decide, based upon substantial public interests, the appropriate number of on-site parking spaces that shall be needed for this project.
5. Existing multi-family zoning regulations adopted by the Commission since 1986 have required 2.5 on-site parking spaces per unit. This allows 2 spaces for the residents and one additional space per two units for guests or visitors. In rare situations, such as when all the units are affordable housing for low income elderly persons located near shopping and transit, this requirement is reduced because such developments generally offer one-bedroom units occupied by residents who own only one or no vehicles. The Commission has itself reduced parking for an 8-30g development at Garden Homes (397 Boston Post Road). That project consists of studio and one bedroom units with an

average size of 448+/- square feet. The subject application proposes 16 units, all with 2 bedrooms. The proposed units here average 981+/- square feet. Parking needs for the proposed project and Garden Homes (which incidentally is on a bus line and within ¼ mile of a grocery store and numerous restaurants) are not at all comparable. Inadequate on-site parking will force cars to park within fire lanes, on the grass, in areas designated for snow storage, in the required back-up aisle, along the driveway (reducing accessibility for emergency vehicles) on Hoyt Street, or on narrow local roads off of Hoyt Street. Any or all of these conditions would create a public safety problem. Over twenty years of experience has demonstrated that the prescribed 2.5 parking spaces are the minimum needed for each 2 bedroom residential unit in the circumstances presented by this proposed development.

L. Concern regarding safe emergency service access for Fire and EMS vehicles. The Fire Marshal and the Commission are concerned about the failure to provide safe access for Fire and EMS vehicles.

1. The Commission notes that 16 units of senior housing are likely to generate a higher number of emergency calls due to the concentration of elderly residents. Medical emergency calls involve police, ambulance and supervisors from the Post 53 public ambulance service. As designed, there is no room on the site for overflow parking, or for any traffic to move on or off the site during such an emergency event.
2. It is noted that if there were fewer units in the building, there would be a lower probability of emergency calls and a lower probability of traffic or parking problems. In the event of a fire, emergency service vehicles converging at this site would include: numerous fire department engines from all three of the Town's volunteer fire Departments, as well as police department and EMS vehicles. All would respond under Town standard dispatch procedures to a fire alarm at a multi-family building.

M. Inadequate Access for Emergency Vehicles. Based on the level of development shown on the proposed site plan, the Commission is concerned whether there is room to safely accommodate the number of fire department apparatus and EMS vehicles that would respond to a fire at this proposed project. The project has only one reliable means of ingress and egress. A second means of access is needed at this site and has not been assured. The submitted plan shows a parking area in front of the building. It was pointed out in the Adler December 3, 2010 letter that "...a right-turn entering SU-30 design vehicles would utilize the entire driveway width to complete the turn, including the exit lane." This would introduce an oncoming turning vehicle into the exit lane of the proposed driveway.

N. Access to rear of the building: In order to adequately protect the safety of the residents in the proposed dwelling units, the Fire Department needs sufficient access and room for ladders to reach third floor bedroom windows. The side setback on the southern property line is proposed to be 10.3 feet, and the rear setback on the eastern property line is proposed to be only 5.3 feet. As proposed, some of the area near the southern property line will be occupied by trees and other landscaping. The Darien Fire Marshal and the Commission remains concerned that there is insufficient room to assure emergency access by fire personnel using ladders in this constricted space, as noted by the Darien Fire Marshal in his

two memos. The reduced building setbacks proposed by the applicants mean that it will likely be dangerously difficult to carry on productive rescue and fire suppression operations.

- O. Legal barriers. It is impossible for the applicants to use the site plan they have presented for this project. Enforceable covenants and restrictions were established by the prior two lot subdivision in the form of minimum setbacks and location limitations. Furthermore, the northern and southern abutting property owners have refused, on the record, to grant easements or any other form of consent to encroachments that are required to implement the applicants' site plan. Accordingly, the applicants must adjust their site plan so it can conform to the restrictions that run with their piece of land. The consent of the owner of the other lot would be required to release these covenants and restrictions and the record demonstrates that the owner has withheld that consent. The applicants are not able to configure their site plan in the way that they have proposed and will be required to place the structures on the property in a way that does not violate these deed restrictions. The modifications reflected in this decision conform with those limitations as explained in Mr. Fuller's letter, and in his testimony at the public hearing.

V. ADDITIONAL HEALTH AND SAFETY CONCERNS

A. With regard to health and safety issues, the Commission concludes:

1. Stormwater Management/drainage/flooding. Unless the proposed drainage system can fit, be built as shown on the applicants' design plans and then work continuously and without fail, there is a likelihood that flooding on adjacent properties could occur. Assuring the system's performance requires regular and scrupulous inspection and maintenance, which is more difficult when a system is underground.
2. No provision for open space. Normally, open space or recreational space would be provided for a 16 unit development. This project proposes none. There is no public park or public open space adjacent to the site that its residents can use. The closest public open space is at Holmes School, which is across Hoyt Street and 650+/- feet to the south of the subject property, and requires crossing a heavily trafficked Hoyt Street with no existing nearby crosswalks, signalized or not signalized. Inadequate open space and recreation space for residents is a health and safety deficiency.

VI. AFFORDABLE HOUSING IN DARIEN.

A. **History and Background**

1. Affordable Housing from 2005-2010: A November 23, 2010 memorandum from Jeremy Ginsberg, Planning and Zoning Director, outlines the recent actions taken by various agencies, boards and Commissions within the Town of Darien (including, but not limited to the Planning and Zoning Commission) relative to affordable housing. This memo gives a brief history from 2005 to late 2010. It also outlines various policies, plans and regulation changes in Darien, which have promoted the construction of affordable housing. These include the following:
 - a) Development of an affordable housing plan by the Darien Board of Selectmen in 2008 and 2009, with adoption in August 2009;

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- b) The adoption of an inclusionary zoning regulation by the Planning and Zoning Commission in 2009, pursuant to Section 8-2(i) of the Connecticut General Statutes. This regulation, which is now Section 580 of the Darien Zoning Regulations, specifically requires that as part of subdivisions greater than five building lots or as part of any multi-family development, the developer must designate a minimum of twelve percent (12%) of the total number of dwelling units as below market rate or contribute to an affordable housing trust fund;
- c) The approval by the Planning and Zoning Commission of a redevelopment plan for the Darien Housing Authority of the Allen O'Neill housing development in 2009. This project, which now contains 53 affordable single-family houses, will be redeveloped over a multi-year period into 106 multi-family units. All 106 will be restricted as affordable housing.
- d) 2010: Garden Homes, 397 Boston Post Road: The approval of Garden Homes in 2010 by the Planning and Zoning Commission. Under Section 8-30g, this affordable housing development converted an existing office building into 35 units, with 11 of those units being affordable housing under CGS 8-30g. Construction of this project is underway, and is nearly complete, with some units now rented and occupied.
- e) 2011-2012: Allen O'Neill Housing redevelopment: If the requested State funds are approved, this project will commence construction in 2011 or 2012. Construction will take more than a year, and result in newly built affordable units, with a net gain of 53 new affordable apartments.

In total, the Town now has one-hundred sixty-two (162) affordable housing units, with 109 of those (more than 2/3rds) constructed since 1985.

Since 2002, the Town has had 58 units of affordable housing constructed--47 affordable units at AvalonBay; and 11 affordable units at Garden Homes (with completion of that project nearly complete). In addition, "the Cottage" on Edgerton Street, approved by the Planning and Zoning Commission in 2008, now provides housing for developmentally disabled adults."

On March 8, 2011, the Darien Planning and Zoning Commission granted with stipulations and modifications a CGS 8-30g application presented by the same applicants to construct senior housing with at least 30% of the units being affordable at the corner of Pheasant Run and Tokeneke Road- The Commission did not take a position on how many units should be built, however, the modifications required by the Commission will necessarily result in a smaller building. Thirty percent of the units in that smaller building must be affordable housing under CGS 8-30g. That project, when completed, will add to the Town's affordable housing stock.

- 2. Affordable Housing Prior to 2005: The November 23, 2010 memorandum also specifically lists the following affordable housing units approved by the Planning and Zoning Commission.

- a. 1940s/1950s Allen O’Neill Housing: Moderate rental housing development, forty-one (41) single-family homes and one 12-unit apartment building---53 units total all affordable;
 - b. 1985: Old Town Hall Homes: Elderly rental housing owned and operated by the Darien Housing Authority – all thirty (30) units for moderate income seniors;
 - c. 1987: Villager Pond Condominiums: deed restricted, limited income housing – two (2) units;
 - d. 1995: Clock Hill Homes: Thirty (30) town-sponsored moderate-income condominium owner-occupied units were built by a private developer adjacent to downtown on land purchased and provided by the Town of Darien for 1.7 million dollars (according to 1994 RTM meeting minutes).
 - e. 2002-2003: AvalonBay Communities: Forty-seven (47) affordable units within a 189 unit privately-developed complex. A total of 47 units of affordable housing were built on 31.5 +/- acres at AvalonBay Communities on Hollow Tree Ridge Road. At this location, a number of market rate units were also built.
3. Town Support of Affordable Housing: The record demonstrates that the Commission supports more affordable housing for the Town. The Commission has previously amended the Regulations to accommodate and encourage moderately priced and/or affordable housing. Reasonable increases in density, reducing setback requirements, increasing allowable building coverage and other incentives have already been incorporated into the regulations for the DBR, DMR and other zones. The Town of Darien has sponsored and subsidized affordable housing developments known as the Old Town Hall elderly housing complex, Clock Hill Homes, and the Allen-O’Neill housing development. These other existing Darien affordable housing developments demonstrate that affordable housing and public health and safety are not mutually exclusive.

B. The recently acquired moratorium as granted by the State Department of Economic and Community Development (DECD).

1. The Commission notes that in the summer of 2010, the Town of Darien applied to the State Department of Economic and Community Development (DECD) under CGS 8-30g, for a “State Certificate of Affordable Housing Completion”, also known as a Moratorium. The DECD approved the application, and the Town was granted a four year moratorium effective November 2, 2010 through November 2, 2014. Darien is only the third community in the State, after Trumbull (in 2001 and 2005) and Berlin (in 2008) to achieve this status.
2. During the Moratorium application process, the applicants submitted the subject application as well as another CGS 8-30g application for the corner of Pheasant Run and Tokeneke Road in Darien. Both of these applications were submitted to the Planning and Zoning Office prior to the DECD decision on the Moratorium. Hence, they have proceeded. The Commission acknowledges that had this application been withdrawn anytime after November 2, 2010, the Moratorium would have prevented re-submittal until November 2, 2014. Thus, both the Commission and the applicant have been aware that any deficiencies in the application had to be addressed during the present application procedure for consideration of the project to continue during the Moratorium period.

VII. DETERMINATION.

- A. THE COMMISSION FINDS THAT THE DECISION GRANTING THIS APPLICATION WITH MODIFICATIONS IS NECESSARY TO PROTECT SUBSTANTIAL PUBLIC INTERESTS IN HEALTH, SAFETY, OR OTHER MATTERS WHICH THE COMMISSION MAY LEGALLY CONSIDER

AND

- B. THE POTENTIAL HARM PRESENTED BY THIS APPLICATION WITHOUT MODIFICATIONS DOES CLEARLY OUTWEIGH THE NEED FOR FIVE UNITS OF AFFORDABLE HOUSING IN DARIEN.

1. The Commission finds that substantial public interests in health and safety exist with regard to this application which the Commission must protect. More specifically, the APPLICATION, WITHOUT MODIFICATIONS, IS IN CONFLICT WITH VESTED PRIVATE PROPERTY RIGHTS CREATED BY A PRIOR SUBDIVISION APPROVAL, AS WELL AS TRAFFIC AND PEDESTRIAN SAFETY ISSUES AND FIRE SAFETY ISSUES WHICH THE COMMISSION NEEDS TO PROTECT. The substantial public interests in not violating vested private property rights and protecting public health and safety are supported by substantial evidence in the record of this proceeding.
2. The Commission has balanced the need for five units of affordable housing in Darien versus the risks presented by this application to the users of Hoyt Street, and the proposed residents of the subject property. In weighing those competing goals, it is clear that the risk of potential harm clearly outweighs the need for this affordable housing for the reasons set out herein.
3. The Commission concludes that the application can be modified to not violate vested private property rights.
4. The Commission concludes that the application can be modified to improve Traffic and Pedestrian Safety.
 - a) Without modification, the proposed 16-unit building with associated bypass area poses a very serious and direct threat to the health and safety of the users of Hoyt Street, Echo Drive, and the subject property.
 - b) The proposed on-site parking is insufficient, particularly as there is no available nearby off-site parking to accommodate vehicles that exceed the number of available parking spaces. Inappropriate parking whether on-site or off-site will create unsafe conditions. Modifications to the Site Plan can increase the amount of on-site parking.
 - c) The sight line for drivers exiting Echo Drive will be worsened if the proposed bypass area is constructed. Eliminating the bypass area will resolve this problem, and significantly improve traffic and pedestrian safety.

5. The Commission concludes that the application can be modified to improve Fire Safety
 - a) Site Plan needs to be modified to provide reliable emergency access.
 - b) Site Plan needs to be modified to provide sufficient space on the site for multiple emergency response vehicles.
 - c) Building setbacks from the southern property line need to be increased to at least 15 feet, to allow access during an emergency, and twenty five feet from the easterly property line as required by deed restrictions and to enhance access during an emergency.
6. The Commission has concluded that the dangers inherent in this affordable housing application are very significant, substantial and clearly supported by the record of this proceeding. The Commission acknowledges the importance of affordable housing. However, this worthy objective does not support the project *as designed*, given the overwhelming deficiencies shown to be present in the submitted proposal. The project needs to be modified to address vested private property rights, traffic and fire safety issues.
7. The Commission has balanced the need for affordable housing in Darien versus the risks presented by the subject application as designed and presented. In weighing the competing needs and risks, it is clear that the risk of potential harm to the general public and to the potential residents of this project clearly outweighs the need for 5 affordable housing units, particularly when, with modifications, a viable project can be approved and constructed.

A. BASED ON THE FINDINGS STATED ABOVE, THE COMMISSION DETERMINES THAT IT IS NECESSARY TO REQUIRE THAT THE APPLICATION BE MODIFIED TO PROTECT SUBSTANTIAL PRIVATE PROPERTY RIGHTS AND PUBLIC INTERESTS IN HEALTH, SAFETY, OR OTHER MATTERS WHICH THE COMMISSION MAY LEGALLY CONSIDER

AND

B. THE POTENTIAL HARM PRESENTED BY THIS APPLICATION DOES CLEARLY OUTWEIGH THE NEED FOR AFFORDABLE HOUSING IN DARIEN AS PROPOSED BY THIS APPLICATION.

1. **ACCESS BY FIRE DEPARTMENT NOT ADEQUATE.** The proposed building design has resulted in a building that is very close to the southern and eastern property lines, which adversely impacts fire department access. A reasonable modification of the application can resolve this issue. The Commission finds that relocating the building to reflect the deed-restrictions that mandates a 25 foot rear yard setback will resolve this matter. Deed-restrictions that run with the subject property were reviewed by outside attorney Robert Fuller, and found to be applicable to the subject property.

2. **BYPASS IS DANGEROUS:** A traffic safety concern is caused by the ConnDOT-approved bypass area. This issue can be resolved by reducing the number of units, and thereby eliminating the ConnDOT requirement of a bypass area, since density and traffic would be decreased. The intensity/density/number of units proposed results in potential traffic safety conflicts. The proposed intensity of development is a serious problem which needs adjustment. As currently proposed, this development would not be safe for the community or the proposed occupants.
3. **STORMWATER:** The manifest deficiencies in the choice and design of the components of the stormwater management system require changes in order to prevent flooding and to provide reliable assurances of water quality at this location.
4. **MODIFICATIONS ARE NECESSARY:** The Commission has considered the proposed site plan and the evidence in the record compiled before the Commission and finds that its decision to grant the application with appropriate modifications is necessary to protect substantial public interests in health, safety, or other matters which the Commission may legally and properly consider, that such public interests clearly outweigh the need for the proposed affordable housing units and that such public interests can be protected by the Commission making reasonable and economically viable modifications to the proposed affordable housing development.
5. **COMMISSION MAY REQUIRE MODIFICATONS:** Under Connecticut General Statute Section 8-30g(c)(1)(D), to the Commission can modify the application. The Commission's concerns are based upon substantial and significant safety and health factors including, but not limited to: the need for safe access, ingress, and egress; parking; sight lines; proper and safe access for emergency vehicles, equipment and personnel; traffic and pedestrian safety on nearby streets impacted by the proposed bypass area; and proper stormwater management.
6. **THE ADJOINING PARCEL HAS A VESTED INTEREST IN THE 25 FOOT REAR SETBACK RESTRICTION WHICH REQUIRES MODIFICATION OF THE APPLICATION.** As noted by Attorney Robert Fuller, a 25 foot rear setback line applies to this property. The plans must be modified to reflect that 25 foot setback. Section 8-30g does not override deed restrictions and other private property rights.
7. **TRAFFIC AND FIRE SAFETY ISSUES REQUIRE MODIFICATION OF APPLICATION:** The Commission finds that substantial public interests in health and safety exist with regard to this application which the Commission must protect. More specifically, the APPLICATION PRESENTS **TRAFFIC SAFETY ISSUES AND FIRE SAFETY ISSUES WHICH THE COMMISSION NEEDS TO PROTECT**, and the substantial public interest in health and safety is supported by substantial evidence in the record of these proceedings.
8. **TRAFFIC SAFETY ISSUES:** The Commission has balanced the need for five units of affordable housing in Darien versus the traffic risks presented by this application to the users of the Hoyt Street, including, in particular, pedestrians, as well as the proposed residents of the subject property. In weighing those competing goals, it is clear that the risk of potential harm from these traffic safety issues clearly outweighs the need for affordable housing as

proposed by this application. Specifically, there is substantial evidence in the record that the proposed bypass area would cause safety problems. That bypass area was required by ConnDOT due to the proposed density of the site. Other traffic safety concerns include insufficient on-site parking, with no available nearby off-site parking to compensate, as well as the even more dangerous sight line reductions which would impact traffic entering Hoyt Street from Echo Drive if the bypass is constructed.

9. **FIRE SAFETY ISSUES:** The Commission has balanced the need for five units of affordable housing in Darien versus the fire safety risks to the residents of the subject property presented by this application. In weighing those competing goals, it is clear that the risk of potential harm from these fire safety issues clearly outweighs the need for affordable housing as proposed by this application. Specifically, fire safety issues include those issues presented by the Fire Marshal in his two submitted memoranda. The Commission finds that the submitted building design has resulted in a building that is very close to the southern and eastern property lines, which will have substantial adverse impacts on fire department access, and the constricted site plan interferes with emergency vehicle access to the site.
10. **PUBLIC SAFETY RISK SUPPORTED BY RECORD:** The Commission has concluded that the dangers inherent in this affordable housing application are very significant, substantial, and are clearly and fully supported by the record of this proceeding. The importance of affordable housing does not outweigh the risks inherent in this project *as designed*, as clearly illustrated by the overwhelming evidence in the record. The Commission can and must identify modifications of the project instead.
11. **BALANCED THE NEED:** The Commission has balanced the need for affordable housing in Darien versus the risks presented by the subject project, as designed and presented. In weighing those competing goals, it is clear that the risk of potential harm to the general public and to the potential residents of this project clearly outweighs the need for five affordable housing units, particularly when with reasonable modifications, a viable project can be approved and constructed.

C. THE COMMISSION FINDS THAT REASONABLE CHANGES CAN BE MADE TO THIS AFFORDABLE HOUSING DEVELOPMENT WHICH COULD PROTECT PUBLIC INTERESTS IN HEALTH AND SAFETY.

1. The Commission has considered the proposed site plan and the evidence in the record and finds that its decision is necessary to protect substantial public interests in health, safety, or other matters which the Commission may legally consider, that such public interests clearly outweigh the need for the proposed affordable housing units and that such public interests can be protected by the Commission making reasonable modifications to the proposed development.
2. Under Connecticut General Statute Section 8-30g(c)(1)(D), the Commission can modify the application. The Commission's concerns are based upon substantial and significant safety and health factors including, but not limited to: the need for safe vehicular and pedestrian access to and from the site; adequate on-site parking; proper stormwater management; and safe access for emergency vehicles, equipment and personnel.

3. The Commission recognizes that under Connecticut General Statutes Section 8-30g(h) the applicant may submit to the Commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by this Commission.

VIII. DECISION TO GRANT THE APPLICATION WITH STIPULATIONS AND MODIFICATIONS

NOW THEREFORE BE IT RESOLVED that the applications for Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street, are hereby GRANTED WITH STIPULATIONS AND MODIFICATIONS.

The application shall be modified as follows:

- A. **THE APPLICATION SHALL BE MODIFIED TO ADDRESS THE VESTED PRIVATE PROPERTY RIGHTS IN A 25 FOOT REAR SETBACK.** Modify plans to address private property right to a 25 foot rear setback. Modify application to comply with 25 foot rear yard setback as required in the original subdivision map and declaration of deed restrictions as noted by Attorney Robert Fuller, and specify the original subdivision map and declaration of deed restrictions on the revised plans.
- B. **THE APPLICATION SHALL BE MODIFIED TO ADDRESS TRAFFIC SAFETY REQUIREMENTS:** Modify plans to address *traffic safety issues* as presented by Michael Galante of FP Clark Associates:
 - 1) Move proposed driveway to south by at least 10 (ten) feet—thereby eliminating need to have radius of that driveway extend beyond the extension of the northerly property line. Moving the driveway will eliminate the need to get an easement or approval from the property owner to the north, as noted by Mr. Galante. It will also allow for increased planting space for the proposed trees along the north property line, and more space to place and construct any needed retaining wall(s).
 - 2) Provide parking ratio of 2 spaces for each unit, plus one handicapped-accessible space. This will avoid any unsafe parking off-site.
 - 3) Emergency egress for fire equipment onto Hoyt Street—should be composed of grass pavers.
 - 4) In its current configuration, the bypass area cannot be approved due to traffic and pedestrian safety concerns. The applicant shall reduce the number of units to a maximum of four (with at least 30% of those units being affordable), thereby eliminating ConnDOT's requirement for the bypass area or submit an alternative plan to the Commission which does not compromise the safety of pedestrians and of the traffic emerging from Echo Drive.

C. THE APPLICATION SHALL BE MODIFIED TO ADDRESS FIRE SAFETY REQUIREMENTS OF DARIEN FIRE MARSHAL: The Darien Fire Marshal stated in his September 30, 2010 and January 14, 2011 memoranda that the plans needed to be revised to

- 1) Increase fire access along the south and east sides of the building. There should be additional room around all sides of the building to give the Fire Department more appropriate and improved room to operate. The building setback on the south and the eastern property lines (considered the side and rear yards respectively as defined in the Darien Zoning Regulations), are now 10 feet and 5 feet. They shall be increased to at least 25 feet along the east property line to address the vested private property rights issues noted by Attorney Fuller, and 15 feet along the south property line to address the concerns of the Fire Marshal outlined in his September 30, 2010 memo, as well as to comply with the side setback restrictions of the described property rights.
- 2) When revising the plans per this decision, the proposed building shall conform to existing building height regulations. Reduction in density and building coverage will improve fire safety, by allowing fire access all around the proposed building. Darien's current R-1/3 Regulations allow 2-1/2 stories and 30 feet in height (as measured from the average ground elevation around the building to the midpoint between the highest eave and the highest peak). The Commission hereby requires that the redesigned building not exceed these standards. The Commission's 30-foot height limitation is consistent with building height limitations set forth in the Town's zoning regulations for the R-1/3 and other residential zones. This height limitation is reasonably connected to legitimate public safety concerns. The Commission acknowledges that the peak of the building can be higher than 30 feet above the average finished grade, however the "calculated" height cannot exceed 30 feet. The Commission strongly believes that the 30-foot height limitation is necessary to protect substantial interests in health and safety and that the risk of such harm clearly outweighs the need for affordable housing. This limitation on height is especially important given the topography at this location and the small size of the property. Moreover, given the limitations made necessary to avoid the unsafe bypass modification, the four allowed units will readily be accommodated in the modified building.
- 3) Any proposed retention area and/or underground stormwater management system must be capable of sustaining the weight of fire apparatus;
- 4) Building to be fully sprinklered;
- 5) Fire hydrant to be added;
- 6) No blocking of access to Dumpster enclosure by parking spaces. The dumpster shall be screened with a six foot high fence. It shall be emptied as often as necessary to avoid any protrusion of garbage above the rim/lid or blowing across the property or adjacent properties. The dumpster enclosure area shall be neatly maintained, and the doors shall remain shut at all times that someone is not loading or unloading garbage.

The property owner(s) is responsible for maintaining this shared trash area, including ensuring that it is emptied frequently enough to minimize odors; and that all its latches and mechanical parts operate smoothly and remain fully aligned. It is imperative that the doors remain shut when not in use, because an open door could obstruct access to parking spaces on the subject property. If in the future, it is determined that the existing size of the dumpster area and/or pickup frequency is not satisfactory, the property owner shall adjust the pickup frequency. If the property owner needs to enlarge the dumpster area, that requires an amendment of this approval from the Planning and Zoning Commission.

- 7) Exterior door to be added; and
- 8) Standpipe system to be added.

D. THE APPLICATION SHALL BE MODIFIED TO ADDRESS STORMWATER REQUIREMENTS. *Modify plans regarding stormwater management/potential flooding and other public interests, as follows:*

1. Show proper size of Vortechincs, as required by Mr. Canas.
2. Assure that the Vortechincs or other underground facilities beneath the parking lot can withstand the weight of the Fire Department's heaviest apparatus.
3. Note on plans that snow shall be removed from the site when a storm produces more than 12" within 24 hours. There shall be sufficient space set aside and identified as snow storage areas. Snow storage shall be off the paved areas but adjacent to them. All driveway and parking areas shall be kept clear after snow is removed.
4. Add new deed restriction concerning location of outdoor grills as agreed by applicant on January 18, 2011 in language satisfactory to Town Counsel.
5. Prior to planting, all landscaping shall be field-sited with the Darien Fire Marshal as agreed by applicant on January 18, 2011. Widen the planting area along the north property line by at least three feet, in connection with moving the driveway to the south. See VIII B(1) page 31.
6. All backfill shall meet ASTM standards.
7. Modified plans shall have a note that CU (Cornell University) structural soil, which is specifically made to accommodate heavy compaction, will be used near the trees.
8. Prior to issuance of a Zoning or Building Permit, the applicants shall obtain a written commitment from the gas utility that it will supply this building. If this commitment cannot be submitted, applicants shall further amend the revised Grading and Utility Plan to show the full location and dimensions of all fuel tanks and pipes that will service the site, including depth and distance measurements from all nearby structures, pipes, conduits, and equipment. The Fire Marshal shall approve these changes before any Zoning or Building Permit is issued.

E. THE FOLLOWING PLANS NEED TO BE REVISED TO REFLECT THE MODIFICATONS REQUIRED ABOVE:

- Map of Property prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated June 1, 2010, Sheet 1 of 6.
- Proposed Site Plan prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated July 12, 2010 and last revised November 19, 2010, Sheet 2 of 6.
- Proposed Site Plan with Sight Line Analysis prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated July 12, 2010, Sheet 3 of 6.
- Grading and Utility Plan Design of Storm Drainage System prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated July 12, 2010, last revised December 23, 2010, Sheet 4 of 6. This plan shall show full details of size and location of all subsurface structures, equipment, pipes, and conduits, to be made part of the finished site with all horizontal and vertical dimensions, including elevations and distances.
- Soil and Erosion Control Plan prepared for Hoyt Senior Residences #57 Hoyt Street, by Hammons, LLC, scale 1"=20', dated July 12, 2010, Sheet 5 of 6.
- Planting Plan prepared for Hoyt Street, 57 Hoyt Street, by PRE/view Landscape Architects, scale 1"=20', dated 10 May 2010 and last revised 22 NOV 2010.
- Hoyt Street Senior Residences, Hoyt Street, Darien, CT, by Stein | Troost architecture, received dated 5.24.10, and received Aug 20, 2010. Six 11" x 17" pages showing floor plans and elevations.

These plans shall be revised and coordinated to reflect:

- Setbacks. Building with setbacks increased to address private property rights noted by Attorney Fuller and fire safety concerns raised by the Darien Fire Marshal.
- Emergency egress. There shall be an emergency egress provided. The Commission allows such emergency egress to be constructed of grass pavers in lieu of asphalt or concrete. In each case, maintenance is required per the Fire Marshal's changes.
- Floor Plans reflecting fewer multi-family units. Note that the Commission is approving a lesser number of units in order to eliminate the need for the bypass area. The Commission is not approving an exact amount of units, but acknowledges that at least 30% of such need to be affordable per CGS 8-30g.
- Parking. At least 2.0 parking spaces per unit shall be constructed, plus one space on the site being a handicapped-accessible space, as required by the Building Code.
- Drainage. Any revised drainage shall be sufficient in size to address the revised building and associated impervious areas on-site.
- Revised Zoning Chart on the Proposed Site Plan reflecting the new design;
- Proper MUTCD compliant signage. Per the memo from Lieutenant Anderson of the Darien Police Department, "all signs and markings related to this development must be fully MUTCD compliant and that property owner(s) agree to maintain said markings and signage to updated MUTCD standards in the future."

F. OTHER CONDITIONS OF APPROVAL:

- 1) **PLANTINGS:** In order to assure the proper and timely installation of the plantings shown on the submitted Planting Plan, the Commission hereby requires a \$5,000 Performance Bond. After a certification from a Landscape Architect that all of the

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required plantings have been installed, the Commission may return 85% of the bond. The remaining 15% shall be held for one additional year to ensure that the plantings thrive.

- 2) **STORMWATER:** Part of the submitted plan provides for the installation of an underground storm water retention system and the connection of overflow pipes from the storage and treatment system to the storm sewer input line. This connection is required by the Commission, and is subject to the applicant obtaining the proper connection permit from the ConnDOT. A copy of the permit from the ConnDOT is to be submitted to the Planning and Zoning Commission by the applicant by August 22, 2011, and before work commences.

In order to ensure the proper operation and maintenance of the proposed stormwater management system, the Planning and Zoning Commission hereby requires a \$10,000 Performance Bond. This bond shall remain in place throughout construction of the project, and for ten years after the issuance of the Certificate of Occupancy of the first multi-family unit.

Upon completion of the work, the applicants shall provide written verification including an as-built map(s) documenting the completion of the project and compliance with the approved plans. This verification shall include written certification from the project's professional engineer that the approved grading and the drainage facilities have been installed according to the approved plans. The applicants shall provide as-built map(s) and drawings to illustrate the final finished grades, and installed drainage system showing all elevation and plan features, the trees and landscaping that have been planted, and that the soil has been properly stabilized and capable of sustaining the weight of fire apparatus.

The applicants shall install the drainage system as shown on an updated and revised version of the submitted "Planting Plan", and as required to be revised herein. Any property owner of this development shall have the continuing obligation to ensure that storm water runoff and drainage from the site will have no negative impacts upon the adjacent property(ies) or the adjacent streets. If such problems do become evident in the future, the then owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.

Prior to the issuance of a Zoning Permit for the proposed work, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Planning & Zoning Department and/or the Darien Land Records. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of the project 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 the next 60 days of this resolution and prior to the start of any work. That Plan shall include a required preparation of a written report concerning inspection and maintenance done on the system. Copies of each

report shall be given to the owner of a rental building, or to the operating board of a condominium building. A copy shall also be given to the Planning and Zoning Department.

- 3) **CONSTRUCTION, SEDIMENTATION AND EROSION CONTROLS:** During the regrading and site work, the applicant shall utilize the sediment and erosion controls illustrated on the plans listed at the top of page 35, and any additional measures as may be necessary due to site conditions, including tree protection and having a silt fence ring the property (as proposed by the applicants). Sediment and erosion controls shall be installed to minimize any adverse impacts during filling and regarding and until the area has been revegetated or destabilized. The Planning and Zoning Department shall be notified prior to commencement of excavation 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. During site work and construction, no vehicles or equipment from the site may park or block Hoyt Street or any surrounding streets.
- 4) **OTHER MODIFICATIONS:** Show location of proposed generator and transformer.
- 5) **AFFORDABILITY REQUIREMENTS:**
 - a. The applicants shall file on the Darien Land Records a restrictive covenant in a form acceptable to Town Counsel and enforceable by the Town, maintaining the property as a residential building including and designating the affordable housing units, rather than any other residential, retail or commercial use, for a period of not less than forty (40) years. Such covenant may be amended only by formal action of the Planning & Zoning Commission or by its duly empowered successor.
 - b. The applicants or their successors or assigns will be the Property Manager and Administrator of the Compliance and Affordability Plan.
 - c. An updated and revised "Compliance Plan" shall be submitted by the applicants to the Darien Planning and Zoning Director for approval, and referred by the Director to Darien Town Counsel, and reviewed by Counsel, prior to final plans being signed by the Chairman. This Compliance Plan shall ensure continued conformity with Section 8-30g of the Connecticut General Statutes and shall be deemed incorporated as part of the conditions of this Resolution.
 - d. Construction of the affordable apartment units shall proceed on a prorated basis as construction takes place. The affordable apartment units shall be of a construction quality and size that is comparable to the market-rate apartment units, and shall be dispersed throughout the development. The average size of the affordable units in the building shall equal or exceed the average size of the market-rate units.

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- e. There shall be parity in the distribution of affordable units amongst the various floors of the building.
- 6) 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.
- 7) 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.
- 8) 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 (March 22, 2012). This may be extended as per Sections 858 and 1009.
- 9) 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 within 60 days of this resolution and prior to the start of any work, or this approval shall become null and void.

Chairman Conze read the following agenda item:

Coastal Site Plan Review #229-B, Flood Damage Prevention Application #293-A, Foster Kaali-Nagy, 125 Five Mile River Road. Proposing to install a pier, ramp and float, and perform related site activities within regulated areas. *HEARING CLOSED 2/15/2011. DECISION DEADLINE: 4/21/2011.*

The following motion was made: That the Commission waive the process of reading aloud all of the draft resolutions aloud because the members have had an opportunity to review the drafts prior to the meeting. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved.

Mrs. Riccardo said that there should not be permission given for a second dock on two adjacent properties that are owned by the same family, as the Town Plan of Conservation and Development encourages shared docks and reducing the proliferation of docks. She will not vote in favor of this application. Mr Spain said that he had not been in favor of the previous application for a dock on this site, but that application was withdrawn. In the meantime the Commission has approved the dock application for the house next door. We no longer have two pending dock applications from next door properties where a shared dock would be feasible. If the Commission wants to make a regulation that would preclude owners from having a second dock on adjacent lots, then the Commission should amend the regulations to prevent that where a shared dock would be feasible.

The following motion was made: That the Commission adopt the following resolution to approve this application with stipulations and conditions. The motion was made by Mr. Hutchison and seconded by Mr. Voigt. Voting in favor were Misters Conze, Spain, Hutchison and Voigt.

Opposed were Mrs. Cameron and Mrs. Riccardo. The motion passed by a vote of 4 to 2. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 22, 2011**

Application Number: Coastal Site Plan Review #229-B
Flood Damage Prevention Application #293-A

Street Address: 125 Five Mile River Road
Assessor's Map #67 Lot #3B

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

Name and Address of:
Property Owner: Foster Kaali-Nagy
125 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 800 feet south of its intersection with Davis Lane.

Zone: R-1/2

Date of Public Hearing: February 15, 2011
Deliberations held on: March 1, 2011, March 8, 2011, March 22, 2011

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

Publication of Hearing Notices
Dates: February 4 & 11, 2011 Newspaper: Darien News

Date of Action: March 22, 2011 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News
April 1, 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.

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- 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 an 4' x 38' fixed timber pier, a 3' x 35' aluminum ramp/gangway, and a 3' x 5' ramp support float and a 5' x 17' floating dock with two support pilings. A related application for a dock on the adjacent 129 Five Mile River Road property was heard by the Commission a few months ago, and approved. This application was pending at the same time, but was eventually withdrawn by the applicant. As noted by the applicant, the application which was withdrawn earlier in 2011 is the same as the subject pending application.
2. At the public hearing, it was noted by the applicant that one aspect of this application that might be changed would be to substitute the installation of concrete piles that are poured in place rather than requiring so many 8 inch diameter holes to be drilled in the existing rock. The applicant noted that these would need to be considered by the Army Corps of Engineers and the Department of Environmental Protection has minor amendments to their existing permits, but if the Planning & Zoning Commission insists on the poured-in-place concrete, they would seek the necessary amendments from DEP and the Corps of Engineers.
3. As noted at the public hearing, the applicant received approval from the State of Connecticut Department of Environmental Protection (DEP) in Permit #200904020-KF for this work. Notice of said permit was received in a letter dated August 17, 2010. The Army Corps of Engineers has also approved this dock, in a February 12, 2010 letter.
4. 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: one proposed step to be placed on existing ledge; the attachment of the fixed pier to the ledge; and one proposed pile. All other work associated with this project is at a lower elevation, and within the jurisdiction of the State of Connecticut DEP.
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 February 8, 2011, noting that "...there is not any anticipated adverse inter-municipal impact."
6. The Commission notes 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." Several Commission members believe that this permit should not be granted because a shared dock arrangement with a family member who is the adjacent land owner may be possible.

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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.
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 #229-B and Flood Damage Prevention Application #293-A 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 Foster Kaali-Nagy 125 Five Mile River Road by William W. Seymour & Associates, dated April 1, 2008, Sheet 2 of 5.
 - Proposed Conditions Map 125 Five Mile River Road prepared for Foster Kaali-Nagy by William W. Seymour & Associates, dated April 1, 2008, Sheet 4 of 5.
 - Proposed Cross Section Map 125 Five Mile River Road prepared for Foster 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 and all lights on the dock shall be turned off by 11 p.m. except in emergency situations.
- D. The Commission notes that a dock for an adjacent property at 129 Five Mile River Road was approved by the Commission on January 11, 2011. These two properties, at 125 and 129, are currently owned by members of the same family, although they are technically in separate ownership. The Commission urges the applicants to reconsider the installation of two separate docks, each on a separate property, and instead, to only install one shared dock, thus minimizing the amount of disturbance in the water and on the shoreland. The Commission encourages the applicants to build only one, shared dock at this time. The Commission hereby **requires** that if the properties at 125 Five Mile River Road and 129 Five Mile River Road become transferred into the same ownership, that this dock will have to be removed, in order to become consistent

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with the following recommendation on page 9-3 of the 2006 Town Plan of Conservation & Development: “Property owners should be encouraged to share docks and floats in order to minimize impacts to Long Island Sound from a multitude of such facilities.” Notice of this condition shall be filed in the Darien Land Records prior to the start of construction.

- E. Due to the specific location of the subject property adjacent to the Five Mile River, and the limited 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.
- F. 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.
- G. Prior to March 22, 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 except with the prior written permission of the Commission, **except that the concrete piles may be poured in place rather than drilling holes**, if the applicant decides to proceed in that manner. 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.
- H. 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.
- I. 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.
- J. 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 (March 22, 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.

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Chairman Conze read the following agenda item:

Coastal Site Plan Review #263, Flood Damage Prevention Application #300, Ralph F. Reynolds, Delafield Island Road (Lot #35). Proposing to construct a fixed timber pier, ramp, and float on Lot #35, and perform related site activities within regulated areas. The subject property is on the east side of Delafield Island Road, approximately 1,900 feet south of its intersection with Raider's Lane, and is shown on Assessor's Map #70 as Lot #35, in the R-1 Zone. *HEARING CLOSED 2/15/2011. DECISION DEADLINE: 4/21/2011.*

Mrs. Cameron said that she sees a problem with the DEP's approval of the proposed walkway that will not adequately protect the sensitive environmental features of the site.

The following motion was made: That the Commission adopt the following resolution to approve this project subject to stipulations and modifications. The motion was made by Mr. Spain and seconded by Mr. Hutchison. Voting in favor were Misters Conze, Spain, Hutchison and Voigt. Opposed were Mrs. Cameron and Mrs. Riccardo. The motion passed by a vote of 4 to 2. The adopted resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 22, 2011**

Application Number: Coastal Site Plan Review #263
Flood Damage Prevention Application #300

Street Address: Delafield Island Road (Lot #35)
Assessor's Map #70 Lot #35

Name and Address of: John P. Casey, Esq.
Applicant's Representative: Robinson & Cole, LLP
280 Trumbull Street
Hartford, CT 06103

(Attorney Robert F. Maslan, Jr. also represented the applicant at the public hearing)

Name and Address of Applicant &: Ralph F. Reynolds
Property Owner: 104 Delafield Island Road
Darien, CT 06820

Activity Being Applied For: Proposing to construct a fixed timber pier, ramp, and float on Lot #35, and perform related site activities within regulated areas.

Property Location: The subject property is on the east side of Delafield Island Road, approximately 1,900 feet south of its intersection with Raider's Lane.

Zone: R-1

Date of Public Hearing: February 15, 2011

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

Publication of Hearing Notices
Dates: February 4 & 11, 2011

Newspapers: Darien News

Date of Action: March 22, 2011

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
April 1, 2011

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 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 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 a 4' x 70' fixed pier, a 3' x 36' ramp, and an 8' x 20' float with float stops in Scott's Cove. As part of this application the owner will be placing a conservation easement over a portion of the now-vacant property. The purpose of the conservation easement is to establish a principal use on the property in order to allow the accessory use, the dock, to be approved. The permitted principal use would be a private conservation area per Section 402c of the Regulations.
2. It was noted at the public hearing by the applicant's representative that at some point in the future, the owner may wish to shift or adjust the lot lines between the subject (vacant) property and the adjacent property that now contains a dwelling. At present, the use of the dock facilities will be shared by the residents of the Reynolds' house located across the street and the Reynolds' house located on the immediately adjacent site. Each of those houses is owned by members of the Reynolds family and access easements will allow for use of the dock facilities.
3. It was noted at the public hearing by the applicant's representative that at some point in the future the conservation easement may be eliminated if the dock facilities are removed or if the lot lines are adjusted to include one of the houses as part of the site. At such time, the house would become the principal permitted use and the conservation easement would no longer be needed as the principal use. He said that as part of this plan, the owners of the two existing (Reynolds) house lots have or will waive their right to have a separate dock facility on their own property.

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4. As noted at the public hearing, the owner received approval from the State of Connecticut Department of Environmental Protection (DEP) in Permit #200701968-TS for this work. The applicant has also received the required approval from the Army Corps of Engineers as outlined within a July 1, 2009 letter (Exhibit G in the applicant's submittal). The Commission noted that the DEP approval had specific conditions with which the applicant will need to comply.
5. It was acknowledged at the public hearing that at times, the land between the road and the beginning of the pier is wet due to unusually high tide conditions. An easement will be created to allow the use of the pathway (or old road way) from the paved portion of Delafield Island Road to the pier. Access to the dock was debated as part of the DEP Permit Review process. The DEP wanted the pier to be as short as possible, but this meant that some of the walk from the street to the pier would be through some of the high tidal wetland. The DEP concluded that walking through the tidal wetlands would not impact those wetlands.
6. As noted within the submitted application materials and at the public hearing, Eastern Prickly Pear, a state species of special concern is present on the subject property. None of that prickly pear is located in the area of the walkway. The DEP permit indicates that the prickly pear area must be preserved and protected and that there would be no walking through that portion of the property that contains that vegetation.
7. The dock is proposed to be shared with the properties at 104 and 111 Delafield Island Road.
8. The potential adverse impacts of the proposed activity upon coastal resources, as designed are minimal and are therefore acceptable.
9. 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.
10. 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.
11. 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.
12. 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 #263 and Flood Damage Prevention Application #300 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:

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- Existing and Proposed Conditions Map Tax Assessors Map 70 Lot 35 prepared for Ralph F. Reynolds, by William W. Seymour & Associates, last revised February 18, 2010, Sheet 3 of 4.
- Proposed Cross Section Map Tax Assessors Map 70 Lot 35 prepared for Ralph F. Reynolds, by William W. Seymour & Associates, last revised February 18, 2010, Sheet 4 of 4.
- Zoning Location Survey & Compilation Plan 0 Delafield Island Road prepared for Ralph F. Reynolds, by William W. Seymour & Associates, scale 1"=20', dated January 5, 2011.
- Reynolds Dock Residential Pier, Gangway, & Float, 0 Delafield Island Road (Lot 35), by Roberge Associates Coastal Engineers, LLC, scale as noted, dated 1-5-11, Sheets D-01 through D-05.

Some of the pathway ground that is upland of the proposed pier is subject to high water conditions on a routine basis.

- B. The proposed Conservation Easement shall be reviewed by Town Counsel and the Planning and Zoning Director. Once approved by the Planning and Zoning Director, it shall be filed in the Darien Land Records along with a map showing the location of said Conservation Easement. This shall be completed by May 22, 2011 and prior to the start of any construction. As noted at the public hearing, the easement shall run in favor of the Planning and Zoning Commission. Also, it shall not automatically be extinguished due to the modification of property lines or the elimination of the pier and dock facilities, but will only be extinguished by consent of the Planning and Zoning Commission after consideration of any changed circumstances.
- C. Due to the location of the subject property directly adjacent to Scott's Cove, and the limited 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.
- D. 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.
- E. During construction, the applicant shall utilize any sediment and erosion control 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 any 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 March 22, 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 except with the prior written permission of the Commission.

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- 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. This includes the special conditions outlined within the July 1, 2009 approval from the U.S. Army Corps of Engineers, which include, but are not limited to:
- 1) "Float stops shall be used such that the bottom of the float shall be maintained a minimum of 18" above the substrate at all times/tides.
 - 2) No motorboats shall be docked at or launched from these structures.
 - 3) The heights of the structure above the marsh shall at all points, be equal to or exceed the width of the deck. For the purpose of this condition, height shall be measured from the marsh substrate to the bottom of the longitudinal support beam.
 - 4) The float and ramp shall be removed from the waterway and stored on the upland during the winter/off-season.
 - 5) The construction barge shall not rest on the bottom at any time."
- I. In addition, one of the DEP conditions of approval is that a Shared Dock Agreement be filed in the Darien Land Records. A copy of that Agreement, once filed in the Darien Land Records, shall be submitted for the file in this matter, prior to the start of construction.
- J. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (March 22, 2012). This may be extended as per Sections 815 and 829f.

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

Chairman Conze read the following agenda item:

Coastal Site Plan Review #131-B, Flood Damage Prevention Application #298, and Land Filling & Regrading Application #254, Leo & Diane Schlinkert, 3 North Road. Proposing to raze the existing residence and construct a new single-family residence with associated septic system and boathouse and perform related site development activities within regulated areas. *HEARING CLOSED 2/15/2011. DECISION DEADLINE: 4/21/2011.*

The Commission discussed the project. The following motion was made: That the Commission adopt the following resolution to approve the project subject to stipulations and modifications. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved. The adopted resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 22, 2011**

Application Number: Coastal Site Plan Review #131-B
Flood Damage Prevention Application #298
Land Filling & Regrading Application #254

Street Address: 3 North Road
Assessor's Map #67 Lot #70

Name and Address of Property Owners: Leo & Diane Schlinkert
3 North Road
Darien, CT 06820

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

Activity Being Applied For: Proposing to raze the existing residence and construct a new single-family residence with associated septic system and boathouse and perform related site development activities within regulated areas.

Property Location: The subject property is located on the west side of North Road, approximately 150 feet north of its intersection with Butlers Island Road.

Zone: R-1 Zone

Date of Public Hearing: February 15, 2011

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

Publication of Hearing Notices
Dates: February 4 and 11, 2011 Newspaper: Darien News

Date of Action: March 22, 2011 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
April 1, 2011 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 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 applicant proposes to raze the existing residence and construct a new single-family residence with associated septic system and stormwater management system and perform related site development activities within regulated areas. The application also includes the removal of the non-conforming shed near the west property line, and the construction of a boathouse/storage structure. The subject property is 1.14 acres, and is served by a private septic system and public water. There is a slope from the house location down to the waters of Butler Creek. A second driveway curb cut to allow access from an egress to the site is proposed. There are rock ledges throughout the property.
2. The 1962 septic system does not comply with the current standards and is proposed to be replaced. Filling and regrading of the septic area is necessary to comply with Health Code requirements. The septic leeching area will require fill and the proposed design for the septic area has been approved by the Connecticut Department of Health and the local Health Department. Doug DiVesta, the engineer who designed in the septic system plan, said that his plans were created before the most recent version reflecting the elimination of the walkway/steps near the property to the west. Mr. DiVesta also submitted copies of the State and local Health Department approvals.
3. The top of the boathouse/storage structure will be a patio type structure. The proposed retaining wall, enclosing the fill for the septic system, will be longer than the existing retaining wall, but will not exceed 5 feet in height.
4. At the public hearing, the Commission members noted that a Letter of Objection had been received from Mrs. Hubner, the property owner directly to the west. Mr. Gleason said that the plans have already been revised in accordance with one of Mrs. Hubner's objections--that revision eliminates the walkway/stairs that had originally been proposed adjacent to the Hubner property. Mr. Schlinkert said that he would continue to meet with his neighbor to understand her concerns and address them to the extent that he can do so.
5. At the public hearing on this matter, Planning and Zoning Director Jeremy Ginsberg reviewed the Memorandum from Richard Jacobson, Staff to the Environmental Protection Commission indicating that the EPC did not have jurisdiction over the waters of Butler's Creek. Mr. Ginsberg said that the matter had been referred to the Connecticut DEP, but they had not responded with any comments.
6. As part of this application, the property owner plans to convert existing lawn to planted areas near Butler's Island Creek. It was noted that switch grasses will be planted in the bio-filter

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areas that will be installed to accommodate storm water runoff. The switch grasses will be installed using a series of plugs rather than seeds in order to facilitate growth and stabilization.

7. 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.
8. 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.
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 potential adverse impacts of the proposed activity, as modified within this resolution, on coastal resources are acceptable.
11. The proposed activities also include filling and regrading a portion of the existing property and managing storm water runoff so that it does not negatively impact the nearby properties.
12. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
13. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #131-B, Flood Damage Prevention Application #298 and Land Filling & Regrading Application #254 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction shall be in accordance with the following plans submitted to and reviewed by the Commission:
 - Proposed Conditions Zoning Location Survey prepared for Leo R. Schlinkert Diane D. Schlinkert, 3 North Road, by William W. Seymour & Associates, dated December 21, 2010.
 - Site Plan, Landscaping Plan & Masonry Details, Proposed Residence Schlinkert Residence 3 North Road, by J.P. Franzen Associates, Architects, scale as noted, last revised 02.15.11, Drawing No. L-1.
 - Schlinkert Residence 3 North Road, by DiVesta Civil Engineering Associates, Inc., Sheet 1 of 3, last revised 1/24/11; Sheets 2 of 3 and 3 of 3 last revised 1/4/11 (Note: these plans shall be revised to reflect no stairs near the Hubner property line but rather, a mowed path, as shown on the Site Plan above by J.P. Franzen Associates, Architects revised 02.15.11).

All plans must be revised to coordinate with each other and to reflect the changes required herein. The Commission encourages the Schlinkerts to modify the proposed driveway to be relocated further from the twin oaks, in order to preserve those trees. If this is pursued, the

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Commission requires tree protection of those trees during the construction process. The applicant shall continue to work with the neighbor, Mrs. Hubner, to address reasonable concerns and to incorporate those changes in the final plans.

- B. In conjunction with the Zoning and Building Permit applications, the plans shall be accompanied by a certification from a licensed architect and/or engineer that verifies that the final, detailed design of the house foundation complies with the applicable requirements to minimize flood damage.
- C. Because of the nature of the land filling and regrading portion of this project, a performance bond for the filling and regrading is hereby waived.
- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans and any 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.
- E. During the construction process, an as-built survey shall be submitted when the ground foundation work for the new house has been installed. Another survey will be required when the foundation of the boathouse is installed. The surveys must verify that the work complies with all aspects of the Zoning Regulations (setbacks from property lines, elevation, etc.) and with all applicable specifics of this approval.
- F. A final "as-built" survey is hereby required to certify that the site improvements adjacent to the coastal resources and/or within the flood hazard area are all in compliance with the approved plans. In addition, a Professional Engineer shall certify in writing that the drainage and grading work has been properly completed in accordance with the approved plans.
- G. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site of the regrading 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 their expense and as quickly as possible.
- H. 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.
- I. 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 agencies. This includes, but is not limited to, obtaining a Demolition Permit from the Building Department, and a septic system approval from the Darien Health Department. Approval for any desired/required blasting will be needed from the Darien Fire Marshal.

- J. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (March 22, 2012). This may be extended as per Sections 815 and 829f.

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 shall be filed in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

Chairman Conze read the following agenda item:

Proposed Amendments to the Darien Zoning Regulations put forth by the Darien Planning & Zoning Commission—Proposed Modification of Subsection 922c. Proposing to modify subsection 922 of the Darien Zoning Regulations--Permitted Signs (subsection 922c specifically addresses real estate signs). The changes affect the maximum sign size and permitted locations of such proposed signs.

Mr. Ginsberg explained that comments from Mrs. Riccardo had been incorporated into a revised draft of the resolution. The resolution would adopt the proposed changes with a maximum sign size of 4 square feet, including any hangers or hangdowns, and would specify that the signs must be on the private property (not within the street right of way) and not create a sight line problem. Mrs. Cameron said that the realtor and the property owner are both responsible for the proper placement and maintenance of the real estate sign. She said that the Board of Realtors will need to get the word out to their members and the sign installers. The effective date of the amendment was discussed. It was agreed that the changes shall become effective on June 5, 2011.

The following motion was made: That the Commission adopt the following resolution to adopted the amendments with an effective date of June 5, 2011. The motion was made by Mr. Voigt, seconded by Mr. Spain and unanimously approved. The resolution is as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 22, 2011**

Application Number: Proposed Amendment to Zoning Regulations (COZR #1-2011)

Application Put Forth by: Darien Planning and Zoning Commission

Activity Being Applied For: Proposing to modify subsection 922 of the Darien Zoning Regulations--Permitted Signs (subsection 922c specifically addresses real estate signs). The changes affect the maximum sign size and permitted locations of such proposed signs.

Date of Public Hearing: February 15, 2011

Deliberations held on: March 1, 2011 and March 8, 2011

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

Publication of Hearing Notices
Dates: February 4 & 11, 2011

Newspaper: Darien News

Date of Action: March 22, 2011

Action: **AMENDMENTS TO THE ZONING REGULATIONS
ARE ADOPTED WITH MODIFICATIONS
WITH AN EFFECTIVE DATE OF SUNDAY, JUNE 5, 2011 AT TWELVE NOON.**

Scheduled Date of Publication of Action:
April 1, 2011

Newspaper: Darien News

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

1. Subsection 922c of the Darien Zoning Regulations now reads as follows:
 - c. One (1) "For Sale" or "For Lease" sign per lot, not exceeding three (3) square feet in area. Only the words "For Sale", or "For Lease", followed by "By Broker" or "By Owner", followed by a telephone number may appear on the sign. All other identifying words, symbols, logos or characters are prohibited. The "For Sale" or "For Rent" signs shall be setback at least 30 feet from the edge of the road surface and shall not be affixed to any tree or utility pole within a public right-of-way.
2. The Commission notes that the subject application is essentially a change of three items within the current subsection 922c.
 - a) Increase of permissible sign size;
 - b) Elimination of content restrictions;
 - c) Modification of the allowable distance from street.
3. At the public hearing, the Commission heard testimony from: real estate brokers/realtors, the President of the Darien Board of Realtors, members of the Beautification Commission, as well as members of the general public. It was particularly helpful for the Commission to hear from all of these groups, and better understand the needs of the realtors as well as the desire of those in Town who wish to limit or restrict the size and placement of such signage.
4. In this resolution, the Commission will use the terms real estate agent, broker, listing agent, realtor, or property owner interchangeably.
5. It was noted that the existing regulations have been in place since 1988. They have not always been strictly enforced by the Planning and Zoning Office. The Commission believes that better compliance with the regulation can and should be the responsibility of both the Board of Realtors as well as the Planning and Zoning Office. By implementing a regulation that realtors can more easily abide by, it is expected that there will be full compliance with the new regulation.

The size issue.

6. With regard to maximum size sign allowed, the Commission heard testimony regarding the existing three foot maximum as well as the proposed five foot maximum. During the public

hearing, Planning and Zoning Director Jeremy Ginsberg showed photographs of many real estate signs. In those, he noted that most real estate signs now installed in Darien are four feet in size—usually 2' x 2'.

7. Sometimes, additional “hangers” or hangdowns” are added. Those “hangdowns” generally measure 6 inches x 2 feet, or one square foot in size. A “hangdown” is often used by the listing agent to note supplemental information, such as “FOR RENT”, the broker’s name, or a web site address. The question for the Commission is whether to stick with the current three square foot maximum, or allow a five square foot maximum, or some size in between.”



This photograph, presented during the public hearing, shows a real estate sign with two “hangdowns”. As part of this decision, the Commission is allowing up to four square feet of signage, INCLUDING any desired “hangdowns”.

8. After reviewing the testimony, the Commission believes that changing the regulations to allow a maximum of four square feet would be appropriate, and that the five square feet proposed is too large, and is not being approved. The permitted four square feet includes any “hangdowns”. In other words, a resident or broker can install a three square foot sign with a single one square foot “hangdown”, or a two square foot sign with a total of two “hangdowns”; or just a four square foot sign with no “hangdowns”. The Commission believes that five square feet is too large, and that four square feet is an appropriate size. It was noted at the public hearing that most existing real estate signs in Town are now four square feet or less. Thus, existing signs can still be used. However, the four square foot size limit may eliminate the use of “hangdowns”, since most existing signs are four square feet. **Listing agents have the discretion to determine how they wish to use their four square feet.** However, if a listing agent wants to have a “hangdown” showing a name or website, a smaller real estate sign must be installed. Four square feet is the maximum overall size for real estate signage under the new regulation.
9. The Commission believes that all “hangdowns” shall be properly installed and attached, and not be flapping or crooked.

The content issue.

10. The Commission agrees that removing any restrictions regarding content of real estate signs is appropriate. This wording in the existing regulations should be modified to eliminate any wording limits or restrictions.
11. At the public hearing, it was noted that the Town of New Canaan limits/restricts content of real

estate signs, and that they have found general compliance with that regulation. In other words, listing agents have specific signs that they use for the Town of New Canaan, and the sign companies who do the installation know those regulations and generally comply with them. It was mentioned that there is no reason why those sign companies cannot know the specific real estate sign regulations in Darien, and comply with them.

The placement/location issue.

12. The existing regulations require that real estate signs be 30 feet from the edge of the road surface. In many cases, that puts the sign 15+ feet from the edge of the right-of-way, and fifteen feet onto the subject property. The proposed regulation allows the sign to be on the subject property, right up to the edge of the right-of-way, but not overhanging the right-of-way. This will actually allow such signs to be closer to the road than currently allowed. No part of the sign shall be in or overhanging the right-of-way. The Commission has decided that it would also be appropriate to have a minimum distance established for the space between the front edge of a sign and the actual edge of the pavement. This will ease compliance, as the distance can be measured at the site. Signs may not interfere with drivers' sight lines. Blocking the view of the road creates a dangerous condition.
13. The Commission acknowledges that due to the size or shape of some properties, the placement of a temporary real estate sign may not be visible to passing drivers if the sign is placed as required by the regulation. The Commission notes that features such as stone walls, fences, and/or plantings may create privacy for a property owner, yet inhibit/restrict their ability to have a conforming temporary real estate sign. Nevertheless, signs must be installed as required by the regulation, or not at all.

Summary of Commission Findings

14. The Commission notes that the subject proposal is to allow Darien property owners to have temporary larger real estate signs on their property. While the Commission is not approving the proposed regulation amendment in its entirety as proposed, it is approving an increase in the permitted size of signs from three square feet to four square feet. The purpose of the one square foot increase is to permit the continued use of existing four foot square real estate signs. Such signs cannot be supplemented by "hangdowns" under the new regulation.
15. The Commission is eliminating any content restrictions as part of this decision.
16. The Commission also notes that the subject proposal allows Darien property owners to place real estate signs closer to the road than current regulations allow. In general, this will allow signs to be 10-15 feet closer to the paved portion of the street.
17. So in conclusion, the Commission is allowing more signage closer to the road, which is what is desired by listing agents. At the same time, the Commission is hereby putting a stronger emphasis on enforcement of the regulations.
18. The Commission finds that the proposed regulation amendments, as modified, are consistent with the 2006 Town Plan of Conservation & Development as amended.
19. The Commission believes that it is incumbent upon the Darien Board of Realtors to work with its membership to assure compliance with the new regulations. While the Commission

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acknowledges that not all brokers or realtors are affiliated with or members of the Board of Realtors, the Board of Realtors will be of great assistance in enforcement of subsection 922c.

20. Subsection 922c on page IX-9 of the Zoning Regulations is proposed to be modified. The inside cover page, Table of Contents and Appendix C-Schedule of Amendments will also be modified accordingly.
21. The Commission hereby approves these regulation amendments with an effective date of Sunday, June 5, 2011 at noon. This will give staff the time to print new zoning regulations, file them with the Town Clerk and post them on the Town web site, give advance notice to townspeople, realtors, and the companies who place the realtors' signs, of the upcoming change, and publish the approval in the local paper as required by law. It will also allow time for the Board of Realtors to work with local realtors and the sign companies that install such signs to become aware of the new regulations regarding real estate signs.

NOW THEREFORE BE IT RESOLVED that ***Proposed Amendments of the Darien Zoning Regulations*** to modify subsection 922 of the Darien Zoning Regulations--Permitted Signs (subsection 922c specifically addresses real estate signs) are hereby MODIFIED AND ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, JUNE 5, 2011 AT TWELVE NOON.

Existing wording:

- 1) Modify subsection 922 Permitted Signs (922c specifically addresses real estate signs).

Existing wording to be repealed:

- c. One (1) "For Sale" or "For Lease" sign per lot, not exceeding three (3) square feet in area. Only the words "For Sale", or "For Lease", followed by "By Broker" or "By Owner", followed by a telephone number may appear on the sign. All other identifying words, symbols, logos or characters are prohibited. The "For Sale" or "For Rent" signs shall be setback at least 30 feet from the edge of the road surface and shall not be affixed to any tree or utility pole within a public right-of-way.

The proposed wording for this subsection was:

Proposed wording:

- c. One (1) temporary "For Sale", "For Rent" or "For Lease" sign per lot, not exceeding five (5.0) square feet in area. One single sign may be back-to-back (double sided) provided the two faces are not visible from any individual vantage point. The temporary "For Sale", "For Rent" or "For Lease" sign shall not be affixed to any tree or utility pole within a public right-of-way. All parts of the sign shall be located on the property which is for sale, for rent, or for lease, and no part of the sign shall be within, on, or above a street right-of-way. No part of the sign shall be located more than eight (8) feet above the adjacent ground level.

The final wording adopted by the Commission (with the change from five square feet to four square feet) is:

- c. One (1) temporary "For Sale", "For Rent" or "For Lease" sign per lot, not exceeding four (4.0) square feet in area. One single sign may be back-to-back (double sided) provided the two faces are not visible from any individual vantage point. The temporary "For Sale", "For Rent" or "For Lease" sign shall not create a safety hazard by restricting a necessary sight line and shall not be affixed to any tree or utility pole within a public right-of-way. All parts of the sign shall be located on the property which is for sale, for rent, or for lease, and no part of the sign shall be within, on, or above a street right-of-way. No part of the sign shall be located more than eight (8) feet above the adjacent ground level and the front edge of the sign shall be at least 8 (eight) feet from the paved edge of the road surface (and outside of the right-of-way).

The inside cover page of the Zoning Regulations, the Table of Contents and Appendix C-Schedule of Amendments also shall be modified accordingly. This would be Amendment #32.

Chairman Conze said **that with respect to the Hoyt Street affordable housing project discussed earlier in the meeting**, the action of the Commission was not to approve the application as it had been submitted, but to adopt the resolution to modify and approve the project subject to stipulations and conditions. The following motion was made: That to clarify any confusion, the Commission vote was to adopt the resolution to modify and approve the project subject to the stipulations and conditions as noted in the resolution (see pages 5 through 39 inclusive, of these minutes). The motion was made by Mrs. Cameron, second by Mrs. Riccardo and unanimously approved.

PUBLIC HEARING

At about 8:45 p.m., Chairman Conze needed to temporarily leave the meeting and Mr. Spain then acted as Chairman. He read the following agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #261, Flood Damage Prevention Application #28-A, Land Filling & Regrading Application #2-A, Joseph & Kimberly Cesare, 144 Five Mile River Road. Proposing to construct a single-family residence, garage, guest cottage, and swimming pool and to perform related site development activities within regulated areas. The subject property is on the south side of Five Mile River Road at its terminus, and is shown on Assessor's Map #67 as Lot #10 & #11, in the R-1/2 Zone. *PUBLIC HEARING OPENED ON 1/25/2011, AND CONTINUED TO 2/15/2011 AND 3/22/2011. DEADLINE TO CLOSE PUBLIC HEARING IS 3/22/2011, UNLESS AN EXTENSION IS GRANTED BY THE APPLICANT.*

Tom Ryder, of Land Tech Consultants, on behalf of the applicants, said that they have revised the plans in accordance with the comments received from the Planning & Zoning Commission and the Connecticut Department of Environmental Protection. He distributed a copy of the DEP's letter of March 22, 2011 and a revised plan dated March 21, 2011. He also distributed a letter from Rocco D'Andrea on behalf of one of the neighboring property owners.

Mr. Ryder said that the changes on this third plan include modifying the northern garage by moving it closer to the house and connecting it to the house. Thus, it is 5 ft. farther away from the tidal wetlands. He said that the driveway has been shifted east so that it is farther away from the tidal wetlands. He said the tidal wetlands line is now shown in the area to the north of the proposed

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house. Also shown on the plans are the cedar trees located on the western portion of the property and near the proposed guest house. He noted that each individual tree is not shown, but they have shown a general location of many of the trees. They have also shown on the plans the vegetation of special concern which includes the eastern prickly pear. He said that many of the DEP comments of March 22nd have already been incorporated into this revised plan. Mr. Ryder said that the high tide line is shown on the plan under the old mapping system using NGVD 1929 as sea level. The high tide line would have been 6.4 ft. above sea level. Using the new mapping system with NAVD 1988 as Elevation 0, the high tide line is 1.1 ft. lower or at Elevation 5.3 ft. above Elevation 0. He said that Mr. D'Andrea references Elevation 5.3 and it is correctly shown on the new map. Mr. Ryder said that work on the existing retaining wall on the south side of the property needs a Connecticut Department of Environmental Protection Permit or Letter of Permission. He said in general the house and driveways have been pulled farther away from the tidal wetlands and more into the center of the property. He said that the sewer connection needs to go through a low portion of the property and it also needs Connecticut DEP permission. Mr. Ryder said that a few trees will need to be removed in order to accommodate the location of the guest cottage. Replacement trees will be planted. He said that the cedar trees often have a deep tap root which indicates that in some areas there is deeper soil. He said that the intent is to open up part of the site by removing the existing vegetation and making other areas more densely planted with trees.

Ms. Cameron said that the pool, as shown on the current plan, would not have any patio. If they wanted to create a patio, they would need to come back to the Commission.

Mr. Ryder said that the storm drainage system has been designed to improve water quality and they will be enhancing the vegetation along the shore line areas to the south of the house. He said that as a result of a 1954 approval, a section on the north part of the property was filled.

Mr. Hutchison noted that a retaining wall is still proposed to be located along the Kane property line. That retaining wall and the fill adjacent to it could impact the trees on the Kane property. He suggested moving the house farther to the west in order to get the driveway and the filling for the driveway farther from the Kane property. He said that he does not think that this plan is very sensitive to the environmental factors of the property.

Andy Glazer said that the design has been impacted by the site and they cannot make the house very wide. He said that no development has been proposed on the westerly edge of the property because it is so unique and sensitive. He said that the wall along the Kane property is needed to get access to the site. He also noted that the guest cottage is placed to the west of the swimming pool because it is such a special spot. It would be a clear glass one-story structure with a low roof. It would take advantage of the magnificent views from that area.

Ms. Cameron said that per the list of birds submitted by Mr. Ryder, there are many common birds. There are also many unusual species that are located in the vicinity and they should take advantage of that view with picture windows from the house rather than disturbing the area of the proposed cottage.

Mr. Glazer said that the proposed retaining walls will hold the fill in place and that although the parcel is very large, there is only one acre of dry land. He said that this is a very unusual site.

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Ms. Cameron said that according to the old map, a much larger driveway was supposed to be built, but it was not.

Mr. Ryder said that it appears that some of the base fill was installed, but not all of the fill was installed per the 1954 plan.

Mr. Spain questioned why so much fill was being proposed at this time. Mr. Glazer said that they need to reach the required elevation so that the driveway and house will be above the expected flood elevation.

Mr. Spain asked why the structure could not be placed on pilings and thus eliminate the need for so much fill. Mr. Glazer said that the fill is needed to make the site more level and keep the flood waters away from the house. He said the intent is not to have a deck located 5 ft. above the existing ground level or to have the house on stilts because that would be an eyesore and not appropriate for this special site. He said that the poured concrete foundation walls will not crumple down or erode.

Mr. Ryder said that the proposed walls are to retain the soil, not to prevent erosion. He said that this is a flood zone with an A designation, not a V flood zone that would be subject to more powerful wave actions. Mr. Spain said that the retaining walls appear to be a flood control mechanism and retaining soil is the prevention of erosion. Thus, it appears that the walls would be in the flood zone and designed to prevent erosion. Mr. Glazer said that the walls are needed in order to make use of the land within the Flood Hazard Zone.

Amy Zabetakis explained that she represents the owners and the applicants. She noted the old 1954 map and said that part of the area was filled, but the road was never paved. She said that flood and erosion control structures are used to stop waves and the flow of water. She said that these walls won't be affected by the normal ebb and flow of waters and will allow for the vegetative stabilization of the soil on the upland side of the wall.

Mr. Spain said that the walls would also appear to reduce the flow through the area from the tidal waters to the south of the lot and the tidal waters to the north of the site. Mrs. Zabetakis said that the fill is to even out the site and eliminate the dip or low area that is in the middle of the property. Mr. Ryder said that the top of the walls are at Elevation 8 and it would be a very rare situation to have the water go through that area by flowing over the walls.

Mrs. Zabetakis said that under Connecticut General Statutes 22a-106, the Planning and Zoning Commission is to conduct the Coastal Site Plan Review to determine what effects the project might have on the coastal resources and the impacts on coastal dependent uses. It is prudent to consider the health and safety aspects and to balance those with the applicant/owners' proposed use of the property. She referred to the 1950s map indicating that the driveway would cross through the low, wet area, but the water does not go through the area that is now proposed to be the swimming pool. A very low percentage of the site is to be developed. She said that compared to the property next door (the Kane site), the proposed development is a much lower density.

Mr. Glazer said that the wall adjacent to the Kane property and the proposed house and the entire project is not pleasing to Mr. Kane. Mr. Glazer said that they could adjust the wall to preserve the trees.

Sally Knowlton Keen said that this is a serious area for wildlife, including herons and egrets. She said that much of the wildlife lives in the trees on the site. She said that the salt marsh naturally migrates from one location to another based on the water flow and currents and other natural changes that take place. She said that walling in the marshes is contrary to the natural process. She noted that low tide is critical for wildlife feeding. She said that a three season survey of the wildlife should be conducted because there are many more bird species at the site than contained on the list submitted by the applicant. She said that the plant species in the area are very important to the wildlife and the natural conditions. She submitted a photo of the prickly pear vegetation that is located along the southwest portion of the site. She said that this unusual species is spreading through other areas of the property. She submitted photographs of the mud at the low tide.

Ms. Knowlton Keen said that there are predatory birds at the site along with egrets, herons and terns. She submitted photographs of wildlife and of vegetation growing along the marsh area. She said that her primary concern is the guest house located on the west half of the site. She said that portion of the property is so special that any development would mean the end of the cedar bluff environment because once the changes start to happen, more changes will occur.

Todd Robbins said that his wife, Martha, owns the property adjacent to the marsh. He concurred that the guest house would be in the midst of the sensitive, environmental area and that the prickly pear would likely get trampled on if the development is allowed to occur in that area. He said that he and the other neighbors object to the amount of fill and the creation of large retaining walls. He said that the high water conditions do breach through the site on 4-5 times per year and that some of this fill would be subject to erosion. That eroded soil would end up in the marsh and would negatively impact the marsh. He said that the retaining walls would stop that natural flow from occurring. He said that raising the house creates no particular safety danger, but it could minimize the need for lawn area around the house.

Mr. Spain asked if the low areas would cause soil to move from the site into the marsh areas. Mr. Robbins said that there is an implied risk of any fill in those lower areas and if there is a risk, then there is no reason that the environment should be put at risk.

Mr. Hutchison said that from his observation of the map and the site conditions, the pitch would lead down from the site toward the tidal wetlands and toward the little inlet on the north and west sides of the property.

Attorney Wilder Gleason represented the neighbors and submitted a letter from Leonard D'Andrea dated March 22nd. He said that Mr. D'Andrea has met with Ms. Kallenberg from the Connecticut DEP and confirmed that DEP approvals and permits would be necessary to restore the old, damaged wall on the south side of the property. He said that DEP permits are needed before the Planning & Zoning Commission can continue to process the application. There is a requirement within the Zoning Regulations that other permits and approvals must be obtained before the applicant comes before the Planning & Zoning Commission. Mr. Gleason said that the flood elevation in the area is expected to be 11 ft. above Elevation 0. The low saddle area is down to about Elevation 7. He said that the Flood Designation AE 11 Flood Hazard Zone means that there are still waves, but those waves are less than three ft. in height. He said that this would not be still water gently rising up on the property. Instead, it would be water that would be capable of causing erosion. The wave action is not as sustained or as substantial as that within the V Flood Hazard Zones, but would be substantial enough to cause erosion and move soil. He said that no detailed landscape nor

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stabilization plan has been submitted, although the applicant has said that they will do planting around the perimeter.

He said that the submitted plans do not make it clear whether there would be a slab on grade or crawl space construction and that no design or flood certification information has been submitted. He said that there are also no calculations about the cubic yardage of fill that would be necessary to accommodate the proposed development plan. Attorney Gleason said that no details of the poured concrete walls or the forms or the excavation have been submitted, particularly regarding the work that is in close proximity to the DEP jurisdiction. He said that the proposed walls would, in his view, be flood and erosion control structures which are not normally allowed in areas such as this. He said that a cut and fill manifest is needed to determine the extent of the excavation on the site and the amount of additional fill that must be brought in. He said that the flood and erosion control structures and retaining walls are not consistent with the Regulations and that the wall along the Kane site will impact the trees on the Kane property.

He said that filling to a depth of one foot or more around the existing healthy oak trees on the site will affect the health of those trees and yet that tree is noted to be preserved. He said that there are safety issues with respect to the proposed 4 ft. or higher walls. He said these will need safety fences or rails, yet none have been shown on the plans. He said that the unscreened driveway will create a visual impact that his clients should not have to bear. He said that sheet flow will be redirected and concentrated, yet adequate provision has not been made to assure that that concentrated flow does not impact the neighbors or the environment. He said that well over 50 cubic yards of fill are needed in order to accommodate the proposed development and therefore the Commission must make very substantive findings under Section 1000 of the Regulations. He submitted copies of the March 22nd letter from Michael Klein.

James Kellen, a specialist in botany, said that there are more coastal resources at the site than noted in the application materials. He said that these additional coastal resources are noted on the Connecticut Eco website and CBH which is Coastal Bluff and Headlands. These are one of 25 special resources that have not been identified by the applicant and therefore they have not provided any information to the Commission or the DEP about how they will preserve those coastal resources. He said that the wetland limitations should be accurately flagged and the tidal wetlands are based on more than just soil type. They also include factors such as elevation, plant types and water levels. This is different than the soil designation for inland wetland. He submitted a fact sheet about shoreline flood and erosion control structures and said that the proposed walls are flood and erosion control structures which are only allowed to protect and preserve existing structures. He said that these types of walls are not allowed to accommodate new development activity or replacement structures. He said that no specific plan has been submitted for the protection and preservation of the eastern prickly pear vegetation. He said that the lawn and planting areas must be kept away from this existing natural vegetation.

Mr. Spain said that it would be appropriate to give the applicant an opportunity to respond to the information submitted by Mr. Gleason and the DEP. Ms. Zabetakis said that the applicant is willing to grant a continuation so that the public hearing could be continued on April 26th.

Mr. Glazer asked what additional information the Commission was looking for. One of the important items is regarding the fill, how much will be brought into the site and how it will be

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retained during installation and how it will be permanently retained and what impact it might have on the marsh.

Mr. Hutchison said that this is a building lot and someone will eventually build a house here, but, where the house will be and how much house there will be and how it will impact the environment are all issues that need to be worked out.

Mr. Kellen continued by saying that the cedar trees that are proposed to be removed are not easy to plant or replace. He said that usually the removal of large trees would require the replacement of at least two smaller trees. He said that the proposed use and activity will impact the habitat for wildlife. He noted that the activities at the perimeter of the site, including the construction process and installation of silt fence seem to be shown in the tidal wetlands. He said that there is no data submitted on the seasonal high water conditions and thus it is not possible to determine the adequacy of the storm water management system.

He said that the storm water system that the applicants have included in their design will require a high level of maintenance. It will create discharges of fresh water into the tidal area and this will encourage the growth of fragmities which cannot tolerate high salt concentrations, but which will thrive when there is a high level of fresh water.

Mr. Kellen also noted that the emergency turnaround is proposed right up to the tidal wetlands, yet there are no contour lines or details shown of how that steep slope will be managed or how fill will be placed in the site and stabilized. Some types of special erosion blankets or other provisions will be needed to accommodate the extent and amount of filling and regrading that would take place. Topsoil that is placed in the area will impact the tidal marshes if it is allowed to erode into those areas. The depth of the topsoil will smother vegetation and the relocation of organic soils can shift species from low water to high water types very easily. The plant species and animal species that live in this area are very dependent on the natural conditions and the quantities and extent of fertilizers that might be used will impact vegetation and wildlife. No plan regarding the details of fertilizers or maintenance of the vegetation has been submitted.

It was determined that a continuation of the public hearing would be necessary. The following motion was made: That the Commission continue this public hearing at 8:00 P.M. in the Darien Town Hall on April 26, 2011. The motion was made by Mrs. Cameron, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze returned to the meeting and read the following agenda item:

Continuation of Public Hearing regarding Coastal Site Plan Review #262, Flood Damage Prevention Application #299, Land Filling & Regrading Application #255, Kieran & Tiernan Cavanna, 38 Old Farm Road. Proposing to demolish a portion of the existing residence, construct additions and alterations to the residence, construct a new detached garage, and perform related site development activities within regulated areas. The subject property is on the south side of Old Farm Road approximately 235 feet east of its intersection with Driftway Lane, and is shown on Assessor's Map #66 as Lot #84, in the R-1 Zone. *PUBLIC HEARING OPENED ON 2/15/2011, AND CONTINUED TO 3/22/2011. DEADLINE TO CLOSE PUBLIC HEARING IS 3/22/2011, UNLESS EXTENSION OF TIME IS GRANTED BY APPLICANT.*

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Jeff McDougal, Land Surveyor from William W. Seymour Associates Land Surveyors appeared on behalf of the applicants. He explained that the public hearing regarding this matter was continued in order to get final action from the Environmental Protection Commission. Since that time, the EPC has approved the application and the approval does not require any changes or modifications to the plans.

Mr. Ginsberg explained that copies of the EPC approval had previously been distributed to the Planning & Zoning Commission. Mr. Ginsberg also noted that the Connecticut Department of Environmental Protection had sent an email on February 10, 2011 indicating that the proposed work was not inconsistent with the DEP policies.

There were no comments from the public regarding this matter. The following motion was made: that the Commission close the public hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved.

Mr. Conze read the following agenda item:

Coastal Site Plan Review #264, and Filling & Regrading Application #256, Robert & Kimberlee Ageloff, 18 Crane Road. Proposing to: construct additions and alterations to the existing single-family residence with associated stormwater management; construct a replacement pool with associated patio; install a new driveway and construct a driveway expansion area; and perform related site development activities within a regulated area. The subject property is located on the east side of Crane Road, approximately 1,100 feet south of its intersection with Pear Tree Point Road, and is shown on Assessor's Map #60 as Lot #29, in the R-1 Zone.

Robert Tucker, Architect, represented the applicants and explained that the Special Permit application for regrading of the site is to accommodate the garage addition and the driveway leading to that garage. A substantial portion of the north side of the property will need to be cut or reduced in height and a retaining wall will be located on the north and northeast sides of the proposed driveway. Mr. Tucker said that no variances are necessary for the project, but special approval from the Planning & Zoning Commission is necessary because the regrading is adjacent to the northerly property line instead of being at least 15 ft. away from the property line. He said that the retaining wall will measure about 2 ft. high at the westerly end and will be 6' to 8' tall at the easterly end. There will also be a small circular driveway from Crane Road to the front door.

Robert Zanzlak, Professional Engineer from Sound View Engineering, explained that the drainage system has been designed by his firm. They have revised the drainage system in accordance with comments from the Darien Public Works Department. They will installing a series of cultic units to provide underground infiltration of storm water that would otherwise run off the site.

Mr. Ginsberg explained that the house construction is Phase One of the project and has received administrative Zoning and Building Permits. It did not require Planning & Zoning Commission approval. The construction of the garage and the driveway (which requires substantial regrading along the north property line) are Phase Two of the project and the regrading does require Planning & Zoning Commission approval before it can be implemented.

Mrs. Cameron said that she would much prefer to see above ground storm water detention and infiltration rather than underground structures.

Mr. Tucker said that a rain garden could be provided in the front yard. He also said that they had looked at ways to move the garage location, but it would cause more impacts to the site.

Mr. Spain said that the proposed connection to the catch basin in the street will require approval from the Planning & Zoning Commission. He said that in this case, the main importance of the storm drainage system is to provide an improvement of the water quality rather than to hold back the flow for potential flood problems. Mr. Tucker said that there will be no increase in the peak flow and no increase in the total volume of runoff.

Mrs. Riccardo said that Note 10 of the Public Works Department comments indicates that the backyard is very wet and that surface and underground water from that area will likely impact the project. Mr. Tucker said that his observations were that the northeast side of the site were not very wet.

Mrs. Cameron said that she would like to continue the public hearing so that the drainage plan could be revised to accommodate the water in the northeast portion of the site and, more importantly, to provide above ground storage capacity and water quality improvement areas rather than only having underground facilities. Mr. Ginsberg said that it might be possible to continue the public hearing on April 26th.

In response to questions, Mr. Tucker said that the homeowner will need to periodically clean out the storm water drainage systems including the sumps and make sure that there are no clogs or other impediments to the proper functioning of the drainage system. He said that it is somewhat hard to find room for enough rain garden area on the lower portions of the site, adjacent to the street, but they will try to do so. He said that it is likely that the rain garden capacity will not be sufficient alone and they will still need to have some underground drainage systems.

Mrs. Cameron said that the pre-treatment of the storm water in the above ground system would be the most critical and a combined system for water quality would help to address the concerns expressed by the Public Works Department.

The Commission requested that the applicant grant an extension of the time period in order to continue the public hearing on April 26th. Mr. Tucker agreed to the time period extension. The following motion was made: That the Commission continue the public hearing regarding this matter at 8:00 P.M. in the Darien Town Hall on April 26, 2011. The motion was made by Mrs. Cameron, seconded by Mrs. Riccardo and unanimously approved.

GENERAL MEETING

Approval of Minutes

January 25, 2011 Public Hearing

The following motion was made: That the Commission adopt the minutes as drafted. The motion was made by Mr. Voigt and seconded by Mrs. Cameron. All voted in favor except Mr. Conze and Mr. Spain who had not been able to attend that meeting. The minutes were adopted.

February 15, 2011 Public Hearing

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The following motion was made: That the Commission adopt the minutes with the correction of typographic errors. The motion was made by Mr. Voigt and seconded by Mrs. Cameron. All voted in favor except Mr. Spain who had not been able to attend that meeting. The minutes were adopted.

March 1, 2011 Public Hearing/General Meeting

The following motion was made: That the Commission adopt the minutes with correction of typographic errors. The motion was made by Mr. Spain and seconded by Mr. Hutchison. All voted in favor except Mrs. Cameron and Mr. Voigt who had not been able to attend that meeting. The minutes were adopted.

March 8, 2011 General Meeting

The following motion was made: That the Commission adopt the minutes as drafted. The motion was made by Mr. Voigt and seconded by Mr. Hutchison. All voted in favor except Mrs. Riccardo who had not been able to attend that meeting. The minutes were adopted.

There being no further business, the meeting was adjourned at 11:30 P.M.

Respectfully submitted,

David J. Keating
Assistant Director of Planning and Zoning

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