

**PLANNING AND ZONING COMMISSION  
MINUTES  
GENERAL MEETING  
March 8, 2011**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

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

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

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**GENERAL MEETING**

Chairman Conze read the following agenda item:

*Discussion, deliberation AND POSSIBLE DECISION regarding the following item:*

**Affordable Housing Application Under CGS 8-30g (#2-2010), Coastal Site Plan Review #259, Site Plan Application #278, Land Filling & Regrading Application #249, Christopher & Margaret Stefanoni, Tokeneke Road.** Proposing to construct 30 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. The subject property is located on the south side of Tokeneke Road at the southeast corner formed by the intersection of Tokeneke Road and Pheasant Run, and is shown on Assessor's Map #66 as Lot #104-A1, within the R-1 Zone. *PUBLIC HEARING WAS CLOSED ON 1/4/2010. DEADLINE FOR COMMISSION DECISION: 3/10/2011.*

Chairman Conze reported that the Commission had requested of the applicants an extension of time to decide the matter, but the request was denied by the applicants. The Commission had provided comments to the staff regarding a first draft of the resolution. The draft was revised accordingly and was distributed to the Commission prior to the meeting. He asked Mr. Ginsberg to summarize the resolution. Mr. Ginsberg read the following statement -

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 3 public hearing nights, consisting of over six hours of testimony. The Commission in its resolution has outlined and reviewed the evidence. The resolution also includes a number of exhibits

The Commission grouped its findings into several subject areas.

- I. THE SUBJECT APPLICATION-- AND FINDINGS OF THE COMMISSION**
- II. THE SUBJECT PROPERTY AND EXISTING CONDITIONS**
- III. THE PROPOSED BUILDING AND DEVELOPMENT**
- IV. CONSULTANTS AND COMMENTS**
- V. TRAFFIC, SIGHT LINES, TRAFFIC VOLUME AND PUBLIC SAFETY**
- VI. HEALTH AND SAFETY CONCERNS**
- VII. AFFORDABLE HOUSING IN DARIEN**
- VIII. DECISION TO GRANT THE APPLICATION  
WITH STIPULATIONS AND MODIFICATIONS**

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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:

**1) PROPOSED ACCESS DRIVE SHALL BE TIED INTO THE EXISTING TOKENEKE ROAD/CLIFF AVENUE TRAFFIC LIGHT SYSTEM:** There is nowhere along the Tokeneke Road frontage where suitable and safe sight lines can be achieved. It is clear from the evidence provided during the public hearings that there are insufficient sight lines along Tokeneke Road for traffic heading west from the site. The only safe way for traffic from the proposed development to exit the site would be to have the proposed driveway tied into a traffic signal. This can happen by having ConnDOT review and approve one of three alternatives:

- 1) Install a traffic signal at the proposed driveway intersection which would be coordinated with the existing Tokeneke Road/Cliff Avenue traffic signal; or
- 2) Relocate the site driveway so it accesses the private road, Pheasant Run, and install a traffic signal at the intersection of Pheasant Run and Tokeneke Road, which is coordinated with the Tokeneke Road/Cliff Avenue traffic signal. This will require the applicant to obtain an easement to use Pheasant Run in this manner, and the third alternative is
- 3) Connect any new driveway to the existing Tokeneke Road/Cliff Avenue traffic signal by acquiring or obtaining an easement over that adjoining property. With the driveway relocated directly opposite Cliff Avenue, there would be no increase in the number of signals within such a short distance along the State highway, Tokeneke Road.

The second required safety modification is to:

**2) PROVIDE A SIDEWALK ALONG, AND A PEDESTRIAN CROSSWALK ACROSS TOKENEKE ROAD FOR PEDESTRIAN SAFETY.**

Third, the

**3) APPLICATION SHALL BE MODIFIED TO INCREASE ON-SITE PARKING TO AVOID UNSAFE PARKING OFF-SITE:** Applicants shall increase the number of on-site parking spaces from 47 (1.5+ per unit) to at least two (2.0) per unit, plus the handicapped parking required by the Building Code and one extra handicapped spot.

And finally,

**4) THE APPLICATION SHALL BE MODIFIED TO ADDRESS FIRE SAFETY REQUIREMENTS OF DARIEN FIRE MARSHAL:** The Darien Fire Marshal stated in his January 4, 2011 memorandum that the plans needed to be revised to reflect:

- Emergency egress. As noted, there shall be a signalized egress (either at Cliff Avenue, at Pheasant Run, or somewhere along the site frontage). There shall also be an emergency egress provided. That may be onto Pheasant Run, if the Pheasant Run Homeowners Association Inc., and the Fire Marshal approve such. Otherwise, it shall be on Tokeneke Road. 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.
- New sidewalks along the south side of Tokeneke Road alongside the frontage of the subject property. No sidewalks are being required on Pheasant Run.
- Revised Zoning Chart on the Proposed Site Plan reflecting the new design;
- Building with setbacks increased to address fire safety concerns outlined in the Fire Marshal's memos;
- Remove parking from under the building, and lower building height;
- Floor Plans reflecting fewer multi-family units. Note that the Commission is not approving an exact amount of units, but acknowledges that due to the modifications required herein and requirements of the State Building Code and other applicable regulations, the number of units will likely be lower than the 30 units proposed.
- At least 2.0 parking spaces per unit plus one extra handicapped accessible spot, due to this being an age-restricted development which is likely to have more than its share of residents and guests who have/need handicapped parking;
- Stormwater management systems to be in the form of above-ground rain gardens/stormwater ponds and vegetated swales and bio-filters rather than below-ground culvert units. The revised drainage shall be sufficient in size to address the revised building and associated impervious areas on-site.

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. Spain said that traffic safety has been a substantial concern. Data regarding the speed of traffic and the movements into and out of the site have been provided through a number of sources. The standard sight line looking west from the proposed driveway would need to be 390 feet, but only 285 feet is available under the best of conditions. This assumes that the 85<sup>th</sup> percentile of cars are moving at 35 miles per hour. Many cars traveling toward the site would be exceeding 35 miles per

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hour and cars coming from the west would be traveling downhill, thus increasing the required stopping distance. Given the many older residents that would be using the proposed driveway, and the limited sight lines, which could easily be obstructed, the stopping distance would be too short to be safe enough.

Mrs. Cameron said that the complicated drainage system should be more conservative and provide more above ground storm water storage and cleaning area.

Mr. Conze said that the sight line / safety issue is a key. A car waiting to exit from Pheasant Run would block the visibility of a driver trying to exit the proposed driveway. It would make exiting the proposed driveway difficult and dangerous.

Mr. Hutchison said that he is bothered by the DOT approval of the proposed driveway before local approval of the use was obtained and because the DOT did not have the information about the sight lines. He said that the number of units is not as crucial to safety as is the need to have a safe driveway that is controlled by and coordinated with the traffic signal.

The following motion was made: That the Commission adopt the following resolution regarding the application. The motion was made by Mr. Hutchison, seconded by Mrs. Cameron and was unanimously approved.

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
March 8, 2011**

Application Number: Affordable Housing Application under CGS 8-30g (#2-2010),  
Coastal Site Plan Review #259, Site Plan Application #278,  
Land Filling & Regrading Application #249

Site Location Street Address: 4 Pheasant Run (corner of Tokeneke Road and Pheasant Run)  
Assessor's Map #66 as Lot #104-A1

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

Activity Being Applied For: Proposing to construct 30 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 south side of Tokeneke Road at the southeast corner formed by the intersection of Tokeneke Road and Pheasant Run.

Zone: R-1 Zone

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Date of Public Hearings: November 9, 2010, November 30, 2010, January 4, 2011  
Deliberations held on February 8, 2011, March 1, 2011

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

Publication of Hearing Notices

Dates: October 29 & November 5, 2010

Newspaper: Darien News

Date of Action: March 8, 2011

Actions: GRANTED WITH STIPULATIONS AND MODIFICATIONS

Scheduled Date of Publication of Action:  
March 18, 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 and all submissions and statements from the experts and from the public and related analyses, the Commission finds:

**I. THE SUBJECT APPLICATION--AFFORDABLE HOUSING APPLICATION UNDER CGS 8-30G (#2-2010), COASTAL SITE PLAN REVIEW #259, SITE PLAN APPLICATION #278, LAND FILLING & REGRADING APPLICATION #249 AND FINDINGS OF THE COMMISSION**

- A. The Application Request. The aforementioned application seeks approval to raze the existing single-family residence on the subject property and construct 30 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.
- B. The Submitted Project Plans. The last revisions of each of the submitted plans are entitled:
- “Map of Property prepared for Tokeneke Senior Residences, #4 Pheasant Run, by Hammons, LLC, scale 1”=20’, dated February 26, 2010.
  - “Proposed Site Plan prepared for Tokeneke Senior Residences, #4 Pheasant Run”, by Hammons, LLC, scale 1”=20’, dated May 12, 2010 and last revised June 1, 2010, Sheet 2 of 5.

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- “10’, 15’ Sight Distance East (Towards Norwalk) prepared for Tokeneke Senior Residences, #4 Pheasant Run”, by Hammons, LLC, scale 1”=20’, dated February 26, 2010.
- “10’, 15’ Sight Distance West (Towards Darien Center) prepared for Tokeneke Senior Residences, #4 Pheasant Run”, by Hammons, LLC, scale 1”=20’, dated February 26, 2010.
- “Grading and Utility Plan-Design of Storm Drainage System prepared for Tokeneke Senior Residences, #4 Pheasant Run”, by Hammons, LLC, scale 1”=20’, dated May 12, 2010 and last revised November 26, 2010, Sheet 3 of 5.
- “Soil Erosion & Sediment Control Plan prepared for Tokeneke Senior Residences, #4 Pheasant Run”, by Hammons, LLC, scale 1”=20’, dated March 12, 2010, Sheet 4 of 5.
- “Planting Plan prepared for Tokeneke Senior Residences”, by Stuart Sachs, originally dated May 12, 2010 and last revised 4 Jan 11. (Planting Plan was Sheet 5 of 5 in the originally submitted package, but that plan has been superseded via this Jan 4, 2011 plan).
- Tokeneke Senior Residences, Tokeneke Road, by Stein Troost Architecture, eight 11”x17” pages, undated.

## **II. THE SUBJECT PROPERTY AND EXISTING PROPERTY CONDITIONS**

As shown on the February 26, 2010 survey by Hammons LLC submitted by the applicants, the subject property is 1.05 acres (45,740 square feet) in size and now contains a single-family residence with associated two-bay garage. Access to the property is now via a driveway off of the private road, Pheasant Run. There is no curb cut presently from the subject property on Tokeneke Road.

- A. **Location.** The subject property directly abuts an arterial street and State Highway—Route 136/Tokeneke Road, close to several intersections. There are virtually no sidewalks or crosswalks in the neighborhood. The submitted “Proposed Site Plan” shows that there are no sidewalks on or adjacent to Pheasant Run, and there are no sidewalks on the south side of Tokeneke Road in front of, directly to the west, or directly to the east of the subject property. The “Proposed Site Plan” shows that there is a sidewalk across the street from the subject property. However, one would need to cross State Route 136/Tokeneke Road to get there. As noted by the applicants, the commercial businesses which now exist within two blocks of the subject property are: 1) a gas station; 2) a liquor store; 3) a children’s consignment shop; 4) a small office building; 5) a private exercise/physical training facility; and 6) a kitchen design center. No other commercial activity is within 0.7 miles.
- B. **Zoning.** The subject property is located within an R-1 (single-family residence) Zone. According to the Town of Darien Zoning Map, the property is bordered by the R-1/2 Zone directly across the street and to the east, the R-1 zone to the south and west, and slightly further to the east of the property is the Neighborhood Business (NB) commercial zone, which zone consists of less than two acres.
- C. **Inland Wetlands.** As noted on pages A12-A14 of the applicants’ submittal, there are no inland wetlands on the subject property. According to their soil scientist, “...there do not appear to

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be wetlands on the adjacent property to the south that are within 50 feet of the subject property.”

- D. Utilities. The proposed building is proposed to be served by public water and sewer. As shown on the submitted Site Plan, water and electric utilities would be underground from Pheasant Run, and public sewer will be from a force main in Tokeneke Road. The site will connect to the State’s storm drainage system under Tokeneke Road. These connections are subject to approval from the public authorities in charge.
- E. Topography. As shown on the submitted plans, the subject property has existing contours ranging from elevation 18 in the northeastern corner of the property to elevation 32 along the western edge of the property—a 14 foot difference in elevation on the subject property. The submitted Grading and Utility Plan shows that most of the proposed regrading will take place in the northwest corner of the property, near its border with Pheasant Run, to install an above-ground rain garden/stormwater pond as part of the stormwater management system. The Grading & Utility Plan shows that the Pheasant Run curb cut is at elevation 28.0. The proposed Tokeneke Road curb cut for the subject property, 90+/- feet east of that intersection, is at elevation 21.5+/- . The slope of the street in this location is pronounced, at over 7% (a 6.5 foot drop in 90 feet of roadway). Drivers exiting the proposed driveway will be looking uphill, past the rain garden and Pheasant Run, for eastbound traffic driving down the Tokeneke Road slope.

### **III. THE PROPOSED BUILDING AND DEVELOPMENT**

- A. Building Size/Square footage. Page 3 of the applicants’ written submittal entitled “Tokeneke Senior Residences”, as well as their submitted plans explain and show that the proposed building will have three levels of living space and a basement mostly filled by parking.
1. Page 17 Schedule A of the Tokeneke Senior Residences bound submittal application and the architectural plans prepared by Stein Troost architects show the following:
- The basement structure as shown on the March 12, 2010 Proposed Site Plan shows 34 basement parking spaces, with one of those designated as handicapped-accessible (the plan notes “Basement parking below—33R, 1ADA”) The applicants’ submittal on page 3 notes, “..[o]f the 47 parking spaces, 34 are located within the building in the ground-level garage...”. The basement plan prepared by Stein Troost Architecture shows 35 parking spaces with one being handicapped-accessible.
  - The first floor of the proposed building will be 16,200 square feet, and contain 12 two-bedroom units, with four of those being affordable. The “market rate” units range in size from 1,050 square feet to 1,260 square feet. The affordable units range in size from 1,000 square feet to 1,090 square feet
  - The second floor of the proposed building will be 16,056 square feet, and contain 12 two-bedroom units, with three of those being affordable. The “market rate” units range in size from 1,010 square feet to 1,390 square feet. The affordable units range in size from 1,010 square feet to 1,210 square feet.
  - The third floor of the proposed building will be 8,790 square feet, and contain 6 two-bedroom units, with two of those being affordable. The “market rate” units range in

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size from 985 square feet to 1,340 square feet. The affordable units range in size from 1,185 square feet to 1,200 square feet.

- All thirty units are two-bedroom units. Overall, they range in size from 985 square feet to 1,390 square feet, with a total of 57,246 square feet of gross square feet according to Stein Troost architects. The average size of all units is 1,134 square feet.

B. Building Height. According to the submitted plans, the proposed multi-family building will be three+ stories in height (three stories and a grade level “basement” for parking). The first floor will have 16,200 square feet; the second floor will have 16,056 square feet; and the third floor will have 8,790 square feet—a total of 57,246 gross square feet. The height at the front entrance is 40 feet and the height at the entrance driveway to the garage to the peak of the building is 52 feet. The height from the ground to the peak of the building is 45 feet, with a “calculated building height” according to the Town’s Zoning Regulations of 39.0 feet. In the R-1 zone, the maximum building height is 2-1/2 stories and 30 feet and in other Darien multi-family housing zones the maximum height is 2-1/2 stories and 28 feet.

C. Density proposed. With thirty proposed units, the proposed project has a density of 28.5 units per acre. The R-1 zoning district allows a maximum of 1.0 (one) unit per acre. The subject application is requesting a 28-fold increase in density over what is currently allowed under the existing R-1 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 magnitude of 28.5 units per acre on this site, in a three+ story building, raises several serious public safety issues.

D. Proposed Generator. The “Proposed Site Plan” shows a generator to be placed between the Dumpster/recycling area and the north side of the building. The Commission believes that the installation of such 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, and the proposed indoor parking must be ventilated at all times.

E. No Proposed On-site Open Space/Recreation Space. As noted, the subject application proposes a building which covers 35.4% of the subject property. The covered front entry, stoops and asphalt drive and parking area cover an additional 13,298 square feet or 29.1% of the subject property, resulting in a total impervious surface area of 64.5% being proposed. The submitted Planting Plan shows a rain garden/stormwater pond to be used for stormwater management which measures about 20’ x 47’. 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

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off the site, while possible, is not a practical option unless a signalized crosswalk is established across Tokeneke Road, a heavily travelled State highway.

2. 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 shall be part of any final modification of this proposed development that might be granted by this Commission.

F. 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.

G. Sidewalks. The Proposed Site Plan submitted by the applicants shows the existing bituminous sidewalk across the street from the subject property, along the north side of Tokeneke Road. The Proposed Site Plan does not show any existing or proposed sidewalks on or adjacent to the private road, Pheasant Run. It also does not show any sidewalks along the south side of Tokeneke Road in front of or alongside the frontage of the subject property. The Proposed Site Plan shows the existing stone wall on the front property line on Tokeneke Road. That stone wall is proposed to remain, but be slightly modified to accommodate the proposed new driveway off of Tokeneke Road.

H. 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 existing conditions and submitted application with the current R-1 standards in the Darien Zoning Regulations.

It should be noted that because Pheasant Run is a private road, and only allows access to the subject parcel when it is occupied by a single-family dwelling, there is no corner lot status for the proposed project, even though its current occupancy properly is viewed as a corner lot.

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a.

	<u>R-1</u>	<u>Existing</u>	<u>Proposed</u>
Minimum Lot Area (Square Feet)	43,560	45,740 s.f. (1.05 ac)	45,740 s.f. (1.05 ac)
Minimum Width	150'	>250'	>250'
Minimum Frontage (there is 152.57 feet of frontage along Tokeneke Rd. and 316.45 feet along Pheasant Run)	50	469.02	469.02
Minimum Depth	150	160'	160'
Minimum Front Yard (56.8' from building to Pheasant Run; 44.9' from building to Tokeneke Road)	40	56.1	56.8/44.9
Minimum Side Yard: Least One (from the building to the south property line, directly across from Tokeneke Road)	25	52.4	14
Minimum Side Yard: Total of Two	50	N/A (corner lot)	N/A (corner lot)
8. Minimum Rear Yard (from the building to the east property line, directly across from Pheasant Run)	40	47.6	12
9. Accessory Structures	40	81.6	N/A
9A. Minimum Distance from Front Lot Line			
9B. Minimum Distance from Side Lot Line	25	>25	N/A
9C. Minimum Distance from Rear Lot Line	40	55.4	N/A
10. Maximum Height in Stories	2-1/2	2	3+ at grade "basement" for parking
11. Maximum Height in Feet	30	Cannot be determined from plans	39.0
12. Maximum Building Coverage	20%	6.9%	35.4%
13. Impervious Site Coverage	No maximum	Cannot be determined from plans, but is less than 20%	64.5%

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

**Building Coverage.** The subject property is located in an R-1 single family residential zone and the maximum Building Coverage permitted by the zone is 20% of the lot area. That 20% maximum allowed Building Coverage is the zoning standard in the following zoning

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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. It is 25% in the 3.7AH zone. It is 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 Darien's 19 zoning districts, which are not overlay districts, is 20% or less.

- a) In Darien, the Building Coverage maximum is not a floor area ratio (FAR). Rather, it is a 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, screening, and emergency access to the building, as well as the needs of the residents 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 part of this Commission's defining the parameters which will apply for any new use at this location.

#### **IV. CONSULTANTS AND COMMENTS**

- o Comments from the Darien Environmental Protection Commission (EPC). In Darien, the EPC serves as its Inland Wetland Agency, Flood and Erosion Control Board, and Conservation Commission. The Darien Environmental Protection Commission (EPC) submitted a three-page report/memo dated December 27, 2010 concerning this application. That memo set forth thirteen basic concerns/comments. These include the following: the increase of new impervious coverage within the coastal management area; potential for direct and cumulative adverse impacts on downstream water quality; the long-term viability of the underground stormwater management structures; operation and maintenance plans for the stormwater detention system and the oil water separators; financial assurance to insure implementation of the approved inspection and maintenance plan; removal of a large number of mature trees; concerns about the depth to groundwater; potential quality of "backfill" to be used; any water discharged by potential sump pumps in the basement; light pollution; and LEED benchmarks and certification. The EPC report/memo emphasized that the preferred and better way to control the quality of stormwater runoff is to include a treatment train made up of vegetated recharge basins, swales, bio-filters, and rain gardens.
- o Comments from Darien Fire Marshal. The Darien Fire Marshal sent comments in two memoranda, the first dated October 4, 2010. Among the 11 assurances sought by that October 4, 2010 memorandum were: the provision of a 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, including the basement parking; the provision of a fire hydrant near the Tokeneke Road driveway; the installation of a standpipe system; verification of adequate

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water supply for firefighting; acceptable operating space and turn around for fire apparatus; all stairs to have a direct exit to the exterior; greater distance on the east side of the building than the 12 feet provided; greater distance on the south side of the building than the 14 feet provided; and building perimeter plantings to be field sited with the Fire Marshal around the entire building to ensure that ladder access to the upper floor egress windows will not be obstructed.

The Fire Marshal sent a second memorandum dated January 4, 2011 which sought four more assurances, namely: provide a minimum distance of 7 feet from the retaining wall on the east side of the building to the property line; provide at least an additional 2 feet of clearance from the south and east property lines to the building; provide some plan for maintaining the grass paver secondary emergency entrance/egress, especially with the clearing of snow; and assure all exterior portions of all means of egress shall be provided with normal as well as emergency lighting leading to an area of safe refuge.

- C. Comments from the State of Connecticut Department of Environmental Protection (DEP). In a November 9, 2010 two-page memo, the State DEP sent comments regarding the subject application. That letter notes that the proposal is consistent with the applicable policies of the Connecticut Coastal Management Act (CCMA).
- D. Comments from the Southwestern Regional Planning Agency (SWRPA). SWRPA sent comments in an e-mail dated November 2, 2010. In that letter, they note, that ConnDOT approval was granted for the driveway. They also noted that the development "...may likely have adverse municipal impacts relating to the density of the proposed development in an existing low density residential area..." "Potential run-off from the proposed action is also a concern."
- E. Hiring of Outside Consultants to Review the Subject Application. The Planning and Zoning Commission hired Joseph Canas, a professional engineer from Tighe & Bond to review the application from an engineering/drainage standpoint. The Commission also hired 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. 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 dated May 12, 2010, submitted on September 13, 2010, by Mr. Barry Hammons of Hammons, LLC. Mr. Canas sent an October 12/13, 2010 four-page letter with associated credentials. After that, revised drainage plans were submitted; and Mr. Canas then submitted a December 22, 2010 three-page letter reviewing the submitted plans and associated drainage report. Mr. Hammons responded to Mr. Canas' December 22, 2010 letter with a response memorandum dated January 2, 2011.
- G. Stormwater Management/Drainage. As noted above, the applicants have submitted plans which cover 64.5+/-% of the subject property with the proposed building, including its covered front entrance and stoops, and with paved surfaces for parking and driveways. Included in the proposed plans are designs for a stormwater containment system which gathers

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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 and then a very short way down the hill directly into Five Mile River adjacent to the bridge where Tokeneke Road/Route 136 crosses over into Norwalk's Rowayton district. To function properly, the pretreatment structures should be inspected at least once every 2-3 months and the chamber bed should be inspected annually at the inlet and outlet areas to remove any restrictive materials. Mr. Canas identified a number of issues with the plan and the assumptions used by the applicants' expert in preparing the Drainage Report. In response to some of Mr. Canas' concerns, the applicants added two (2) additional Cultec units as well as a rain garden in the northwest corner of the site. Other concerns of Mr. Canas were not addressed with the explanation that they would be addressed at the construction level stage.

1. Concerns were expressed at the hearings that the design did not include above ground detention as part of the treatment train, but relied primarily on sub-surface stormwater storage structures. It was pointed out that the 2004 Connecticut DEP Stormwater Quality Manual states a preference for above ground structures to capture and treat stormwater. In response to these concerns, the applicants provided a small detention and recharge basin in the northeast corner of the site, but in its memo the Darien Environmental Protection Commission, acting in its capacity as Conservation Commission and Flood and Erosion Control Board, pointed out that "because of the proposed density and large area of impervious surface, this small detention basin does not obviate the need for the large array of underground storm water structures."
2. Concerns were raised regarding the design of a stormwater pond (rain garden) which includes a proposed retaining wall on the north and east sides of the pond. It remains unanswered whether or not the wall design can resist the hydrostatic forces that will be imposed on it by a full pond. Further, the slope of the pond sides is steep, at 2:1. The 2004 Connecticut DEP Stormwater Quality Manual recommends slopes no steeper than 4:1 for detention ponds.
3. It also was brought out during the hearings that the original proposed stormwater system contained no means of filtering or containing soluble contaminants, even though the site is a mere tenth of a mile from its outlet into the Five Mile River estuary. The site is a potential source of motor vehicle sourced soluble liquid contaminants such as ethylene glycol from leaking engine cooling systems, as well as liquids spilling from the Dumpster and from the vehicles that stop by to collect the contents of the Dumpster.
4. Given the one acre plus space available on the site, it is more than feasible to design the entire stormwater system to consist of swales, open rain gardens, bio-filters, and surface flow courses which can easily be observed, inspected, and maintained by simple maintenance methods. The natural vegetation in surface gardens and ponds perform filtering and absorption as well as sedimentation which are substantially better than underground chambers and is crucial when the outflow is so close to sensitive coastal estuaries and other protected resources.

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- H. Legal Issues. Attorney Robert Fuller was hired by the Commission to review several site specific legal issues and questions relative to the submitted application. He submitted a letter dated January 4, 2011. In that letter, he reviews three issues: 1) the right of the applicants to access Pheasant Run, which is a privately owned roadway, or to improve land on private property that is adjacent to Pheasant Run; 2) jurisdiction over access to Tokeneke Road, a State Highway, adjacent to the north of the property; and 3) possible takings issues.

Access over Pheasant Run. In his January 4, 2011 memo, Mr. Fuller noted that fire trucks or other emergency vehicles do not need an easement to enter onto a property in an emergency if there is a safe path that will accommodate the emergency equipment. Mr. Fuller explained in that letter that additional use or expansion of the subject property's current easement into and over Pheasant Run would require review and approval from the Pheasant Run Homeowners Association, Inc., which owns the private road.

Jurisdiction over access to Tokeneke Road. Mr. Fuller noted that access to the site from a State highway such as Tokeneke Road does not prevent review and action by a local Planning and Zoning Commission. A local Planning and Zoning Commission can impose conditions relative to safe access, provided that they do not conflict with the ConnDOT.

Possible Takings issue. Mr. Fuller noted that if the Commission were to preclude development by denying all access to the public road a court would probably conclude that there was a taking if no curb cut at all were approved by the Commission.

- I. Comments Received from General Public. Both written and spoken comments were received from the general public on this matter. Included among them were various letters with exhibits received from John McRae, President of the Pheasant Run Homeowners Association, Inc. (including those dated November 10, 2010, December 30, 2010 and January 4, 2011); a submission dated November 9, 2010 and a subsequent memo with exhibits dated January 3, 2011 from Barry Seeman of 7 Pheasant Run, and a November 30, 2010 letter from Spencer McIlmurray of 27 Pheasant Run. These submissions from concerned neighbors focused on traffic speeds and sight lines along Tokeneke Road extending from the newly installed traffic light at Cliff Avenue to the intersection of Pheasant Run and Tokeneke Road, as well as on other issues. Comments from the general public who live on Pheasant Run noted that sight line problems currently exist when exiting Pheasant Run.

**V. TRAFFIC, SIGHT LINES, TRAFFIC VOLUME AND PUBLIC SAFETY**

- A. Traffic and Traffic Volume. Currently, as shown on the location map and on Town maps, several streets intersect with Tokeneke Road near the project's proposed location and where its access driveway is proposed. All adjacent streets intersecting with Tokeneke Road have stop signs at their entrances to Tokeneke Road. Tokeneke Road is an arterial highway, and is the principal street in that section of Town. One nearby street, Cliff Avenue, is signalized at its intersection with Tokeneke Road. Tokeneke Road is a heavily trafficked street, as noted from the submitted information—traffic is in the range of 5600-6500 vehicles/day. There were no traffic counts submitted by the applicants until the final public hearing. These had been conducted only after the preceding public hearing session. However, other traffic and speed data had, by then, been submitted from ConnDOT records, from the Darien

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Police Department and from private citizens who arranged for this important data to be gathered.

1. Tokeneke Road is the principal street from downtown Darien to the Rowayton district of Norwalk. Traffic from the proposed site would need to enter Tokeneke Road and turn left to proceed west to the Central Business District of Darien. That is the most likely route to and from the subject property almost all Darien shopping, Town services, health care resources and Town recreation facilities. It also is the shortest route to I-95 entrance/exit #12, the Tokeneke Road entrance/exit ramps.
2. Traffic exiting the site and turning right could proceed a very short way and then turn north up Cliff Avenue to other parts of Darien and Norwalk or proceed east and then across a bridge over the Five Mile River into Norwalk and Rowayton.
3. Heavy traffic during the morning and afternoon/evening peak hours on Tokeneke Road near the proposed site makes the existing entrance of Pheasant Run onto Tokeneke Road a dangerous intersection for the relatively small number of drivers who enter and exit that street, where there are now eight residences. Pheasant Run is a short dead-end/cul-de-sac street approved in 1958, a very short distance to the west of the project site's proposed driveway. Emerging from Pheasant Run is particularly dangerous for drivers seeking to turn left to proceed west along Tokeneke Road. That testimony was received from the residents who live on Pheasant Run, and it has been personally observed by members of this Commission.
4. Factors affecting left turns from the site: Traffic on Tokeneke Road coming from the east accelerates from the bridge that spans the Five Mile River to travel up the Tokeneke Road slope. When there is a break in that traffic from the east, the traffic from the west is more difficult to assess because of the very short sight line to the left along Tokeneke Road, as that street goes up the hill to the west of the proposed driveway. Sight lines to the west from the proposed driveway are restricted due to the fact that the road rises and curves away further to the left and out of sight. Vehicles coming along Tokeneke Road from the left (the west) are out of sight, until they suddenly appear topping the crest of the hill. Such vehicles are often traveling at a relatively fast speed, coming down the hill.
5. The left turn entrance into the proposed driveway from the east will require patience and quick reflexes in order to identify a gap in the opposing east-bound traffic coming down the hill. The relatively recent installation of the traffic signal (indicative of a recognized safety condition) at the Cliff Avenue/Tokeneke Road intersection provides some shelter when it turns red for Tokeneke Road traffic, because the Cliff Avenue light is sited between the subject property and the place to the east where Tokeneke Road crosses the bridge into Norwalk. The light turns red to halt traffic on the State highway, Tokeneke Road, only when traffic coming south on Cliff Avenue "trips" a sensor as it approaches that signalized intersection (source: Mr. Spear, January 4). For this reason, traffic moving eastbound on Tokeneke Road and wishing to turn left onto Cliff Avenue, sometimes must queue, and may block the entrance to Pheasant Run. Such queues would need even fewer cars to block the driveway of the proposed project because its proposed location is closer to the Cliff Avenue turn than is Pheasant Run. This problem was given specific mention

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by the ConnDOT's Manager of Traffic Engineering, who described the resultant situation as one of simultaneous left turn "...interlock, creating safety and operational concerns." (letter of 23 October 2009 from J.P. Carey, PE)

6. Even with the addition of the Cliff Avenue traffic light, the exit from Pheasant Run is still a dangerous intersection, and would be made even more dangerous if the proposed site driveway becomes operational just 60+/- feet to the east, as applicants are proposing. With Pheasant Run and the project's driveway operating at the same time the risks associated with exiting onto Tokeneke Road are far greater than either functioning alone.
  7. Existing Traffic Light in Vicinity. The traffic light at Cliff Avenue, which was installed in 2010, is an improvement, but one must consider how many curb cuts there are in close proximity to that traffic light. Adding another high volume driveway so close to the traffic light creates a serious traffic safety problem which is not acceptable even if it creates additional affordable units. The problem was clearly enunciated in the October 23, 2009 letter from John F. Carey, PE, Manager of Traffic Engineering Bureau of Engineering and Construction. In his letter to the applicants, he indicated that a 25 unit development was not feasible unless an exit driveway could be located opposite Cliff Avenue, and thus use its traffic light.
  8. Driveway Curb Cut and Curb Cuts in Vicinity. One curb cut onto Tokeneke Road is proposed to serve this development. It would be 24 feet wide, plus the curved radius of each edge of the driveway as it intersects with the street and would be about 35 feet east of the western property line of the subject property (which is also the edge of the Pheasant Run right-of-way). One factor in the area is the number of curb cuts now in the vicinity. As shown on the submitted Proposed Site Plan and attached Sight Distance plans and listing from the west, the following curb cuts are within a 260 foot distance along Tokeneke Road:
    - On the south side of the road, the intersection of Pheasant Run (a private road);
    - On the north side of the road, there is a driveway for a single-family residence directly across the street from Pheasant Run.
    - On the south side of the road, the proposed driveway for the proposed 30 unit building is about 85 feet east of the centerline of Pheasant Run;
    - On the north side of the road, the intersection of Cliff Avenue--about 210 feet east of the centerline of Pheasant Run;
    - On the south side of the road, the curb cut for 277 Tokeneke Road—Five Mile River Kitchen—about 250 feet to the east of the centerline of Pheasant Run;
    - On the north side of the road, the curb cut for 280 Tokeneke Road, a small office building--about 260 feet east of the centerline of Pheasant Run;
- B. Sight Lines. The following plans show the sight distances from the proposed driveway along Tokeneke Road:
- "10', 15' Sight Distance East (Towards Norwalk) prepared for Tokeneke Senior Residences, #4 Pheasant Run", by Hammons, LLC, scale 1"=20', dated February 26, 2010.
  - "10', 15' Sight Distance West (Towards Darien Center) prepared for Tokeneke Senior Residences, #4 Pheasant Run", by Hammons, LLC, scale 1"=20', dated February 26, 2010.

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These plans show the sight lines from the proposed driveway onto Tokeneke Road. The applicants note on those plans as well as on page 2 of the December 27, 2010 letter from DLS Traffic Engineering, LLC, that some work is proposed to improve sight lines. This work includes lowering an existing wall and removing material within the existing right-of-way. Those plans also show the sight distance and associated ConnDOT recommended sight lines as:

<b>SIGHT DISTANCE AS MEASURED</b>	<b>ConnDOT Recommended Sight Line Distance At 35 mph</b>	<b>Looking East (Towards Norwalk)</b>	<b>Looking West (Towards Darien Center)</b>
10' back from edge of Tokeneke Road	<b>390</b>	390'	285-290'
15' back from edge of Tokeneke Road	<b>390</b>	390'	290'

The sight distances are based upon the 85<sup>th</sup> percentile speed. As measured by DLS Traffic Engineering, LLC, the 85<sup>th</sup> percentile speed along the Tokeneke Road frontage at the site is 35 mph traveling eastbound, and 36 mph traveling westbound. Mr. Galante's January 4, 2011 letter notes, "Based on standards and guidelines provided by ConnDOT for intersection sight distance, 390 feet would be needed in both directions." (page 2). Looking east, that sight distance can be achieved; looking west, it cannot.

In his first letter to the Commission dated November 9, 2010, Mr. Galante noted that if the applicants had submitted a Traffic Study with the application, it would have included information regarding intersection sight distance at the proposed access drive. Mr. Galante's November 30, 2010 letter (page 2) goes into additional details regarding the sight lines. "At the location of the proposed access drive, which is located approximately 90 feet east of the intersection with Pheasant Run, there is the same restricted sight line to the west due to the embankment located along the southerly side of Tokeneke Road and west of the Pheasant Run intersection. The restricted sight line is due to the embankment and also due to the vertical alignment of Tokeneke Road."

The Commission's consultant, Michael Galante then reviewed these proposed project driveway's Sight Distance plans, and commented further on the sight line issue in his January 4, 2011 memo. In that memo, he notes (emphasis added), "...with minor regrading 285 feet of intersection sight distance will be available to the west, **which is substantially less than the 390 feet needed** for 35 miles per hour."

Commission members noted that if another vehicle is waiting on Pheasant Run to turn into Tokeneke Road, it would block the view and further reduce the sight line available to any driver trying to leave the proposed site. The sight line from Pheasant Run is even worse than the sight line of the proposed new driveway. Pheasant Run would not be approved as a subdivision under today's regulations, without including a traffic light, for exactly this reason. (See diagram titled, "Diagram Showing Obstructed Sight Line").

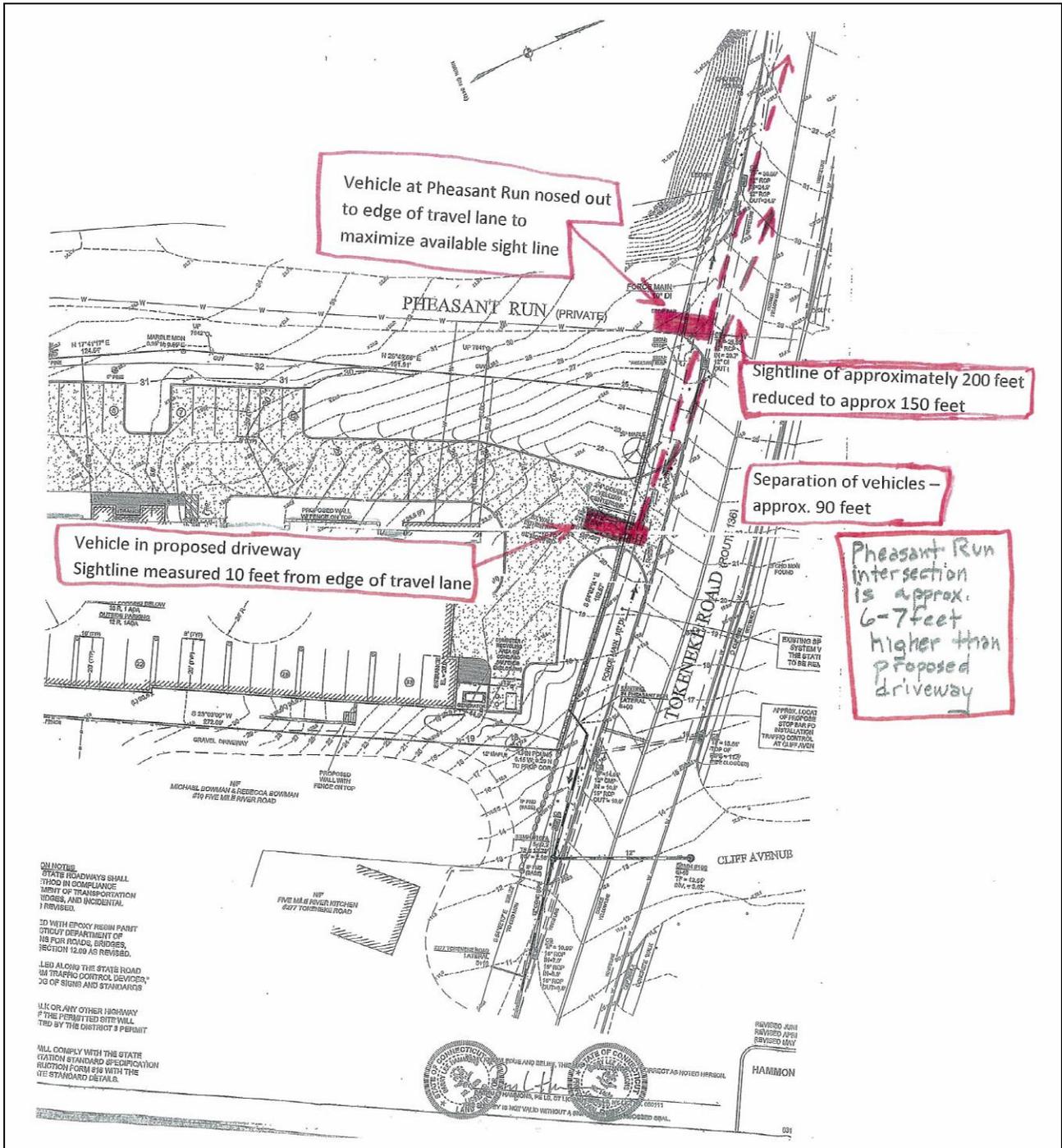
- C. Vehicle Speeds. In order to analyze required sight lines, it is imperative to understand vehicle speeds in the vicinity. The Commission received testimony regarding the speeds of

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vehicles going both eastbound and westbound along Tokeneke Road in the vicinity of the subject property. In his November 30, 2010 letter to the Commission, Michael Galante notes that determination of the actual 85<sup>th</sup> percentile speed needs to be submitted and reviewed. “An intersection sight distance should be based upon these criteria, and not the posted speed limit.”

1. The first submitted speed data were presented by the applicants at the November 30, 2010 hearing. That had been received from ConnDOT in a November 21, 2010 e-mail. In it the data were categorized as northbound/southbound, which has been interpreted and reconciled to be westbound/eastbound. Second, speed data were submitted by DLS Traffic Engineering on behalf of the applicants, and third, speed data were collected by the Darien Police Department. Also, a neighbor submitted minutes from a June 2007 meeting of the State Traffic Commission at which a report was presented reflecting an extensive DOT study done of the traffic on Tokeneke Road. The Commission accepts the data provided by DLS Traffic Engineering as showing speeds at the proposed driveway location. This is consistent with the data provided by the Darien Police Department. While the Police Department data and the 2007 ConnDOT study data show higher speeds than were measured in front of the site, these higher measurements were made to the west of the site, up the hill where the speed limit is higher and the traffic is just coming into view of the site. The chart on page 21 shows the above described data received regarding speeds along Tokeneke Road in the vicinity of the proposed project's driveway.

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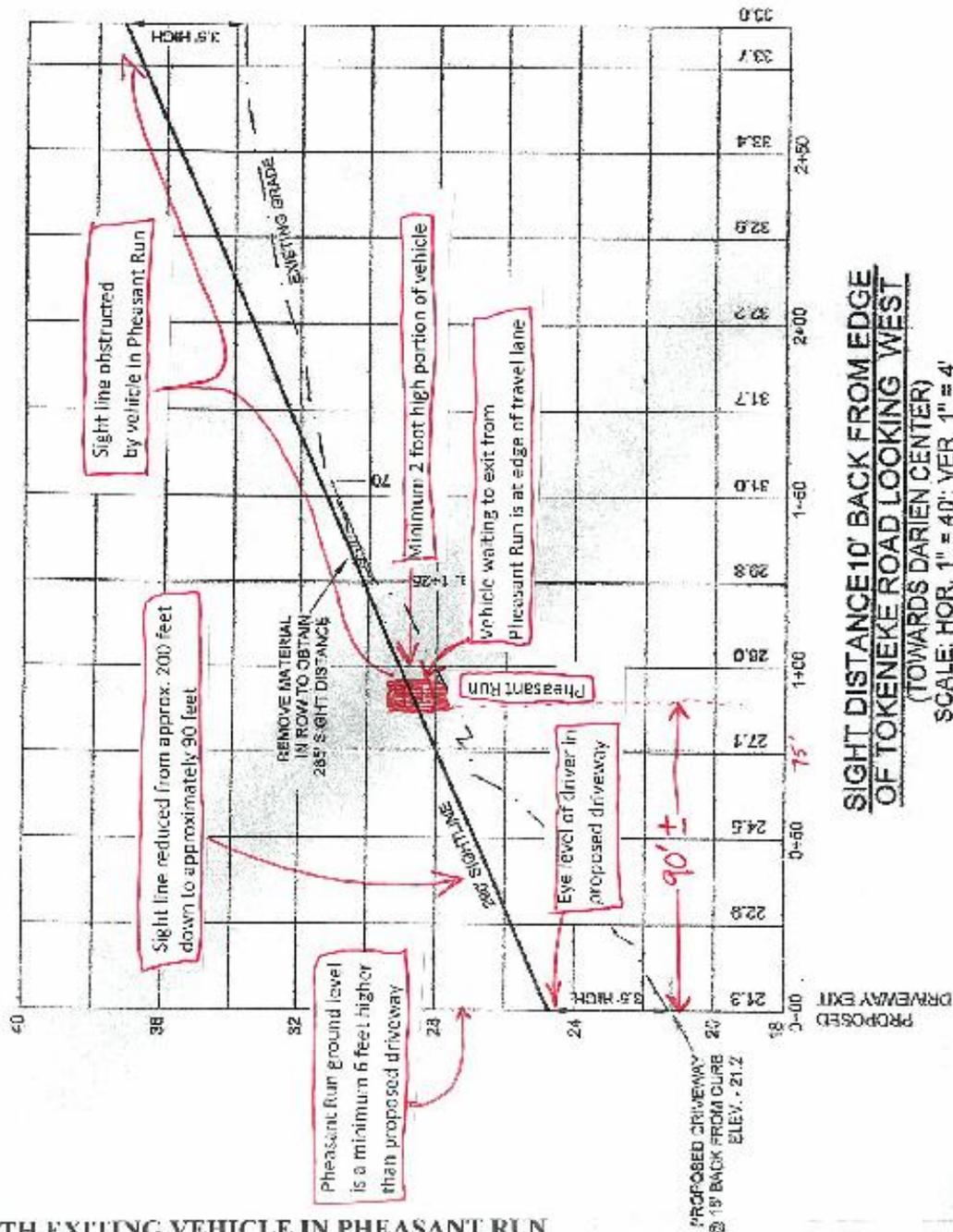


**DIAGRAM SHOWING OBSTRUCTED SIGHTLINE**

Diagram prepared by Darien Planning and Zoning.

March, 2011.

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**SIGHT DISTANCE 10' BACK FROM EDGE OF TOKENEKE ROAD LOOKING WEST (TOWARDS DARIEN CENTER)**  
 SCALE: HOR. 1" = 40'; VER. 1" = 4'

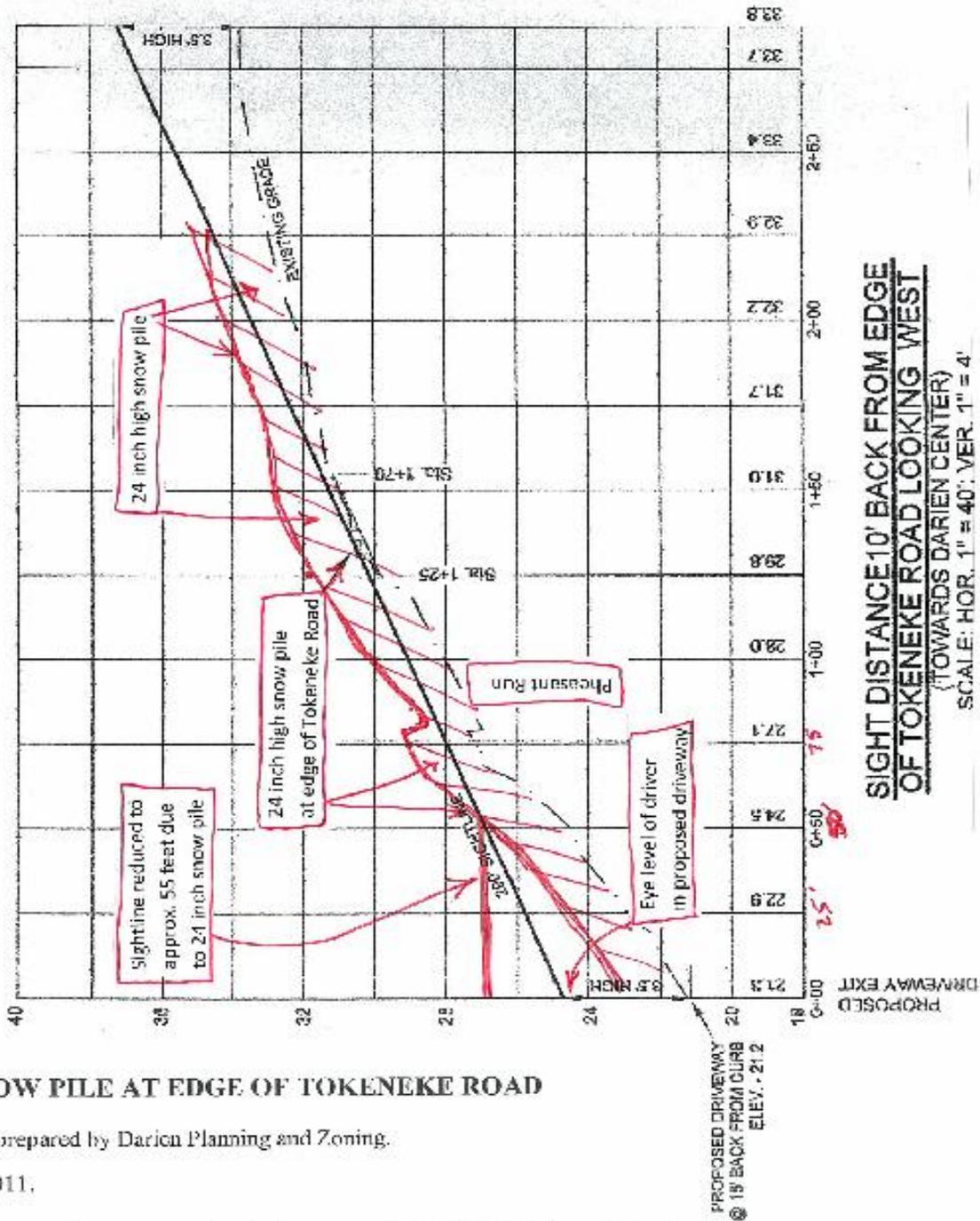
**WITH EXISTING VEHICLE IN PHEASANT RUN**

Diagram prepared by Darien Planning and Zoning.  
 March, 2011.

Profile data taken from applicants' submitted plan: "10', 15' Sight Distance West (Towards Darien Center) prepared for Tokeneke Senior Residences, #4 Pheasant Run", by Hammons, I.J.C, scale 1"=20', dated February 26, 2010.



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**SIGHT DISTANCE 10' BACK FROM EDGE  
 OF TOKENEKE ROAD LOOKING WEST**  
 (TOWARDS DARIEN CENTER)  
 SCALE: HOR. 1" = 40'; VER. 1" = 4'

**24" SNOW PILE AT EDGE OF TOKENEKE ROAD**

Diagram prepared by Daricn Planning and Zoning.  
 March, 2011.

Profile data taken from applicants' submitted plan: "10', 15' Sight Distance West (Towards Darien Center) prepared for Tokeneke Senior Residences, #4 Pheasant Run", by Hammons, LLC, scale 1"=20', dated February 26, 2010.

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	<b><u>85<sup>th</sup> percentile Speeds eastbound (southbound)</u></b>	<b><u>85<sup>th</sup> percentile Speeds westbound (northbound)</u></b>	<b><u>Posted speed limit</u></b>
Data from State Traffic Commission June 19, 2007 as presented in Barry Seeman November 9, 2010 memo. (see STC minutes page 10 attached to memo of Seeman dated Jan. 3, 2011)	43 mph	41 mph	25 mph
ConnDOT data (as noted in November 21, 2010 e-mail)	30.5 mph	30.7 mph	25 mph
DLS Traffic Engineering data (as noted in 12/27/2010 letter)	35 mph	36 mph	25 mph
Speed data gathered by John McRae of Pheasant Run (as noted in his January 4, 2011 memo)	38 mph	Assumed it would at least equal the 35 mph posted speed limit sign	25 mph
Darien Police Department data (as noted in 1/4/2011 fax)	37 mph	40 mph	25 mph

2. Vehicle Speeds/Sight Lines. The applicants' engineer prepared two plans dated February 26, 2010 showing the sight distances to the right (toward the east) and to the left (toward the west) from the proposed exit driveway onto Tokeneke Road/Route 136. They were submitted by applicants to the Commission during December 2010. To the right, the exiting drivers can see all the way to the children's consignment shop, a distance of 390 feet. But toward the left, drivers exiting the proposed driveway can only see for 285 feet, even after some of the terrain along Tokeneke Road is sculpted away, as proposed by the applicants. Sight line distances may be reduced by the growth of vegetation or build-up of plowed snow along the southern edge of Tokeneke Road, where the highway rises and curves away from the site. There is no tolerance for when the western sight line is obstructed by any plowed snow build-up. Such build-up, which is a common winter condition, will mean an even shorter sight line to the west. This condition is exacerbated by the incline of the road itself. The attached diagrams on pages 17-18 demonstrate that when a vehicle at Pheasant Run is at the edge of the travel lane to maximize that vehicle's sight line, this has the effect of reducing the sight for vehicles simultaneously exiting the proposed driveway to only 150 feet.
  
3. There was evidence showing that cars passing the site along this State highway, more often than not, exceed the posted speed limits which are 25 mph at the site itself, and 35 mph up the hill and around the curve to the west. Reports from the Connecticut Department of Transportation (ConnDOT) were introduced by the applicants via a November 21, 2010 memo. These data are reflected in the chart above.

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4. Connecticut Counts, LLC. In addition, the applicants' traffic engineer had an automated vehicle counter placed on Tokeneke Road near the site by Connecticut Counts LLC for 3 half days in late November, 2010. The counter's data showed an 85<sup>th</sup> percentile speed past the site of 35 mph eastbound and 36 mph westbound, meaning that 85% of the vehicles passing the counter had speeds at or below that speed, and 15% of them had speeds at or above that level.
5. Darien Police Speed Study. The Darien Police Department set up two radar activated traffic monitors (Speed Sentry) on poles on the south side of Tokeneke Road uphill to the west of the site that measured the eastbound speed of vehicles approaching the proposed site driveway from the west. Thus placed, the monitors were visible to approaching eastbound traffic and, therefore, could have had a moderating effect upon the drivers. Nonetheless, the data printouts provided by the Police Department dated January 4, 2011 showed that over a period of 10 days in December 2010, the 85<sup>th</sup> percentile eastbound speed was determined to be 37 mph and 40 mph at the two monitoring locations to the west of the site.
6. Commission Finding. Based on all of the data in the record, the Commission members' own familiarity with the site and the curving downhill approach to the site along Tokeneke Road from the west, it is clear that significant amounts of eastbound traffic coming into view from the proposed site driveway will be at risk of a collision with vehicles exiting from the site, whether the exiting cars are turning right or left from the proposed driveway.
7. Traffic Light. When the Cliff Avenue traffic light is red to Tokeneke Road traffic, that red light can be seen by drivers approaching from the west. However, due to the curve and slope of the road, these drivers cannot yet see the site driveway or any vehicles emerging from it. A red light will slow them down, making the situation less dangerous. But a red light signal is triggered only when traffic approaching the light from Cliff Avenue trips a sensor. When the light is green for Tokeneke Road traffic, which is most of the time, a driver emerging from the site will see no sign of approaching traffic from his or her vehicle's left side (the west). When such a driver commits to entering the street, he or she may not yet see those eastbound vehicles which are relying on a green signal from the Cliff Avenue traffic light as they bear eastbound down the road, many at speeds well in excess of forty (40) miles per hour. The drivers of both vehicles will have to react quickly and decisively to avoid a collision. The Commission notes that the approaching vehicles will have to slow down while traveling down an incline and a driver exiting from the site is highly likely to be elderly. The Commission received testimony regarding the deficiencies and abilities of elderly drivers.
8. Three Potential Signal Light Modifications. Irrespective of the number of units of senior housing that might be approved for the proposed site, or the number of vehicles permitted per housing unit, to have this development served by an unsignalized exit driveway onto this State highway raises very serious safety issues. These problems could be substantially reduced if the driveway were signalized so that a red light for Tokeneke Road traffic is in effect when vehicles emerge onto the highway from the development. Achieving this end will necessitate coordination and/or modification of

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the existing nearby traffic light at the Cliff Avenue intersection. The Commission has identified three alternatives for the applicants, at their expense, to develop a safe driveway configuration for the development.

- a) Obtain an easement over the property of the Pheasant Run Homeowners Association Inc., to allow the project's principal access to be over the Pheasant Run private street. Then arrange for a traffic signal at Pheasant Run and a new crosswalk over Tokeneke Road;
  - b) Acquire a portion of the contiguous property to the site's immediate east, or obtain an easement over that property, so the proposed development's access driveway could be relocated directly opposite Cliff Avenue's intersection with Tokeneke Road. With this configuration, the existing signal could coordinate traffic for the proposed site and Cliff Avenue, as well as for crosswalks across Tokeneke Road (new) and Cliff Avenue (existing);
  - c) Arrange for the installation of a traffic signal at their proposed driveway directly upon Tokeneke Road, which is then coordinated with the Cliff Avenue traffic signal and also monitors a new crosswalk across Tokeneke Road from the driveway, as well as with the existing crosswalk at Cliff Avenue.
9. ConnDOT Statements Concerning Signalized Driveway: The potential for tying the multi-unit senior housing development into the Tokeneke/ Cliff Avenue traffic light was the subject of an October 23, 2009 letter from John F. Carey, PE, Manager of Traffic Engineering Bureau of Engineering and Construction ConnDOT. He noted when referring to a similar proposal considered by the applicants for the subject property, that "...access to the proposed housing development on Route 136 is therefore not recommended unless a signalized driveway can be located directly opposite Cliff Avenue." The Commission acknowledges that Mr. Carey was not reviewing the subject application, or even an identical application. His October 23, 2009 letter refers to a 25-unit senior housing development at the site.

Paul Holmes of the Connecticut Department of Transportation reviewed the driveway location for the 30-unit project proposed by this application. In his letter of March 24, 2010, and then followed up with a July 13, 2010 letter, he noted that the driveway plans were subject to 5 conditions or stipulations, one of which is proof of Town approval. The Commission cannot and does not approve of the proposed project, as designed, and does not approve the driveway design or location. To make the driveway sufficiently safe it must be modified to provide for signalized access. The applicants must also provide a secondary emergency access driveway. **The Commission believes that a signalized driveway onto Tokeneke Road is the only safe way to exit and enter the proposed project.**

- D. Queuing Will Block Driveway. . Currently, eastbound traffic stopped at the Cliff Avenue traffic light queues in front of the proposed site driveway, as does eastbound traffic waiting to turn left onto Cliff Avenue. The "Proposed Site Plan" shows the location of the existing stop bar for the Cliff Avenue traffic light. It is 70-90 feet from the proposed curb cut. Assuming cars of 18' in length with some space in between cars, it appears that the proposed curb cut would be blocked by a queue of 3-5 cars. In fact, in the applicants' December 27, 2010 letter from DLS Traffic Engineering, LLC, on page 3, it is noted that "...the site

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driveway will be periodically blocked when the signal is called to the Cliff Avenue phase.” (i.e. “red” to Tokeneke Road traffic).

In his January 4, 2011 letter to the Commission, Michael Galante of FP Clark agrees with the applicants’ traffic consultant that the proposed driveway will be blocked by queuing at the Cliff Avenue traffic light during certain times. Mr. Galante notes in that letter, “This condition could result in a hazardous condition for motorists exiting the subject property and turning left between waiting vehicles to travel westbound on Tokeneke Road and will also restrict motorists from turning left into the driveway on Tokeneke Road during this peak hour.”

Also, there is occasional queuing of westbound traffic waiting to turn left onto Pheasant Run. Given the speed of some traffic past the site, there already has been a number of rear end collisions caused by this queuing. The proposed site will both increase the queuing and compound it.

E. Comments Received from Traffic Consultant Michael Galante of Frederick P. Clark Associates.

1. Applicants Failed to Submit Traffic Study: At the November 9, 2010 public hearing on this matter, the Commission noted that the applicants had not submitted a Traffic Study with the application. Accordingly, the Commission voted to require the submittal of a Traffic Study, as specifically allowed in Section 1024 of the Darien Zoning Regulations. The public hearing was then continued to November 30, 2010 to allow the applicants an opportunity to prepare such a Traffic Study.
2. Galante Comments: Mr. Galante wrote four separate letters to the Commission in response to the materials submitted, and also testified at the public hearings. His letters are dated: September 29, 2010 (4 pages with attached credentials); November 9, 2010 (two pages); November 30, 2010 (10 pages); and January 4, 2011 (4 pages). His September 29, 2010 letter focused generally on the following subject areas: 1) Site Access Considerations; 2) Traffic Impact; and 3) Summary. The November 9, 2010 letter noted the various topics which are typically included in a Traffic Study. The November 30, 2010 letter includes comments on the Site Plan and the Traffic Statement prepared by DLS Traffic Engineering, LLC, for the applicants. The January 4, 2011 letter made comments relative to four subject areas: 1) Accident History; 2) Vehicle Queuing; 3) Sight Distance; and 4) By-Pass Area.
3. DLS Traffic Engineering, LLC: The applicants submitted various memoranda on the subject of traffic from DLS Traffic Engineering, LLC. The first was a November 18, 2010 statement letter (3 pages with 2 pages of attachments). This was followed by a December 27, 2010 report letter (4 pages with attachments). The applicants chose to ignore the request of the Commission for a Traffic Study.

F. Inadequate Parking. As noted by the applicants on page 3, 47 parking spaces have been proposed for the 30 units—a ratio of 1.566 spaces per unit. Thirteen (13) of those spaces are located outside of the building in an at-grade surface parking area. One of those thirteen

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spaces would be handicapped van accessible. In the basement parking below the proposed building, 34 parking spaces are proposed, with one of those being handicapped-accessible. There is no off-site parking allowed on Tokeneke Road, nor are there any nearby municipal or private parking lots which could be considered or used by residents or their 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 residents, as well as the impact of parking needs on the surrounding community for a multi-unit project at this location.
2. No off-site parking is available. Given this location, the heavy traffic on Tokeneke Road and the narrowness of the surrounding streets, none of which are closely convenient or able to accommodate on-street parking, there is no doubt that all the needed parking for this proposed multi-unit 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.

1.5 on-site parking spaces for two bedroom units are inadequate. The applicants have asserted that occupancy will be limited and restricted to occupancy by 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 their own vehicles. A fully retired couple may have two cars and use them both regularly to reach shopping and services. Given the distance from the site to shopping, services, and to 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, others might have visitors, service personnel, etc., but the strain on the parking lot may be less pronounced than at night.

3. It is against this realistic assessment of the needs of the residents of a building of this nature at this specific location that the Commission must decide based upon the substantial public interests the appropriate number of on-site parking spaces that shall be needed for this project.
4. More than 47 parking spaces are needed at this site if all 30 units are two bedroom units. Existing multi-family zoning regulations adopted by the Planning and Zoning 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. That project consists of studio and one bedroom units

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with an average size of 448+/- square feet. The subject application proposes 30 units all with 2 bedrooms. The proposed units here average above 1,134+/- square feet. Parking needs for the proposed project and at 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 spaces 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 the accessibility of emergency vehicles), on Pheasant Run or on Tokeneke Road. Any or all of these conditions would create a public safety problem. Over twenty years of experience has demonstrated that 2.5 parking spaces are the minimum needed for each 2 bedroom residential unit in the circumstances presented by this proposed development.

G. 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. Emergency Responders. The Commission notes that 30 units of senior housing are likely to generate a higher number of medical 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. 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 a traffic or parking problem. Responding emergency service vehicles to 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.
2. 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 an emergency access only (grass pavers) onto the private road, Pheasant Run. However, it was pointed out during the public hearing, that the Pheasant Run Homeowners Association Inc., could construct a stone wall or fence, which could block such emergency access.
3. 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 rear and side yard setbacks are proposed to be only 12-14 feet wide and much of the setback areas would be occupied by trees and other landscaping vegetation. 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

that have been proposed would mean that it would be difficult for rescue and fire suppression operations.

Overall Height of the Building. As mentioned earlier, the proposed building will be three full stories above what is essentially an at-grade parking garage. The height at the front entrance is 40 feet and the height at the entrance driveway to the garage to the peak of the building is 52 feet. By eliminating the basement level parking garage, and moving the parking to be at-grade, each floor of the building can be lowered, to reduce the height of the building, and improve fire department access, and associated safety. This also eliminates the carbon monoxide risks to the building from vehicles in the garage.

## VI. HEALTH AND SAFETY CONCERNS

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

1. Flooding. Unless the proposed drainage system can be built as shown on design plans submitted by the applicants, works perfectly and is properly maintained so it continuously work perfectly without fail, there is a likelihood that flooding on adjacent properties could occur, and/or water quality in the nearby Five Mile River and/or Long Island Sound could be compromised. The Commission believes that above-ground drainage structures, such as vegetated rain gardens and bio-filters, provide the most effective methods to address stormwater management and water quality needs. Above-ground systems are obvious to the naked eye, so it is more likely that proper maintenance will be done on a regular basis, thereby ensuring that the system functions properly. Moreover, their water quality performance is superior, which is particularly important here, as this location is so close to a major tributary to Long Island Sound.
2. No provision for open space. Normally, open space or recreational space would be provided for a 30 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 Tokeneke School, which is over a ½ mile away. Inadequate open space and recreation space for residents is a health and safety deficiency.

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### THE COMMISSION FINDS THAT

- The decision to protect substantial public interests in health, safety, or other matters which the commission may legally consider, is necessary.
  - The potential harm presented by this application clearly outweighs the need for nine additional affordable housing units.
1. The Commission finds that this application presents substantial public health and safety issues which it must protect. More specifically, the APPLICATION PRESENTS **TRAFFIC SAFETY ISSUES AND FIRE SAFETY ISSUES WHICH THE**

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COMMISSION NEEDS TO PROTECT, and the substantial public interest in health and safety is supported by substantial evidence in the record of this proceeding.

2. The Commission has balanced the need for 9 units of affordable housing in Darien versus the risks presented by this application to the users of the Tokeneke Road, Pheasant Run, Cliff Avenue, 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 affordable housing for the reasons set out herein.
  3. The 30-unit building proposed by the applicants, without modification concerning traffic signalization, would pose a very serious and direct threat to the health and safety of the users of Tokeneke Road, Pheasant Run, Cliff Avenue, and the subject property.
  4. The deficient sight line issues mentioned herein present a significant traffic safety concern. Other traffic safety concerns include existing queuing which now blocks the location where the proposed driveway would be. Other traffic safety concerns include the dangerous conditions of interlocked left turns into Cliff Avenue and into the proposed site, and insufficient on-site parking, with no available nearby off-site parking to compensate.
  5. Fire safety issues include no reliable emergency access onto the private road, Pheasant Run as well as a lack of space on the site for multiple emergency response vehicles. Also, there are deficient building setbacks from the southern property line, and the eastern property line.
  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 notes the importance of affordable housing; however, the Commission cannot support the project *as designed*, given the overwhelming deficiencies shown to be presented by the submitted proposal. The project needs to be modified to address these traffic and fire safety issues.
  7. The Commission has balanced the need for affordable housing in Darien versus the risks presented with the subject application 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 9 additional affordable housing units for the reasons stated herein, particularly when, with modifications, a viable project can be approved and constructed.
  8. The deficient driveway sight line is clearly supported by substantial/overwhelming evidence in the record and would pose a very serious and direct threat to the health and safety of the residents of this development and drivers on Pheasant Run and Tokeneke Road. It is clear from the record that there are safety issues due to the inadequate sight lines.
- C. THE COMMISSION FINDS THAT REASONABLE CHANGES CAN BE MADE TO THIS AFFORDABLE HOUSING DEVELOPMENT WHICH COULD PROTECT PUBLIC INTERESTS IN HEALTH AND SAFETY AND STILL PROVIDE A VIABLE MULTI-FAMILY PROJECT AT THIS SITE.

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1. The traffic safety concern is due to aforementioned location of and sight line issue at the proposed driveway onto Tokeneke Road. This issue can be resolved by traffic signalization.
2. The proposed building design has resulted in a building that is very close to the southern and eastern property lines, which has a negative effect on fire department access. A reasonable modification of the application can resolve this issue.
4. The intensity/density/number of units proposed results in serious parking issues and potential traffic safety and emergency response 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.
5. The manifest deficiencies in the choice and design of the components of the stormwater management system require substantial changes in order to prevent flooding and to provide reliable assurances of water quality at this location so close to delicate and vulnerable coastal resources.
6. 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 nine additional affordable housing units proposed by the applicants, and that such public interests can be protected by the Commission making reasonable and economically viable modifications to the proposed affordable housing development.
7. The Commission recognizes that under Connecticut General Statute Section 8-30g(c)(1)(D), it has the ability to modify the application. The Commission's concerns are based upon substantial and significant safety and health factors including, without limitation: the need for safe access, ingress, and egress; parking; sight lines; proper and safe access for emergency vehicles, equipment and personnel; and proper stormwater management.

## **VII. 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) 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.
  - e) 2010: Garden Homes, 397 Boston Post Road: Eleven (11) affordable units within a 35 unit building. Construction is underway, and nearly complete.
  - f) 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.
  - g) 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.
  - h) 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."
2. Affordable Housing Prior to 2005: This memorandum also specifically lists the following affordable housing units approved by the Planning and Zoning Commission. These include the following:
- 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;
  - b) 1985: Old Town Hall Homes: Elderly rental housing owned and operated by the Darien Housing Authority – thirty (30) units of moderate income senior housing;
  - 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 by the Town of Darien for 1.7 million dollars (according to 1994 RTM meeting minutes).
  - i) 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.

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3. Town Support of Affordable Housing: The record also 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, lessening setback requirements, increasing allowable building coverage and other incentives have already been incorporated into the regulations concerning 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. Recently Acquired Moratorium 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 57 Hoyt Street in Darien. Since those applications were both submitted to the Planning and Zoning Office prior to the DECD decision on the Moratorium, they were allowed to proceed. The Commission acknowledges that had this application been withdrawn anytime after November 2, 2010, the Moratorium would have prevented re-submittal of said application until November 2, 2014. Thus, both the Commission and the applicants were aware that any deficiencies in the application had to be addressed during the present application procedure for consideration of the project to continue at this time.

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A. **BASED ON THE FINDINGS STATED ABOVE, THE COMMISSION DETERMINES THAT IT IS NECESSARY TO REQUIRE THAT THE APPLICATION BE MODIFIED 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 DOES CLEARLY OUTWEIGH THE NEED FOR THE NINE AFFORDABLE HOUSING IN DARIEN PROPOSED BY THIS APPLICATION.**

1. **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 this

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substantial public interest in health and safety is supported by substantial evidence in the record of these proceedings.

2. **TRAFFIC SAFETY ISSUES:** The Commission has balanced the need for 9 units of affordable housing in Darien versus the traffic risks presented by this application to the users of the Tokeneke Road, Pheasant Run, Cliff Avenue, and 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 dangerous sight line issues present a significant traffic safety concern. A signalized entry driveway to the site would substantially reduce the safety issues caused by the short sight lines. Other traffic safety concerns include existing queuing which now blocks the location where the proposed driveway would be, as well as insufficient on-site parking, with no available nearby off-site parking to compensate. A reasonable amount of on-site parking provided on site would obviate the need for dangerous off-site parking.
  3. **FIRE SAFETY ISSUES:** The Commission has balanced the need for 9 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 the emergency access onto the private road, Pheasant Run as well as the building setbacks from the southern and the eastern property line. The Commission finds that building design has resulted in a building that is very close to the southern and eastern property lines, which has a negative effect on fire department access.
  4. **PUBLIC SAFETY RISK SUPPORTED BY RECORD:** 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. Even while noting the importance of affordable housing, this cannot support the project *as designed*, but given the overwhelming evidence in the record, the Commission can support modifications of the project.
  5. **BALANCING THE NEED:** The Commission has balanced the need for affordable housing in Darien versus the risks presented with the subject application 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 9 affordable housing units for the reasons stated herein, 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 THE PUBLIC INTEREST IN SAFETY.**
1. The Commission has considered the proposed site plan and the evidence in the record compiled before the Commission 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 these proposed affordable housing units; and that such public interests can be protected by making reasonable modifications to the proposed affordable housing development.

2. The Commission recognizes that under Connecticut General Statute Section 8-30g(c)(1)(D), it has the ability to modify the application. The Commission's concerns are based upon substantial and significant safety and health factors including: 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.

### **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 (#2-2010), Coastal Site Plan Review #259, Site Plan Application #278, Land Filling & Regrading Application #249, Christopher & Margaret Stefanoni, Tokeneke Road are hereby GRANTED WITH STIPULATIONS AND MODIFICATIONS.**

**1) PROPOSED ACCESS DRIVE SHALL BE TIED INTO THE EXISTING TOKENEKE/CLIFF AVENUE TRAFFIC LIGHT SYSTEM:** There is nowhere along the Tokeneke Road frontage where suitable and safe sight lines can be achieved. It is clear from the evidence provided during the public hearings that there are insufficient sight lines along Tokeneke Road for traffic heading westbound from the site. The only safe way to exit the site would be to have the proposed driveway tied into a traffic signal. This can happen by having ConnDOT review and approve one of three alternatives:

- a. Install a traffic signal at the proposed driveway intersection which would be coordinated with the existing Tokeneke Road/Cliff Avenue traffic signal; or
- b. Relocate the site driveway so it accesses the private road, Pheasant Run, and install a traffic signal at the intersection of Pheasant Run and Tokeneke Road, which is coordinated with the Tokeneke Road/Cliff Avenue traffic signal; or
- c. Connect any new driveway to the existing Tokeneke Road/Cliff Avenue traffic signal by acquiring or obtaining an easement over that adjoining property. With the driveway relocated directly opposite Cliff Avenue, there would be no increase in the number of signals within such a short distance along the State highway, Tokeneke Road.

**2) PROVIDE SIDEWALK ALONG TOKENEKE ROAD, AND PEDESTRIAN CROSSWALK ACROSS TOKENEKE ROAD, FOR PEDESTRIAN SAFETY:** The application shall be modified to install sidewalks on the south side of Tokeneke Road in front of the development. This will address issues related to pedestrian safety. It will allow residents of the proposed development to walk safely along the street in front of the subject property, without having to walk in the street. When other properties along this portion of the street are developed or redeveloped, the Commission will require that sidewalks be installed, thus creating

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a connected network for safe pedestrian travel. The pedestrian crosswalk across Tokeneke Road is to be incorporated into the traffic light system.

**3) APPLICATION SHALL BE MODIFIED TO INCREASE ON-SITE PARKING TO AVOID UNSAFE PARKING OFF-SITE:**

Applicants shall increase the number of on-site parking spaces from 47 (1.5+ per unit) to at least two (2.0) per unit. The building code requires that for each 25 parking spaces provided, one be a handicap-accessible van space. Because this is an age-restricted building, the Commission is requiring one additional handicapped-accessible space for each 25 spaces provided. (Thus a building with 25 spaces or less will have two handicapped spaces provided—one which must be a van space.) Increasing the number of on-site parking spaces may necessitate reducing the proposed 34.5% building coverage. As noted herein, the lower level parking garage must be eliminated in order to reduce building height and improve public safety.

**4) THE APPLICATION SHALL BE MODIFIED TO ADDRESS FIRE SAFETY REQUIREMENTS OF DARIEN FIRE MARSHAL:**

The Darien Fire Marshal stated in his January 4, 2011 memorandum that the plans needed to be revised to:

- *Provide a minimum distance of 7 feet from the retaining wall on the east side of the building to the property line, currently it scales at approximately five feet.*
- *Provide at least an additional 2 feet of clearance from the south and east property lines to the building.*
- *Provide some plan for maintaining the grass paver emergency entrance/egress onto Pheasant Run, especially with clearing of snow.*
- *All exterior portions of all means of egress shall be provided with normal and emergency lighting leading to an area of safe refuge.*

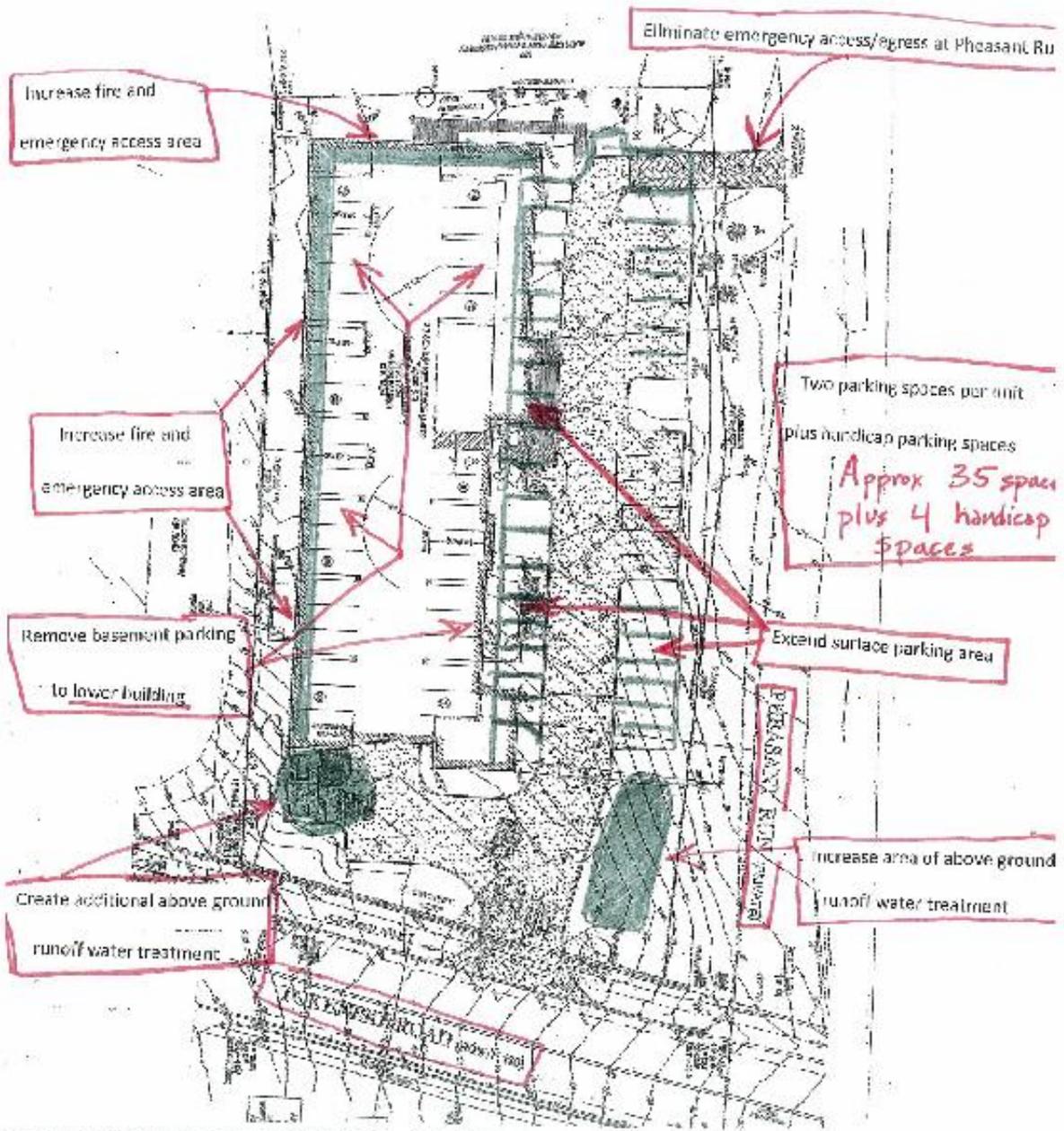
There should be additional room around all sides of the building to give the Fire Department more appropriate and improved space to operate. The building setbacks on the southern and the eastern property lines (considered the rear and side yards, respectively, under the Darien Zoning Regulations), are now 14 feet and 12 feet. Each shall be increased to be at least **16 feet** to address the January 4, 2011 concerns of the Fire Marshal. The existing Darien Zoning Regulations for the R-1 zone would normally require these setbacks to be 40 feet on the southern (rear) property line and 25 feet on the eastern (side) property line.

When revising the plans per this decision, the proposed building should not be increased in height. Any reduction in height, density and building coverage will improve fire safety, by allowing fire access all around the proposed building. The existing Darien Zoning Regulations for the R-1 Zone 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 herein is consistent with building height limitations contained in the town's zoning regulations with respect to other residential zones within Darien. This height limitation is reasonably connected to legitimate

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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. Due to the significant slopes on the parcel, stable locations for fire apparatus with support outriggers are less readily available, making higher buildings more difficult for fire rescue and fire suppression.

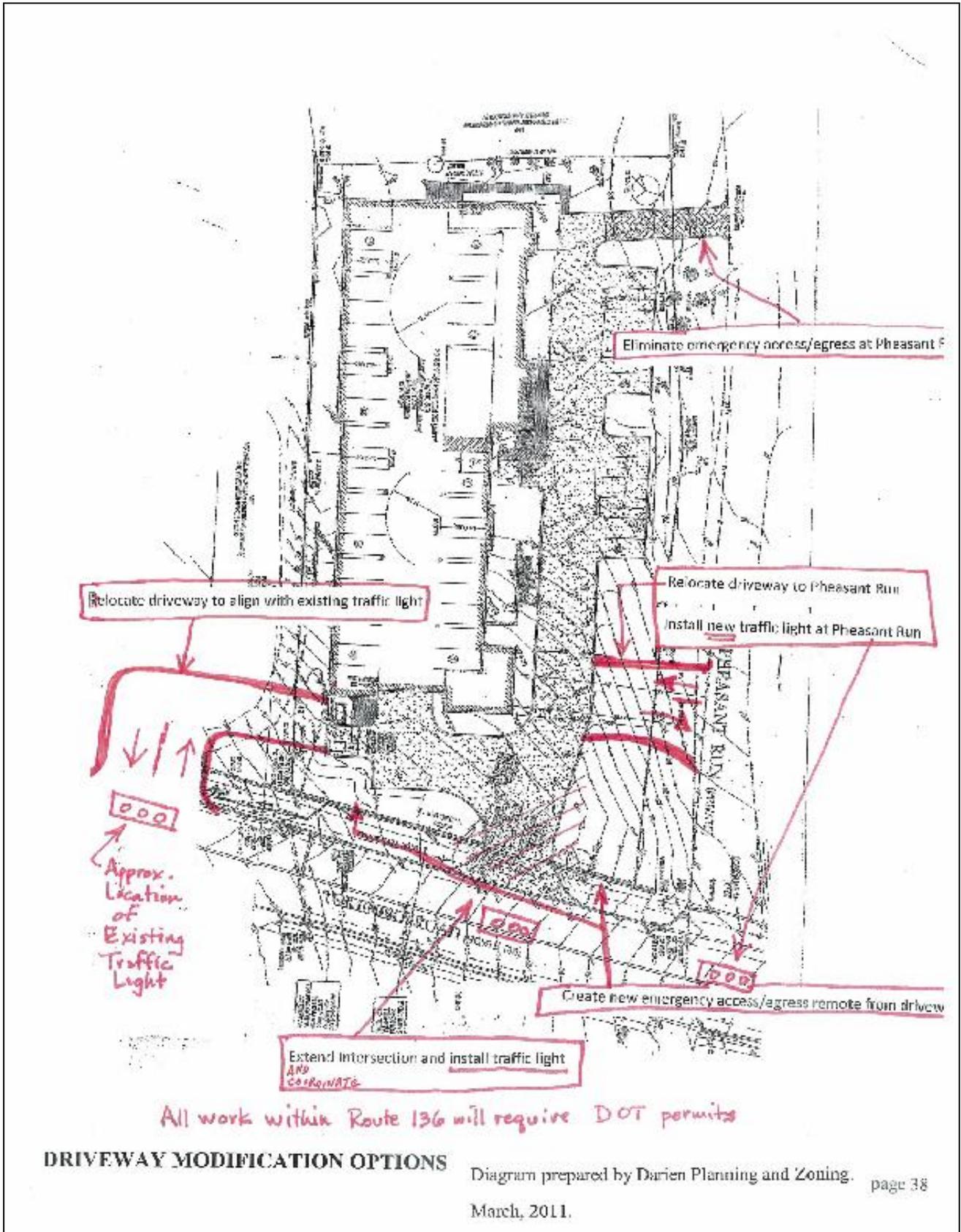
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SKETCH OF REQUIRED SITE PLAN CHANGES

RELATED DRIVEWAY MODIFICATION OPTIONS SHOWN ON NEXT PAGE

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**5) THE FOLLOWING PLANS NEED TO BE REVISED TO REFLECT THE MODIFICATONS REQUIRED ABOVE:**

- “Proposed Site Plan prepared for Tokeneke Senior Residences, #4 Pheasant Run”, by Hammons, LLC, scale 1”=20’, dated May 12, 2010 and last revised June 1, 2010, Sheet 2 of 5.
- “Grading and Utility Plan-Design of Storm Drainage System prepared for Tokeneke Senior Residences, #4 Pheasant Run”, by Hammons, LLC, scale 1”=20’, dated May 12, 2010 and last revised November 26, 2010, Sheet 3 of 5.
- “Soil Erosion & Sediment Control Plan prepared for Tokeneke Senior Residences, #4 Pheasant Run”, by Hammons, LLC, scale 1”=20’, dated March 12, 2010, Sheet 4 of 5.
- “Planting Plan prepared for Tokeneke Senior Residences”, by Stuart Sachs, originally dated May 12, 2010 and last revised 4 Jan 11. (Planting Plan was Sheet 5 of 5 in the originally submitted package, but that plan has been superseded via this Jan 4 2011 plan).
- Tokeneke Senior Residences, Tokeneke Road, by Stein Troost Architecture, eight 11”x17” pages, undated.

These five sheets of plans shall be revised and coordinated to reflect:

- Emergency egress. As noted above, there shall be a signalized egress (either at Cliff, at Pheasant Run, or somewhere along the site frontage). There shall also be an emergency egress provided. That may be onto Pheasant Run, if the Pheasant Run Homeowners Association Inc., and the Fire Marshal approve such. Otherwise, it shall be on Tokeneke Road. 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.
- Building height to be reduced to be not more than 2 ½ stories and 30 feet, by eliminating the basement level parking garage, and building setbacks increased to at least 16 feet address Fire Marshal safety concerns;
- Floor Plans reflecting fewer multi-family units. Note that the Commission is not approving an exact amount of units, but acknowledges that due to the modifications required herein and requirements of the State Building Code and other applicable regulations, the number of units of the size the applicants have planned will likely be lower than the 30 units they have proposed.
- At least 2.0 parking spaces per unit plus one extra handicapped accessible spot, due to this being an age-restricted development which is likely to have more than its share of residents and guests who have/need handicapped parking;
- New sidewalks along the south side of Tokeneke Road alongside the frontage of the subject property. No sidewalks are being required on Pheasant Run.
- Revised Zoning Chart on the Proposed Site Plan reflecting the new design;
- Stormwater management systems to be in the form of above-ground rain gardens/stormwater ponds and vegetated swales and bio-filters rather than below-ground cultec units. The revised drainage shall be sufficient in size to address the revised building and associated impervious areas on-site.
- Open space area, which can be used for both recreational space, as well as for snow storage areas. There should be sufficient space set aside and identified as snow storage

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areas. They shall be off the paved areas and adjacent to it so that full driveway and parking areas are maintained after snow is cleared. The storage areas shall be large enough to store 30" of snow with no intermediate thaw. The 20" assumption per winter season used by Mr. Hammons was unrealistically low.

**6. OTHER CONDITIONS OF APPROVAL:**

a. **STORMWATER:** Part of the submitted plan involves the installation of the proposed storm water retention system and the connection of overflow pipes from the storage and treatment system to the storm sewer input line adjacent to the catch basin in Tokeneke Road near the northeast corner of the subject property. This connection is required by the Commission, and is subject to the applicants 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 applicants by August 14, 2011, and before work commences.

The rain gardens/stormwater ponds shall be designed to not exceed a 4:1 safe slope standard.

The best place for the bulk of the open air drainage facilities is along the eastern property line of the parcel, but leaving space near the street for the driveway to pass off the property toward the connection to the Cliff Avenue light. Final output of the system would go under the driveway and connect at the northeast corner of the parcel to the DOT storm sewer input line.

In order to ensure the proper operation and maintenance of the proposed stormwater management system, the Planning and Zoning Commission will require a \$10,000 Performance Bond. This shall be in place for the extent of the work on 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 shall include written certification for 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.

The applicants shall install the drainage system as shown on an updated and revised version of the submitted "Planting Plan" last revised 4 Jan 11, and as required to be revised herein, which shows the installation of a rain garden/stormwater pond. The property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies) or the adjacent streets. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.

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Prior to the issuance of a Certificate of Zoning Compliance 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.

**b. SEDIMENTATION AND EROSION CONTROLS:** During the regrading and site work, the applicants 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 silt fence ring the property (as proposed by the applicants). Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restablilized. 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.

**c. AFFORDABILITY REQUIREMENTS:**

1. 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.
2. The applicants or their successors or assigns will be the Property Manager and Administrator of the Compliance and Affordability Plan.
3. 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.
4. 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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5. 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 applicants. 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 8, 2012). This may be extended as per Sections 858 and 1009.

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:

*Deliberation only regarding the following matters:*

**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.*

Mrs. Cameron said she would like to ask the applicants for a one week extension of time to render a decision regarding this application. The current deadline is 3/24 and the next meeting of the Commission is scheduled for 3/22. The rest of the Commission agreed and the staff will request an extension. The staff will also start to draft a resolution.

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

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estate signs). The changes affect the maximum sign size and permitted locations of such proposed signs.

In the discussion it was agreed that the consensus would be to increase the maximum size to four square feet, including any hanger below the main sign. The regulation must also make it clear that the installation of all real estate signs must avoid creating any reduction of sightlines and signs must be on private property, not the street right of way. The staff will draft a resolution for consideration at a future meeting.

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.*

Mrs. Cameron said that there should be a single dock used by members of the same family that owns these adjacent parcels. This would avoid a proliferation of docks extending out into the river. Mr. Conze said that if the Commission is going to establish such a rule, then a hearing about that policy would need to be conducted before the policy is implemented and enforced regarding a particular site. Mr. Hutchison said that the Commission should concentrate on their responsibilities under the CAM program and the existing regulations. No action was taken.

Chairman Conze reads 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. *DECISION DEADLINE: 4/21/2011.*

Mrs. Cameron said that this plan would result in having to walk through water at high tide to reach the wooden pier structure. She said it does not make sense. No action was taken.

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.*

Mrs. Cameron expressed her concerns about the regrading close to the neighbor, the extensive filling for the septic system, and the extra driveway which will necessitate removing lots of rock outcrop. She said the speed limit on the street is only 10 miles per hour and the new driveway sight line is no better than the sightline at the existing driveway.

Mr. Spain said that there is no problem with flooding on the site. Mr. Hutchison said that the ledge at the driveway is not crucial. The improvement of the septic system is very important. No action was taken.

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

None.

The Meeting was adjourned at 8:50 P.M.

Respectfully Submitted,

David J. Keating  
Assistant Planning & Zoning Director

*03082011min*