

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
March 23, 2010**

Place: Auditorium, Town Hall

TIME: 7:30 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Spain, Riccardo, Voigt, Hutchison

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Booth

FILMED BY: Channel 79

GENERAL MEETING

Chairman Conze read the following agenda item:

Interview and possible appointment to the Commission to replace Gwynne Grimes, who resigned in February 2010.

Chairman Conze recognized Peter Rogers and asked him to step forward and speak with the Commission about his qualifications. Mr. Rogers explained that he has been a 54 year resident of Darien and works locally for Rings End Lumber Company. He has raised six children in Town and in the 1980s was a member of the Representative Town Meeting. He is involved in the Lions Club and the Darien Chamber of Commerce. He has been nominated by the Republican Town Committee to serve as the replacement for Mrs. Grimes. Mr. Rogers said that he had opposed the application of the Housing Authority and was a party to the litigation that appealed the Planning & Zoning Commission's approval of the project. He was also a party to the discussions to resolve the litigation matters.

In response to questions about major issues facing the Commission and the Town, Mr. Rogers indicated that he sees affordable housing as a major issue impacting the community. He noted that the 2007 Sub-Committee Report was well thought out and addresses the issues appropriately. Mr. Rogers said that senior affordable housing will be important for residents as they wish to downsize yet remain within the community. Mr. Rogers said that the redevelopment of the Noroton Heights commercial area will be an important aspect of the Commission's work within the coming years. It will be necessary to coordinate the Commission's efforts with property owners in the area for a logical redevelopment of the important commercial and transportation facility within Town.

In response to questions about the litigation involving the Darien Housing Authority appeal, Mr. Rogers said that the basic aspects of the appeal included the argument that the Planning & Zoning Commission improperly delegated some of its authority and extended its jurisdiction beyond its bounds when it required certain off-site improvements to be made to the intersection of Noroton Avenue and West Avenue. Another issue concerned the building heights and the floor area and the number of bedrooms. These issues were not really resolved to everyone's satisfaction with the resolution of the litigation, but at least the court action has been withdrawn.

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In response to a question, Mr. Rogers said that he currently resides at 240 Noroton Avenue and has been at the location since June of 2009.

Chairman Conze called upon Susan Cameron and asked her to come forward and speak with the Commission. She explained that she had been a member of the Environmental Protection Commission for 8½ years and is the former Chair of the Recycling Committee and has been a member of the Flood & Mitigation Committee. She sees major issues for the community including flooding due to increased development activity, affordable housing, impacts of expanding the housing base upon the school system, and traffic problems within the community getting worse.

In response to questions, Mrs. Cameron explained that she was a paralegal for 20 years and has been on the boards of various non-profit groups. She currently does information technology consulting work, generally working on accounting systems. When asked about potential conflicts of interest, she explained that when she was on the board of the Darien Land Trust, that group actively opposed an application that was pending before the Environmental Protection Commission. To avoid any appearance of conflict of interest, she abstained from participation in discussions or action regarding the application.

Commission members thanked the two candidates for their input.

The Commission then deliberated regarding the possible replacement of Gwynne Grimes. The Commission members concluded that at this time, Susan Cameron would be a better replacement for Mrs. Grimes. All Commission members voted in favor of Mrs. Cameron as the replacement for Mrs. Grimes. Mr. Spain said that Mr. Rogers had numerous qualifications that could make him a valuable member of the Commission, but he is concerned about the appearance of a potential conflict due to the recently resolved litigation. He recognizes that the Commission members do maintain their independence and impartiality. But equally important is that the public be assured that the Commission functions independently and impartially. He said that the Housing Authority litigation conclusion and Mr. Rogers' nomination to the Commission by the RTC are in fact not connected. But they have occurred in too short of a time frame. He recognized that the Commission is not following the recommendation of the Republican Town Committee, but the Commission this time needs to depart from its usual practice of following such recommendations in order to avoid any possible appearance of impropriety. Mr. Conze noted that Mr. Rogers has worked with him on the resolution of the litigation and feels that there must be some other spot in the Town government where his qualifications and service will be of import.

The Commission members then informed the candidates that they had selected Mrs. Cameron to serve as the replacement for Mrs. Grimes. Mr. Rogers thanked the Commission for their consideration. Mrs. Cameron was sworn in by the Town Clerk, Donna Rajczewski. Mrs. Cameron explained that she would not be able to stay for the rest of the meeting due to a family matter.

Chairman Conze read the following agenda item:

Election of Secretary to replace Gwynne Grimes.

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Mr. Spain nominated Vickie Riccardo to serve as Secretary to the Commission. Mr. Hutchison seconded the nomination. There were no other nominations for Secretary. Mrs. Riccardo was unanimously elected to serve as Secretary.

Chairman Conze then read the following agenda item:

Discussion, deliberation and possible decisions regarding:

Coastal Site Plan Review #239-A, Flood Damage Prevention Application #264-A, Kevin & Jennifer Fay, 22 Beach Drive. Proposing to construct a replacement patio at a different grade and to perform related site development activities within regulated areas. The subject property is located on the west side of Beach Drive approximately 1,000 feet south of its intersection with Boston Post Road and is shown on Assessor's Map #53 as Lot #11, in the R-1/2 Zone. *PUBLIC HEARING CLOSED MARCH 9, 2010. DECISION DEADLINE: MAY 13, 2010.*

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

Commission members reviewed the draft Resolution. Minor modifications to Condition C were discussed and agreed upon by all members so that it would be clearer. The following motion was made: That the Commission adopt the following Resolution to approve the project with conditions and stipulations. The motion was made by Mr. Voigt, seconded by Mr. Spain and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 23, 2010**

Application Number: Coastal Site Plan Review #239-A
Flood Damage Prevention Application #264 -A

Street Address: 22 Beach Drive
Assessor's Map #53 Lot #11

Name and Address of Property Owners: Kevin & Jennifer Fay
22 Beach Drive
Darien, CT 06820

Activity Being Applied For: Proposing to construct a replacement patio at a different grade and to perform related site development activities within regulated areas.

Property Location: The subject property is located on the west side of Beach Drive approximately 1,000 feet south of its intersection with Boston Post Road.

Zone: R-1/2 Zone

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Date of Public Hearing: February 2, 2010 continued to February 23, 2010;
March 2, 2010 and March 9, 2010.

Time and Place: 8:00 P.M. Room 119 and Room 206 Town Hall

Publication of Hearing Notices

Dates: January 21 and 28, 2010
February 11 and 18, 2010

Newspaper: Darien News-Review

Date of Action: March 23, 2010 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
April 1, 2010

Newspaper: Darien News-Review

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

- the proposed use and activities must comply with all provisions of Sections 400, 810 and 820 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plan, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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

1. The subject application is to construct a replacement patio at a different grade and to perform related site development activities within regulated areas. The submitted plan shows a new rectangular shaped slate patio 20' x 26' +/- set on a 3" concrete slab, with a wall to the east of it. New plantings are proposed for the eastern side of that proposed wall. This proposal is to replace a prior circular shaped on-grade patio.
2. The circular-shaped flagstone patio which is to be replaced was estimated to be 341 square feet in size, and the proposed rectangular-shaped patio has an area of 675 square feet. Both of these calculations were made by Peter Finkbeiner of SoundView Engineers & Land Surveyors, LLC, the Fays' engineer. Thus, there is an increase of about 334 square feet of impervious surface proposed as part of this application.
3. An adjacent neighbor to the south, Mrs. Long, submitted letters with her concerns regarding drainage. She also hired a professional engineer, Leonard M. Szczesny of SE Minor & Co, who sent letters dated February 1, 2010 and February 2, 2010. SoundView Engineers & Land Surveyors, the engineer hired by the Fays, sent written responses dated February 19, 2010 and

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February 25, 2010. In that February 25th letter, it was noted that the Fay back yard is within the Flood Hazard Zone.

4. As part of this application, stormwater management has been proposed via new stormwater treatment. Additional Cultec units are proposed in the rear of the property, to supplement those six Cultec 280HD units which were installed as part of the recent addition to the Fay residence.
5. The Commission notes the need for the applicant to file a document regarding maintenance of the proposed and installed drainage system in the Darien Land Records. This 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.
6. The State of Connecticut DEP sent an e-mail dated January 26, 2010, stating that it has "...no comment" on this application.
7. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
8. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.
9. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
10. The potential adverse impacts of the proposed activity, as modified within this resolution, on coastal resources are acceptable.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #239-A and Flood Damage Prevention Application #264-A are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction of the patio shall be in accordance with the following plan submitted to and reviewed by the Commission:
 - Mr. & Mrs. K. Fay, Proposed Patio, dated 12-15-09.As recommended by Mrs. Long's engineer Mr. Szczesny, and as noted in the Peter J. Finkbeiner drainage letter dated February 19, 2010, the new terrace shall be sloped towards the northwest to prevent it from drainage directly onto Mrs. Long's property. A trench drain shall be utilized to capture all of the terrace runoff and drain into the new/expanded Cultec retention system.
- B. In accordance with the recommendation contained in the February 25, 2010 drainage letter from Peter J. Finkbeiner, two additional Cultec 280HD units shall be added to the existing six units within the Fay back yard. As noted within his letter, this will be an improvement over existing conditions and will be a reduction below pre-existing runoff volumes.

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- C. During construction, the applicant shall utilize such sediment and erosion controls as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. After the patio has been installed, an “as-built” survey must be submitted to verify compliance with the setback requirements. That final “as-built” survey is hereby required to certify that the site improvements adjacent to the coastal recourses and/or within the flood hazard area are all in compliance with the approved plans. In addition, a Professional Engineer shall certify in writing that the drainage work has been properly completed in accordance with the approved plans.
- E. 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 22 Beach Drive to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner, within the next 60 days and prior to the resumption of construction of the patio.
- F. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site of the regrading will not have any negative impacts upon the adjacent property(ies) and/or the nearby street. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- G. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- H. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies.
- I. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (March 22, 2011). This may be extended as per Sections 815 and 829f.

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

Chairman Conze read the following agenda item:

Land Filling & Regrading Application #236, Philip & Lorraine Weyhe, 42 Stanton Road.
Proposing to fill and regrade south of the existing residence and to perform related site activities. The subject property is located on the east side of Stanton Road, at the northwest corner formed by its intersection with Gardiner Street and is shown on Assessor's Map #46 as Lot #68, in the R-1/2 Zone. *PUBLIC HEARING CLOSED MARCH 9, 2010. DECISION DEADLINE: MAY 13, 2010.*

The Commission members reviewed the draft Resolution. The following motion was made: That the Commission adopt the following Resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Spain, seconded by Mr. Voigt and unanimously approved. The Adopted Resolution is as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 23, 2010**

Application Number: Land Filling & Regrading Application #236

Street Address: 42 Stanton Road
Assessor's Map #46 Lot #68

Name and Address of Applicant & Philip & Lorraine Weyhe
Property Owner: 42 Stanton Road
Darien, CT 06820

Activity Being Applied For: Proposing to fill and regrade south of the existing residence and to perform related site activities.

Property Location: The subject property is located on the east side of Stanton Road, at the northwest corner formed by its intersection with Gardiner Street.

Zone: R-1/2

Date of Public Hearing: February 23, 2010 continued to March 2, 2010 and March 9, 2010

Time and Place: 8:00 P.M. Room 119 and Room 206 Town Hall

Publication of Hearing Notices
Dates: February 11 & 18, 2010 Newspaper: Darien News-Review

Date of Action: March 23, 2010 Action: APPROVED WITH CONDITIONS

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Scheduled Date of Publication of Action:
April 1, 2010

Newspaper: Darien News-Review

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

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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

1. The subject application is to fill and regrade south of the existing residence and to perform related site activities. During the public hearing, it was noted that the applicant started this work without the proper permits. This application is an “after-the-fact” application for permission to keep the work as completed. The applicant noted that grass and trees will be added to the regraded area.
2. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
3. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #236 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Land filling, excavation, and regrading work shall be in accordance with the following plans submitted to and reviewed by the Commission:
 - Topographic Survey 42 Stanton Road prepared for Philip Weyhe Lorraine Weyhe, by William W. Seymour & Associates, scale 1”=30’, dated December 7, 2009.
 - Cross-Sections, 42 Stanton Road prepared for Philip Weyhe Lorraine Weyhe, by William W. Seymour & Associates, vertical & horizontal scales 1”=20’, dated December 17, 2009.
- B. During the completion of the replanting, soil stabilization and site work, the property owner shall utilize the sediment and erosion controls illustrated on the submitted plans referred to in

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Condition A above, and any additional measures as may be necessary due to site conditions, including tree protection as may be necessary. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.

- C. The applicant must make sure that at all times during the redevelopment of the site, the storm water runoff is properly managed to avoid impacts to the neighbors and the street. This shall include, but not be limited to, sedimentation prevention and control, temporary artificial and/or vegetative cover to minimize erosion of exposed soils, and speedy restabilization of all disturbed areas.
- D. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- E. The granting of this approval does not relieve the developer/builder of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- F. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (March 22, 2011). 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 shall be filed in the Darien Land Records within 60 days of this action and prior to the resumption of any filling or regrading work, or this approval shall become null and void.

Mr. Conze read the following agenda item:

Coastal Site Plan Review #249, Flood Damage Prevention Application #279, Edward “Tim” Brown & Yael van Hulst, 2 Baywater Drive. Proposing to remove the existing pier, ramp and dock, and replace it with a new pier, ramp and dock, and perform related site activities within regulated areas. *PUBLIC HEARING CLOSED MARCH 9, 2010. DECISION DEADLINE: MAY 13, 2010.*

The Commission members reviewed the draft Resolution. The following motion was made: That the Commission adopt the following Resolution to approve the project with conditions and stipulations. The motion was made by Mr. Voigt, seconded by Mr. Hutchison and unanimously approved. Mr. Spain noted that although he had not attended one of the public hearings regarding

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some of these matters, he had watched the video of the hearings and has read the application materials and the draft minutes so that he is familiar with each and every application. The Adopted Resolution is as follows:

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ADOPTED RESOLUTION
March 23, 2010**

Application Number: Coastal Site Plan Review #249
Flood Damage Prevention Application #279

Street Address: 2 Baywater Drive
Assessor's Map #55 Lot #105 & #106

Name and Address of Property Owner: Edward "Tim" Brown & Yael van Hulst
2 Baywater Drive
Darien, CT 06820

Name and Address of Applicant: John Hilts
Applicant's Representative: PO Box 47
Rowayton, CT 06853

Activity Being Applied For: Proposing to remove the existing pier, ramp and dock, and replace it with a new pier, ramp and dock, and perform related site activities within regulated areas.

Property Location: The subject property is on the south side of Baywater Drive, at the southeast corner formed by its intersection with Nearwater Lane.

Zone: R-NBD Zone

Date of Public Hearing: February 23, 2010 continued to March 2, 2010 and March 9, 2010

Time and Place: 8:00 P.M. Room 119 and Room 206 Town Hall

Publication of Hearing Notices
Dates: February 11 & 18, 2010 Newspaper: Darien News-Review

Date of Action: March 23, 2010 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News-Review
April 1, 2010

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

- the proposed use and activities must comply with all provisions of Sections 400, 810 and 820 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.

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- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plan, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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

1. The owner proposes to remove the existing pier, ramp and dock, and replace the old items with a new 4' x 72' fixed pier, 3' x 30' aluminum ramp and a 12'8" x 16'8" timber floating dock anchored by pilings, and perform related site activities within regulated areas.
2. As noted at the public hearing, the applicant received approval from the State of Connecticut Department of Environmental Protection (DEP) in Permit #200903038-KF for this work. The DEP Office of Long Island Sound Programs sent an e-mail dated February 5, 2010 noting that "...the applicant has received the necessary authorizations for the proposed work..." They had no additional comments at that time.
3. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
4. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.
5. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
6. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
7. The potential adverse impacts of the proposed activity, as modified within this resolution, on coastal resources are acceptable.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #249 and Flood Damage Prevention Application #279 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Work shall be in accordance with the plan entitled:

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- Proposed Replacement of Pier, Ramp & Piling-Anchored Floating Dock in: Long Island Sound at 2 Baywater Drive, Sheet 2 of 3, 7/30/09.
- B. The proposed activity is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.
- C. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plan and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized. Prior to the completion and/or occupancy of the house, all approved site work must be completed and the disturbed areas are to be stabilized with appropriate vegetation.
- D. Prior to April 22, 2011, as-built maps, surveys and/or other documentation shall be submitted to the Commission to verify that the dock has been installed and completed in accordance with the approved plans. No deviation or alterations from the approved plans shall be permitted except with the prior written permission of the Commission.
- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- F. 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.
- G. This permit shall be subject to the provisions of Section 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (March 22, 2011). This may be extended as per Section 829f.

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

Chairman Conze read the following agenda item:

Coastal Site Plan Review #228-A, Flood Damage Prevention Application #256-A, Land Filling & Regrading Application #201-A, Real & Tara LeClerc, 16 Cross Road. Proposing to construct additions and alterations to the existing residence and relocate the driveway from Hope Drive to

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Cross Road and perform related site development activities within regulated areas. *PUBLIC HEARING CLOSED MARCH 9, 2010. DECISION DEADLINE: MAY 13, 2010.*

The Commission members discussed the draft Resolution. It was noted that one of the large trees on the property is to be saved, but if it dies, it must be replaced. The language in the draft Resolution was revised accordingly. Commission members also noted that the burying of the power lines to the site had been discussed as an option to the applicant. It was suggested that a stipulation be added to indicate that the Director of Planning could approve the burying of the power lines to the site if the applicant chooses to proceed with that activity. All members agreed with the recommended modifications. The following motion was made: That the Commission adopt the following, revised Resolution to approve the project with conditions and stipulations. The motion was made by Mr. Voigt, seconded by Mr. Spain and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 23, 2010**

Application Number: Coastal Site Plan Review #228-A
Flood Damage Prevention Application #256-A
Land Filling & Regrading Application #201-A

Street Address: 16 Cross Road
Assessor's Map #69 Lot #12

Name and Address of Property Owner: Real & Tara LeClerc
16 Cross Road
Darien, CT 06820

Name and Address of
Applicant's Representative: Dan Conlon
Daniel Conlon Architects
4 Old Mill Road
PO Box 418
Georgetown, CT 06829

Activity Being Applied For: Proposing to construct additions and alterations to the existing residence and relocate the driveway from Hope Drive to Cross Road and perform related site development activities within regulated areas.

Property Location: The subject property is on the northwest corner formed by the intersection of Cross Road and Hope Drive.

Zone: R-1

Date of Public Hearing: February 23, 2010 continued to March 2, 2010 and March 9, 2010

Time and Place: 8:00 P.M. Room 119 and Room 206 Town Hall

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Publication of Hearing Notices
Dates: February 11 & 18, 2010

Newspaper: Darien News-Review

Date of Action: March 23, 2010

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
April 1, 2010

Newspaper: Darien News-Review

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

- the proposed use and activities must comply with all provisions of Sections 400, 810, 820, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant and applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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

1. The proposal is to construct additions and alterations to the existing residence and relocate the driveway from Hope Drive to Cross Road and perform related site development activities within regulated areas. There are substantial additions and alterations proposed to the residence. As noted by the applicant, this is not a "teardown", as major portions of the residence will remain throughout the construction process. The subject property is served by an on-site septic system. As part of this application, a new septic tank and associated galleries will be installed.
2. The Darien Environmental Protection Commission (EPC) sent comments on this application via an e-mail from Rick Rohr dated February 8, 2010. The Darien Public Works Department sent referral comments received in the P&Z office on February 17, 2010. A response to those comments was submitted from Bob Oley of Land-Tech Consultants, Inc., dated February 23, 2010.
3. During the public hearing, the applicant's representative, Mr. Conlon, noted that care will be taken to try to save the existing 36" oak, maybe by moving the water line. He noted that they will be carefully relocating the water line so that it is farther away from the roots of the oak tree and they will work with an arborist to determine what steps will assure that the oak tree will survive the redevelopment process.
4. As part of this application, stormwater management has been proposed via new stormwater treatment. Cultec units are proposed in the southeast corner of the property. Some filling and regrading is proposed to put the structure outside of the flood zone.

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5. The Commission notes the need for the applicant to file a document regarding maintenance of the proposed and installed drainage system in the Darien Land Records. This 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.
6. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
7. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
8. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
9. The potential adverse impacts of the proposed activity upon coastal resources, as designed and as modified within this resolution, are minimal and are therefore acceptable.
10. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
11. The proposed activity, as modified within this resolution, is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #228-A, Flood Damage Prevention Application #256-A and Land Filling & Regrading Application #201-A are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Additions and alterations to the existing residence, relocation the driveway from Hope Drive to Cross Road, filling and regrading, and related activity shall be in accordance with the following plans:
 - “Zoning Location Survey #16 Cross Road prepared for Real LeClerc Tara E. LeClerc, by William W. Seymour & Associates, dated May 1, 2006 and last revised Dec. 29, 2009.
 - “Site Development Plan prepared for Tara & Real LeClerc”, by Land-Tech Consultants, Inc., dated 12/02/09, and last revised 1/05/10, Sheet 1 of 2.
 - “Details & Notes prepared for Tara & Real LeClerc”, by Land-Tech Consultants, Inc., dated 12/02/09, and last revised 12/14/09, Sheet 2 of 2.
 - New Residence for: LeClerc Residence 16 Cross Road by Daniel Conlon Architects, dated 1/08/2010, Sheets L1 and A1 through A7.
- B. During construction, the applicant shall utilize sediment and erosion controls as shown on the submitted plans, and as may be necessary due to site conditions. These sediment and erosion

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controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.

- C. At the public hearing, the applicant's representative noted that they will take care in preserving the existing 36" oak tree. If that 36" oak dies, it shall be replaced by the property owner with a tree of at least a 3" (three inch) trunk diameter in size in generally the same location.
- D. A final "as-built" survey is hereby required to certify that the regrading, site improvements adjacent to the coastal resources and/or within the flood hazard area are all in compliance with the approved plans. In addition, a Professional Engineer shall certify in writing that the work has been properly completed in accordance with the approved plans.
- E. 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 16 Cross Road 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, within the next 60 days and prior to the start of any filling or regrading work.
- F. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- G. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to approval of the Darien Health Department for the new septic system.
- H. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (March 22, 2010). This may be extended as per Sections 815 and 829f.

All provisions and details of the plans shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. Both a Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by May 23, 2010, or this approval shall be null and void.

Chairman conze read the following agenda item:

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Amendment of Business Site Plan #186-B/Special Permit, Burgers Shakes & Fries, 800 Boston Post Road, CBD Zone. Proposal to establish a new restaurant in space formerly occupied by Brueggers.

Commission members discussed the following draft Resolution. Several modifications were made regarding the trash dumpster and the proper disposal of the used cooking oil. The following motion was then made: That the Commission adopt the following revised Resolution to approved the proposed use subject to the conditions and stipulations as noted in the Resolution. The motion was made by Mr. Voigt, seconded by Mr. Hutchison and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 23, 2010**

Application Number: Amendment of Business Site Plan #186-B/Special Permit
Burgers Shakes & Fries

Street Address: 800 Boston Post Road
Assessor's Map #71 Lot #1, 2, 17

Name and Address of Applicant: Kory Wollins
President, Eighty/Twenty Inc.

Name and Address of
Property Owner: Hawthorne Realty, LLC
38 Grove Street, Suite 201
Ridgefield, CT 06877

Name and Address of:
Representative: Jim Bailey
Harris Restaurant Supply and Design
Abendroth Ave.
Port Chester, NY 10573

Activity Being Applied For: Proposal to establish a new restaurant in space formerly occupied by Bruegger's.

Property Location: The subject property is located on the southwest corner formed by the intersection of Boston Post Road and Sedgwick Avenue.

Zone: CBD

Date of Meeting where item was presented: March 9, 2010

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

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Date of Action: March 23, 2010

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:

April 1, 2010

Newspaper: Darien News-Review

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

- the proposed use and activities must comply with all provisions of Sections 650, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the March 3, 2010 letter submitted by the applicant along with venting information, and the statements of the applicant whose testimony is contained in the record of the March 9 meeting, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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

1. The proposal is to establish a new restaurant in space formerly occupied by Bruegger's within a portion of the first floor of 800 Boston Post Road. At the Planning & Zoning Commission meeting held on March 9, the applicant noted that he has read through the Brueggers approval from October 2007 and wants to amend that approval in four areas: 1) the fact that they do cook with grease; 2) proposed hours of operation; 3) the number of employees; and 4) to have a full service restaurant with a beer and wine license. Thus, at a minimum, findings #3 and 4 in that October 2007 resolution as well as Conditions D, E, and F need to be modified. This resolution incorporates those changes. Because these are amendments to that previous restaurant approval, the Commission confirms that a public hearing is not required on this application amendment.
2. At the March 9, 2010 Planning & Zoning Commission meeting, Mr. Kory Wollins, President of Eighty/Twenty Inc., presented further information and reviewed his March 3, 2010 letter. It was noted that Bruegger's had no heavy cooking or fryers, and the proposed tenant, Burgers Shakes and Fries, would have a griddle, grill, deep fryer, oven and six burner stove and would therefore need to provide a fire suppression system and an exhaust hood with filters. They are in the process of working up the details for the exhaust hood and filters. The new filters and exhaust stack would be within the existing building and vent out above the roof of the building.
3. Mr. Wollins noted that there would be no off-loading of supplies or materials from the Boston Post Road and that the trash dumpster located on the site will be sufficient for their needs.
4. The topic of outdoor dining was also discussed on March 9, 2010. It was noted that the previous approval had allowed up to 16 customer seats located on the outside of the building and underneath the building overhangs. No details regarding outside dining for the proposed use are available at this time. Mr. Wollins indicated that as long as they had the approval for the interior renovation work and the use in general, they would commence construction and come back to the Planning &

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Zoning Commission with details about any potential outside dining. Mr. Wollins estimated that it would take 4 to 6 months of renovation work before the restaurant could be opened. Commission members believed that the proposed use would be generally acceptable, provided there is adequate control of potential odors.

5. Burgers Shakes & Fries proposes to locate within a portion of the first floor space at 800 Boston Post Road in the space formerly occupied by Bruegger's (a restaurant), and prior to that, it was the Rainbow Shoppe (a retail store). This restaurant use is a Special Permit use under Section 654b of the Darien Zoning Regulations. The parking requirements within the Zoning Regulations were amended in July 2007. The parking requirement for a restaurant (Section 904h) is 1 space required for each 100 square feet of interior floor area. This is the same requirement which was required for the prior retail use within this space (Rainbow Shoppe), and the same as it was for Bruegger's.
6. The subject establishment, Burgers Shakes & Fries, does cook with grease and open flame in the form of griddle, grill, deep fryer, oven and 6-burner stove. The existing Dumpster area will be shared with other businesses on this property.
7. Mr. Wollins represented in his March 3, 2010 letter the following proposed hours of operation: Sunday through Saturday 11:30 A.M. to 11 PM. It is expected that 8-12 employees will be on-site at any one time.
8. The Architectural Review Board (ARB) will need to review and act upon any signage, new awnings, and, if desired in the future, the style of outdoor furniture.
9. The Commission acknowledges that outdoor seating may be the subject of a future application, but would require review and action by the Architectural Review Board prior to returning to the Planning and Zoning Commission.
10. The location and size of the use, the nature of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
11. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
12. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
13. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.

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NOW THEREFORE BE IT RESOLVED that Amendment of Business Site Plan #186-B/Special Permit is hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. The Commission hereby approves the new restaurant use with a beer /wine license within a portion of the first floor space at 800 Boston Post Road. It is specifically understood that final interior layout plans will need to be created to meet the specific needs of the Fire Marshal, Health Department and Building Department. Once approved by the Fire Marshal and Health Department, a final interior layout plan shall be submitted for review and action by the Planning & Zoning Director prior to the issuance of a Zoning or Building Permit for this use. The Commission hereby requires that any final interior floor plans specifically allow for public access through both the front and rear doors, and that there be no more than 65 interior seats. This is the same amount of seating allowed within the Bruegger's approval in 2007.
- B. No outdoor seating was proposed by the applicant and none is approved herein. The Commission notes that sixteen outdoor seats were approved for Bruegger's. If any outdoor seating is desired in the future, the applicant or business operator needs to apply to the Architectural Review Board (ARB) then return to the Planning and Zoning Commission with final details of any tables, chairs, umbrellas, heaters, etc.
- C. Final venting of the restaurant shall be coordinated with the Zoning Enforcement Officer, Fire Marshal and the Darien Health Department. The applicant has assured the Commission that there will be no problem caused by odors or fumes from this restaurant on the site or adjacent sites. The Commission is relying on the expertise of the applicant's engineer regarding the venting system to be used and his assertion that it will virtually eliminate any odors from infiltrating into upstairs office space or the adjacent first floor retail (bank) space. This condition is an integral part of the validity of this Special Permit. Any failure to correct odor problems may result in this Special Permit becoming null and void.
- D. All deliveries to Burgers Shakes & Fries shall be made to the rear entrance of the building so as not to interfere will traffic patterns on Boston Post Road in front of #800. In order to minimize impacts to the tenant(s) within the building and adjacent to the subject property, and to minimize parking conflicts with other businesses on this property and adjacent properties, no delivery vehicles can park on the Boston Post Road and the business cannot accept any delivery from any vehicle parked on the Boston Post Road.
- E. The Dumpster enclosure area shall be neatly maintained, and the doors shall be kept in good operating condition and remain shut at all times that someone is not loading or unloading garbage. The applicant is responsible for maintaining this shared trash area, including ensuring that it is emptied frequently enough to minimize odors. Although the trash facility area may be shared with other uses on the subject property, the applicant and landlord shall be responsible for the upkeep and maintenance of the area. The schedule for emptying the Dumpster and/or picking up recyclables shall be adjusted so as to eliminate any odor problem and/or overflowing garbage situations and to keep the area in a sanitary condition at all times. As proposed by the applicant within his March 3, 2010 letter, all refuse oil from fryers shall not be disposed of in the Dumpster, but rather, separately removed from the site.

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- F. The Commission hereby approves the hours of operation proposed by the applicant in the application materials--Sunday through Saturday 11:30 A.M. to 11 P.M. Any hours longer than those will require subsequent review and action by the Planning & Zoning Commission. The Commission understands that employees will need to arrive earlier and stay later.
- G. Because there are other uses both adjacent to and above this tenant space, it is imperative that odors be minimized via a properly designed and functioning exhaust system. In order to minimize potential odors, the Commission hereby requires that the exhaust system include a CaptiveAire kitchen hood with high performance grease filters or other pollution control unit at least as effective as a water wash system with charcoal filters. Prior to the issuance of a Certificate of Occupancy or restaurant opening for business, documentation shall be provided by the exhaust system installer to the Planning & Zoning Department that the proposed system has been properly installed. The tenant is responsible for assuring that the venting system functions properly at all times. The proposed venting system shall be installed per the approved plans and per the requirements of the Darien Health Department, Fire Marshal and Building Department. The continuing operation of and proper regular maintenance of the ventilation system (as recommended by the manufacturer or as required by the Darien Health Department) to prohibit the discharge of odors to the surrounding uses and/or properties is the responsibility of the restaurant operators and the owner of the property. The system shall be operated and maintained to minimize the emission of odors that could or would negatively impact adjacent property and/or be a potential nuisance to nearby residents. If, in the opinion of the Zoning Enforcement Officer (ZEO), there is a persistent recurring odor, the ZEO shall contact the tenant. Odor complaints from commercial and/or residential neighbors shall also be reviewed and investigated by the ZEO. The tenant shall then take appropriate measures to minimize odors. In order to better understand how the proposed kitchen exhaust system functions, the tenant shall submit a one or two page report to the Commission in March 2011, noting the experience up to that point with the kitchen exhaust, whether the venting has proven to be sufficient, whether complaints have been received, and what actions have been taken to ensure that there has been no fumes or odors and/or to respond to said complaints.
- H. Prior to the issuance of a Certificate of Occupancy for the proposed use, all site improvements shall be completed. This includes the odor control and venting system, and any Dumpsters to be added by the applicant within the existing dumpster area next to the loading dock.
- I. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- J. The granting of this Special Permit and Site Plan amendment does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies. This includes, but is not limited to, final approval from the Darien Health Department and the Darien Fire Marshal.
- K. This permit shall be subject to the provisions of Section 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (March 22, 2011). This may be extended as per Section 1009.

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All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations, the signing of the final approved plans by the Chairman, and filing of the Special Permit form in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

Chairman Conze read the following agenda item:

Coastal Site Plan Review #252, Flood Damage Prevention Application #282, Blackman, 253 Long Neck Point Road, R-1 Zone. Request to repair and restore approximately 300 feet of a retaining wall located on the southeast side of the property and replace fill behind the wall--all damage caused by the March 13, 2010 storm. Most, if not all of this wall is located within the open space area set aside as part of Subdivision Application #510. The subject property is located at the southeast terminus of Long Neck Point Road, and is shown on Assessor's Map #61 as Lot #13-4.

Mr. Ginsberg explained that the retaining wall on the outer perimeter of the lawn had been damaged by the high seas and heavy wind conditions experienced in earlier March. The proposed repair activity is within the open space land designated on the original subdivision and it is within the coastal area boundary. The contractor proposing the work, Jay Condon, was in attendance to answer any questions. He indicated that the work to repair the wall will take three to four weeks and will all be performed from the landward side of the retaining wall. No work is anticipated within the Connecticut Department of Environmental Protection (DEP) jurisdiction which extends up to elevation 6.3 feet +/- above sea level. The retaining wall is approximately at elevation 8 feet above sea level. In response to questions from the Commission members, Mr. Condon said that there is no real good way to install reinforcement bar within the existing stone wall. His plan is to repair the wall and re-point it, when necessary, and to reinstall the stone cap so that it will be secure and will be able to resist damage from most storms in the future.

The following motion was made: That the Planning & Zoning Commission approve the proposed repair of the retaining wall in accordance with the March 18, 2010 letter from Jay Condon of Condon Brown Builders, Inc. The repair work is to take place within the coastal area management boundary and flood zone and open space portions of the property at 253 Long Neck Point Road. The motion to approve was made by Mr. Hutchison, seconded by Mr. Voigt and unanimously approved.

Chairman Conze read the following agenda item:

Amendment of Business Site Plan #228, 21 Tokeneke Road, CBD Zone.
Request for new first floor hair salon to replace Paws and Reflect.

Mr. Ginsberg explained that one of the former tenants at 21 Tokeneke Road, Paws and Reflect, an animal grooming service, has recently obtained approval from the Planning & Zoning Commission to relocate to another building within the Central Business District. Charles Thomas, the owner of 21 Tokeneke Road, is seeking approval to convert the first floor space formerly occupied by Paws and Reflect into a hair salon. Mr. Ginsberg noted that this is a historic property that has received a special designation and approval from the Commission. There is sufficient on-street parking on Tokeneke Road and off-street parking within the Center Street North municipal parking lot to

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accommodate this business use. The owner will have to work closely with the Health Department and Fire Marshal to make sure that all of their code requirements are fulfilled. The Commission members discussed the fact that, in accordance with the letter submitted to the Commission, there would be a limit of three workers involved in the hair salon business. The following motion was made: That the Planning & Zoning Commission approve the request for the establishment of a hair salon at 21 Tokeneke Road in accordance with the March 17th two-page letter from Mr. Thomas. The motion was made by Mr. Hutchison, seconded by Mr. Voigt and unanimously approved.

Chairman Conze read the following agenda item:

Land Filling & Regrading Application #231, VR Associates, 305 Middlesex Road.

Request for 60 day extension of time.

Mr. Ginsberg explained that there is some confusion about the timing of the filing of the conservation easement. One part of the Resolution indicates that it must be filed within 60 days of the approval by the Commission and another portion of the Resolution indicates that it must be filed prior to the issuance of the Zoning Permit for the house. Commission members were asked to clarify. The Commission members discussed the situation and concluded that it would be appropriate to have the conservation easement filed within a certain period of time rather than waiting for the Zoning Permit to be submitted. In that case, the applicant has requested an additional 60 days in order to file the conservation easement.

The Commission members unanimously approved the requested extension so that there would be 120 days to file the Conservation Easement and all of the necessary documentation.

Chairman Conze read the following agenda item:

Approval of Minutes

March 9, 2010 Public Hearing/General Meeting

Minor modifications that were on page 21 were discussed and agreed upon: the following motion was made: that the Commission adopt the minutes as revised. The motion was made by Mr. Voigt, seconded by Mrs. Riccardo and all voted in favor of the motion except Mr. Spain who had not attended the meeting on March 9th.

Chairman Conze explained that the Commission would conclude the general meeting portion of the meeting and would now proceed into the public hearing portion of the meeting.

PUBLIC HEARING

Chairman Conze read the following agenda item and noted that it had been postponed:

Proposed Amendments to the 2006 Town Plan of Conservation & Development, put forth by the Darien Planning & Zoning Commission. Proposal put forth by the Darien Planning and Zoning Commission for amendments to the 2006 Town Plan of Conservation & Development (the "Town Plan") in three groups. The first group of amendments would modify pages 8-2, 8-3, 9-5, 9-6 and A9-17 of the Town Plan relative to classification of private land as open space for certain properties

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within Darien per Section 12-107e of the Connecticut General Statutes. The second group of amendments would add a new #20 on page 9-5 of the Town Plan, which would specifically reference the Town of Darien Commercial Design Guidelines document. The third group of amendments is to modify the inside cover page, table of contents, and index of the Town Plan to reflect any amendments adopted by the Commission. **POSTPONED.**

Chairman Conze read the following agenda item:

Proposed Amendments to the Darien Zoning Regulations put forth by the Darien Planning & Zoning Commission. Proposing to modify the existing zoning regulations relative to the Town's Flood Damage Prevention regulations, specifically with changes proposed to Section 210 (Definitions), including the insertion of new definitions and the amendment of some existing definitions; and changes to Section 820 (Flood Damage Prevention), including changes to Sections 822, 825, 826 and 828. This includes a proposal to delete the existing subsection 825g(4) and replace it with a new subsection 825g(4).

Director of Planning, Jeremy Ginsberg, explained that the Amendments to the Regulations are proposed in response to requirements from the Federal Emergency Management Agency (FEMA). The draft Amendments were submitted to the Connecticut Department of Environmental Protection. He read aloud the response that indicates that they found no inconsistency in the proposals. Mr. Ginsberg said that the new Flood Insurance Rate Maps produced by the Federal Emergency Management Agency (FEMA) will become effective on June 18, 2010. The Town of Darien has prepared a comparison map that shows the old flood zone boundaries, the new flood zone boundary, new flood areas and new parcels that are affected by the Flood Zone designation. He said that there is really not that much of a change between the old flood maps and the new flood maps. There are about 30 parcels that are being added in the Flood Zone and, typically, only small portions of these parcels are in the flood hazard area. He also noted that the FEMA Flood Insurance Rate Maps are not produced by the Town, but are referred to within the Flood Damage Prevention portions of the Darien Zoning Regulations. There are many Amendments to the Flood Damage Prevention Regulations that must be incorporated in order to continue to comply with the FEMA guidelines and requirements. There are other proposed amendments that are optional. These have been proposed to make the Regulations more readable and understandable and to make application of the Regulations more beneficial to the residents within the community. Some of the existing definitions are being modified.

Mr. Hutchison noted that one of the proposed modifications to the Regulations would put a 10 year time limit on the value of repairs and improvements to residences. This would result in a cumulative total of repairs and improvements that can easily exceed 50% of the value of the structure and would therefore prohibit someone from making desirable repairs or maintenance. He asked why the 10 year limitation was selected when the minimum FEMA guideline was for a one year to allow property owners to do 50% of value repair and improvements each year. Mr. Ginsberg explained that the various communities that he consulted with other planners in the area and the way that the cumulative value of repairs and improvements is handled varies considerably, from having no defined time period such as current Darien Regulations, to other municipalities that cumulate the values over the lifetime of the structure. Most communities want to have some clearly defined time limit. Some have a 5 year time limit, others use a 10 year time period for each property and others use a calendar time period of 10 years. Mr. Hutchison said that the imposition

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of this Regulation would discourage people from doing routine maintenance. Mr. Ginsberg noted that routine maintenance such as painting or re-carpeting or repairing broken windows are not items that would require Building Permits and would therefore not count toward the cumulative costs of a “substantial improvement.” Other structural work that does require a Building Permit or expansions of the structure will be included in the cumulative costs when defining a substantial improvement. He also noted that the 2006 Town Plan of Development does include a provision that calls for the strengthening of the Flood Damage Protection Regulations by including a time limitation within the definition and/or practical application of the “substantial improvements to a house within the Flood Zone. He also noted that there is a Zoning Board of Appeals process whereby someone can request that the 50% limitation be varied.

Zoning Enforcement Officer, David Keating, noted that the general purpose of Zoning Regulations is to protect public health, safety and welfare and that the Flood Damage Prevention Regulations are specifically designed for structures and improvements that are within the flood hazard zones and that are susceptible to damage during flood events. The Regulations do allow for repair and maintenance and improvement of structures that are in the flood zone, but specifically note that, in order to avoid too much money being spent on structures that are likely to be damaged by flood occurrences, if the cost of the modifications exceed 50% of the value of the structure (not the land and the structure, just the structure) then the Regulations require that the entire structure be brought into compliance with the Flood Damage Prevention Regulations, including the lowest floor being at least one foot above flood level and structural strength of the foundation and support of the building. At present, the Zoning Regulations do not define whether the costs of improvements will be cumulative and thus the policy of the Commission has been that each improvement project allows 50% of the value to be spent. Each project must be completed before an additional project can be undertaken. This has happened on several occasions where one renovation project of less than 50% of the value of the structure has been allowed and, as soon as the owner has completed that project and received their Certificate of Occupancy, they can undertake a second project to modify the structure even more. This seems to be a way of getting around the intent of the regulations. The current Regulations do not add the value of the renovation work together. The proposal is to add the values for work undertaken within each calendar decade. At the end of the decade, the owner would be allowed to make more renovations and modifications, up to 50% of the new value of the structure.

Mr. Hutchison said he believed the cumulative provisions will discourage property owners from making normal maintenance and repairs. He also noted that if they choose to invest more in their house, they are the ones taking the risk and it will only impact them. Mr. Keating and Mr. Ginsberg indicated that the Town participates in the FEMA Flood Damage Prevention Program and that, if there are too many variances of those Regulations granted, or if the Town does not have adequate Regulations, we would not be able to participate in the program and thus, all of the people that benefit now would no longer benefit. Mr. Ginsberg noted that there is a biennial report that must be submitted to the FEMA representatives to verify continued compliance with the FEMA guidelines and standards. He said that Greenwich and Westport have or are proposing that the 50% definition of substantial improvement be for the life of the structure. Norwalk and other communities have, or are proposing 10 year time periods similar to Darien’s proposal and Stamford and a few other communities use a 5 year time period. He said that if the Commission would feel more comfortable with a 5 year period, that would be acceptable. He noted that the documents in the file include the December 14, 2009 letter from Diane Ifkovic, State NFIP (National Flood Insurance Program)

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Coordinator and two memorandums written by Mr. Ginsberg, one dated January 15, 2010 and one dated February 16, 2010.

Chris Rowland of 136 West Avenue said that he lives in a flood zone and does not want to see a cumulative limitation on the work that a property owner can do on their own house. He said that a normal house will need periodic maintenance and the Town should not limit the extent of that maintenance. He said that he has lived in that location for more than 30 years and the flood conditions are worse now than they were years ago. He feels that the increased flooding is due to over-development that has occurred upstream and that there is a cumulative effect as more development continues to happen in the upper reaches of the watershed area.

Craig Flaherty, Professional Engineer, said that he is also a resident of Hoyt Street. He noted that the new Flood Damage Prevention Regulations required by FEMA will mandate that anytime that there is filling within the flood hazard zone that there be compensatory storage area required. He said that this requirement is without engineering merit, but he understands that the Town must adopt it in order to comply with the FEMA requirements. He said that he is in favor of a more strict time frame regarding the cumulative cost of improvements to the residences that are in the Flood Hazard Zone because the structures and improvements within the flood zone endanger the property owners, but also endanger the emergency personnel that need to deal with flood conditions and also because objects in the flood zone can break loose and become projectiles that are tossed by the flood waters. Those tossed items could then do damage to other properties. He said that the goal of the Commission and the Regulations should aim towards making all structures within the Flood Hazard Zones comply with the Regulations. He said he thinks that a 10 year time limitation is appropriate, but it should not be set to a calendar 10 years, rather it should be for the previous 10 years.

There were no further comments from the public regarding the pending amendments of the Regulations. Mr. Ginsberg noted that the public hearing could be continued or the Commission could close the public hearing, but the Commission must adopt certain required amendments at least by May so that they can become effective in June prior to the deadline established by FEMA. The Commission members felt that it was not necessary to continue the public hearing. The following motion was made: That the Commission close the public hearing regarding the proposed amendment of the Regulations. The motion was made by Mrs. Riccardo, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze read the following agenda item:

Coastal Site Plan Review #250, Flood Damage Prevention Application #280, John & Allegra Erickson, 17 Plymouth Road. Proposing to lift the existing residence and construct additions and alterations to the existing residence and perform related site development activities within regulated areas. The subject property is on the southeast corner formed by the intersection of Baywater Drive and Plymouth Road, and is shown on Assessor's Map #55 as Lot #73, in the R-NBD Zone.

Chad Nehring, Project Architect, explained that the Ericksons purchased this property in September of 2005 and that the site is within the Noroton Bay neighborhood. The house is a 1952 residence that contains approximately 2,450 square feet that has been renovated several times since its original construction. The plan is to modify the existing structure and literally lift up the existing house so that it will be above the expected flood level. They will re-utilize the existing foundation

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and add vertical walls to the existing foundation walls. All of the structure will then comply with the FEMA requirements regarding the elevation of the floor and the foundation of the structure being able to withstand the flood forces. They have obtained a variance from the Zoning Board of Appeals (Calendar #7-2010). The existing building coverage is more than 28% of the lot area. The renovation program will result in no more than 23.5% of the lot area being covered with structures. The expected flood elevation is 12 feet above sea level as established in 1929 (NGVD '29). The new slab of the crawl space will be 8.5 feet above sea level and the new first floor will be 13 feet above sea level (instead of the current floor level being at 10.2 feet and thus being below the expected flood level).

Mr. Ginsberg noted that Section 417c of the Noroton Bay District Regulations requires that a detailed Drainage Plan be worked out to make sure that the neighboring property owners within the neighborhood will not be impacted due to the proposed work. He said that this Drainage Plan has not yet been prepared because the applicant was not sure if they would get their variances from the Zoning Board of Appeals. He said that the Planning & Zoning Commission could close the public hearing and if the project is approved, the submission of a detailed and acceptable Drainage Plan could be a condition of approval. Otherwise, the Planning & Zoning Commission could continue the public hearing so that the applicant can have the Drainage Plan designed and submitted for the future continuation of the hearing. He was asked if there were any unusual aspects to the drainage design. Mr. Ginsberg indicated that it appears to be a straightforward and simple engineering design solution that must be coordinated with the Noroton Bay Neighborhood Association and the applicant is actually reducing the amount of building coverage. He suggested that the public hearing be closed and that the submission of an acceptable Drainage Plan be a condition of approval. If the applicant cannot comply with the requirement, then the approval would not be valid or they would need to come back to the Planning & Zoning Commission to request an amendment of the approval.

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

Chairman Conze read the following agenda item:

Land Filling & Regrading Application #237, Karl & Elisabeth Puehringer, 51 Phillips Lane. Proposing to fill and regrade, construct an associated retaining wall, and perform related site activities. The subject property is located on the south side of Phillips Lane approximately 1050 feet west of its intersection with Hoyt Street and is shown on Assessor's Map #25 as Lot #113-3, and is in the R-1/3 Zone.

Peter Ratkiewich, P.E., from Bridgewater Engineering, LLC spoke on behalf of the applicants. He explained that they have young children and have very little backyard. In order to create some additional backyard, they propose to construct a large retaining wall on the south and east sides of the existing house. To do this, they will need to excavate approximately 200 cubic yards of fill and bring in approximately 336 cubic yards of fill. This will result in approximately 536 yards of fill being placed on the uphill side of the retaining wall. He noted that the Environmental Protection Commission had approved this project at its March 30, 2010 meeting, as part of EPC #1-2010.

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Mr. Ratkiewich said that the retaining wall will be approximately 10 feet tall with a 4 foot high safety fence atop the wall. He explained that Sara Ungemack McCool has been hired as the Landscape Architect and will have prepared a detailed landscaping and planting plan to soften the view of the wall by placing plants at the bottom and top of the wall.

Mr. Ginsberg noted that the Planning & Zoning Commission discourages the installation of tall retaining walls. At its highest, this would be about a 10 foot high wall with a 4 foot high fence above it. He confirmed that the Environmental Protection Commission did approve the project with conditions and that the applicant has reviewed the plans with the neighbors who signed off on the plan. Mr. Ratkiewich noted that a retaining wall greater than three ft. in height will need a permit from the Building Department. Mr. Spain asked if it was possible to have a terraced design so that it would be more stable and each piece of the wall would not need to be as tall. Mr. Ratkiewich said that they have considered a terraced or stepped retaining wall, but it would not create very much flat area because of the downward slope of the land away from the house. If they kept the proposed extent of flat backyard the same, the new retaining walls would have to be placed farther and farther downslope. He referred to the sectional wall design and noted that they are interlocking pieces with mechanically stabilized materials that will be buried within the retaining soil. He said that rather than using typical materials, they will use as geogrid of interwoven material that will be placed at various levels and then incorporated into the compacted fill. He said that this design is preferred to a poured concrete retaining wall in this particular type of application.

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

There being no further business, the meeting was adjourned at 9:35 p.m.

Respectfully submitted,

David J. Keating
Assistant Director of Planning