

**PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:  
Cunningham, DiDonna, Olvany, Sini, Jr., Voigt

STAFF ATTENDING: Ginsberg, Keating  
RECORDER: Syat  
Channel 79

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Vice Chairman Olvany opened the meeting at 8 P.M. and read the first agenda item:

**PUBLIC HEARING**

**Business Site Plan #168-F, Equity One, LLC--Trader Joe's, 430 Boston Post Road.** Proposal to expand Trader Joe's into a portion of the space now occupied by Orvis and perform related site development activities. The subject property is located on the southeast corner of the intersection of Boston Post Road and Old King's Highway North and is shown on Assessor's Map #35 as Lot #1, in a DB-2 (Designed Business Two – commercial) Zone.

Mr. Ginsberg explained that the Zoning Board of Appeals (ZBA) had granted a variance to allow the expansion of the Trader Joe's use into a portion of the existing building. The ZBA also authorized the amendment of the court stipulated judgement that allowed Trader Joe's to be established in this shopping center in the first place. The space in question had recently been occupied by Orvis and Orvis has relocated to a different space within the shopping center. This proposed 2,600 square feet of additional floor area will be occupied by Trader Joe's. The applicant also proposes to modify the driveway that allows traffic to exit the parking lot onto the Boston Post Road. At present, vehicles leaving the parking lot can turn left or right. Currently, the traffic flow on the Boston Post Road creates difficulty and safety concerns as vehicles try to turn left on to the Boston Post Road. In this case, they are proposing to modify the site plan, which is within the jurisdiction of the Planning & Zoning Commission to clearly indicate as vehicles leave the parking lot, they can only turn right. A left turn would be prohibited.

Attorney Wilder Gleason represented the applicant and explained that there are 104 on-site parking spaces. He said in accordance with the 1997 information when Trader Joe's first occupied a portion of the 19,600 square foot building, there were 94 parking spaces on the site. They want to make this situation safer and are therefore proposing to make the exit from the parking lot to the Boston Post Road a right turn only. They will ask for the Connecticut Department of Transportation (CT DOT), which controls Route 1/Boston Post Road, to install appropriate signage on the other side of the street to make the right turn only more enforceable. New signage within the site will direct traffic that wishes to head south on Route 1 or toward the downtown Darien or to I-95 South to use the Old King's Highway North driveway. There was some discussion about the possibility of elimination of the southbound, left turn lane from the Boston Post Road into the site, but a point was made that it would be better to have the left turn lane striped to encourage safe left turn movements into the site. Attorney Gleason said that Trader Joe's and the owners of the property will work with CT DOT. John

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 2 OF 32

Canning, traffic consultant hired by the applicant, read into the record his conclusion that indicates that left turn movements to and from the parking lot from the Boston Post Road are the safety issues that need to be addressed. Mr. Canning said that the area is congested, it is problematic and eliminating the left turn from the parking lot to the Boston Post Road will result in a significant improvement. He said that he will work with Captain Anderson of the Darien Police Department and with Michael Galante, the traffic consultant retained by the Town to review the application, and with the CT DOT. He said eliminating the left turn from the driveway onto the Boston Post Road will reduce queuing at the egress.

Attorney Gleason said that one of the points in the traffic report is the possibility of having off-site parking for employees. He said that while Trader Joe's is not in a position to commit to such a requirement, they will work with their employees to have as many of them park off site as possible. Mr. Ehud Kupperman, Vice President of Development for Equity One, the property owner, said that this is a great location for Trader Joe's but the existing store is approximately one-half the square footage that Trader Joe's typically likes to have. He said that he will have discussions with Trader Joe's about requiring employees to park off site but cannot guarantee that they will accept it. Mr. Cunningham said that off-site parking for employees is not an unreasonable request. Attorney Gleason said that at the peak shift, Trader Joe's now has 20 employees and that will remain unchanged even though they are expanding the space that they occupy. Mr. Kupperman said that Trader Joe's will have more display space and it will improve the storage capacity in the back of the store but he understands that they are not planning to greatly increase the number of products that they carry. Mr. DiDonna said that he has been in this store and noticed that it is sometimes rather congested. He said that the expansion would allow for an improved internal customer flow. Mr. Kupperman said that it will also create a more efficient operation in the store, which will allow customers to get in and get out more quickly, thus freeing up more parking spaces on a more frequent basis. Attorney Gleason said that Trader Joe's entrance/exit will be on the left hand portion of the store space that they occupy and that the handicap parking spaces in that vicinity will be near the front door. He submitted two letters of support and said that Trader Joe's will work with the owner of the adjacent site on the Boston Post Road to trim back shrubs that are currently limiting visibility and sight lines at the driveway exit location.

Josephine Lombardo spoke in support of the application.

Michael Galante of Frederick P. Clark Associates explained that he is a traffic consultant hired by the Town. He said that the CT DOT knows that this proposal to create a right turn only exit is coming and if the CT DOT approves the plan, it will be the applicant's responsibility and the applicant's expense to implement the project. He said that he will work with the applicant's traffic consultant and with CT DOT to address any unresolved issues.

Commission members were concerned about whether the traffic engineers would be able to get CT DOT approval and address the other issues. They decided to continue the public hearing on June 2, 2015 so that a more definitive answer regarding the traffic aspects of the project can be obtained from CT DOT and communicated to the Commission.

At about 8:35 p.m., Vice Chairman Olvany then read the following agenda item:

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 3 OF 32

**Special Permit Application #288/Site Plan, Fjord Fish Market, 1015 Boston Post Road.**

Proposing to establish a retail fish market with associated convenience food service use in a portion of the now-vacant 927+/- square foot first floor space at 1015 Boston Post Road. The subject property is situated on the northwest corner of the intersection formed by Boston Post Road and Day Street and is shown on Assessor's Map #73 as Lot #15 & 16, in the CBD (Central Business District) Zone.

Mr. Ginsberg said that this is the building that fronts on the Boston Post Road and the front portion of the building is currently occupied by Bluemercury. The second floor is configured as three apartments, all of which are currently occupied. The proposed Fjord Fish Market will occupy approximately 930 square feet of the ground floor. He said that the retail use is permitted but the fact that they would be having convenience food service or prepared food ready for consumption, requires Special Permit approval from the Planning & Zoning Commission. He said that no seats are proposed inside or outside. There are 12 on-site parking spaces that are shared with the other businesses in this building and the other commercial building on the property and those 12 parking spaces are also shared by the residential tenants in both buildings. Mr. Ginsberg said that on-street parking exists in the vicinity. He said according to the applicant, the operators expect that a typical customer visit will be approximately 10 minutes.

Ken Kleban, building owner, said that they sent all the notices to the neighboring property owners. He said that the quiet enjoyment and use of the adjacent spaces by the tenants is very important to him. He said Fjord Fish Market will be using the rear entrance (adjacent to the common parking lot) rather than the front door facing the Boston Post Road. Mr. Olvany said that there is a letter from David Genovese of Baywater Properties and a letter from Bluemercury expressing concern about potential issues.

Jim Thistle of Fjord Fish Market said that venting and odor control is not really a problem at his other locations. He noted a letter from a neighbor of their New Canaan store. Commission members asked Mr. Ginsberg to contact the Planning Department in New Canaan to see if odors or venting are a problem. Mr. Ginsberg said that the Fire Marshal noted that this is an all-electric cooking system and that the Health Department has no issues regarding the concept but needs to review the menu for details of the facility. Mr. Kleban said that there will be no exhaust system going through the roof. Mr. Thistle said that all of the cooking appliances will be electrically operated. He said that the Cos Cob, Westport and New Canaan stores all have full kitchens. He noted a letter from a law office neighbor of the New Canaan store. The New Canaan store uses a different venting system. He said that approximately 85% of the store income comes from the sale of fresh fish and approximately 15% comes from cooked and prepared fish. He said that they do operate small fryers for the fish and French fries and shellfish. In some facilities, they only have four or five cooked orders per day.

Commission members expressed concern with Mr. Genovese's letter that the vent-less odor control systems do not work effectively. Mr. Thistle said that they do use a state-of-the-art system to control odors at their existing locations. Mr. Ginsberg read the vent-less system description from the file letter. Mr. Kleban said that they will be using the new and improved system.

Mr. Olvany asked about handling food waste and garbage and the potential odor problems associated with that. Mr. Thistle said that they will have zero garbage going from the store into the Dumpster outside the building. They pack up all of their food waste product into plastic bags and keep it in the

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 4 OF 32

store and in the cooler overnight until it is removed on a daily basis. He said that there is no odor problem with waste because they control how they handle the waste product. In response to questions, he said that the customers do not bring in their fresh catch to be processed. Mr. Thistle said that the Greenwich location has become a food destination along with similar stores that sell cheese or butcher products and seafood in the same area.

Mr. Kleban said that this building shares a small parking lot with the building at 13 Grove Street, owned by Albert Orlando.

Mr. Ginsberg recommended that the Commission keep open the public hearing regarding this matter so that more information regarding the hood and venting system can be obtained and the Commission members can visit those other sites to determine the effectiveness of the odor controls.

There were no comments from the public regarding the matter.

The Commission decided to continue the public hearing at 8 P.M. on May 12, 2015 in room 206 of the Town Hall.

Vice Chairman Olvany then read the following agenda item:

**Coastal Site Plan Review #307, Flood Damage Prevention Application #348, Land Filling & Regrading Application #350, Jared & Schuyler Heuer, 37 Contentment Island Road** Proposal to construct an addition to the existing single-family residence, modify the parking court and driveway, and to perform related site development activities within regulated areas. The subject property is located on the east side of Contentment Island Road approximately 1,250 feet south of its intersection with Shennamere Road, and is shown on Assessor's Map #68 as Lot #13 in the R-1 Zone.

Scott Fisher represented the property owners and explained that most of the work will replace portions of the existing residence that is being removed. They are replacing a two car garage with a new larger garage and adding a second floor above. They are also adding a two story addition to another portion of the property. Mr. Ginsberg said that very little of the work is within the Flood Zone but a small portion of the regrading is below the expected Flood Elevation. The proposed work will make the driveway grade work well. Mr. Fisher said that the regrading for the driveway is necessary due to the larger garage and to improve safety. He said that no blasting will be needed to do the regrading. Mr. DiDonna said that he reviewed the plans and visited the site and felt that it was an appropriate design.

There were no comments from the public. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. Sini, seconded by Mr. DiDonna and unanimously approved.

At about 9:10 p.m., Vice Chairman Olvany then read the following agenda item:

**Coastal Site Plan Review #270-B, Flood Damage Prevention Application #306-B, Land Filling & Regrading Application #270-B, Paul & Amy Darrah, 11 Peabody Lane**. Proposal to retain a seawall; remove existing ramp and pier and float; construct timber walkway; construct elevated

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 5 OF 32

walkway, pier, gangway and float; and to perform related site development activities within regulated areas. The subject property is on the east side of Peabody Lane approximately 1,000 feet northeast of its intersection with Hawthorne Road (Salem Straits), and is shown on Assessor's Map #62 as Lot #60, in the R-1 Zone.

Attorney Wilder Gleason represented the applicant and explained that they have obtained approval from the Connecticut Department of Energy and Environmental Protection (DEEP) and from the US Army Corps of Engineers (ACOE). This is a replacement of the existing pier structure and pilings. The replacement structure will be northeast of the existing pier and pilings that will be removed. He said that there are detailed environmental reports that were submitted to DEEP and ACOE as well to the Town. He said that the old pier is in need of such substantial repair that it is not worth it to undertake that project. Instead they will be creating a new pier and removing the old facilities. Construction methods to be used are outlined within the application materials.

Devon Santa said that they would be relocating the pier in order to provide access to deeper water without extending the pier. He said that the design is very sensitive to the environmental concerns of all the regulatory agencies. He said that they would be retaining the existing sea wall in the area and would be constructing a new wooden walkway to get from the main portion of the property over a very low wet area that provides access to the pier. He said that there is a small storage building on the peninsula/island that will be accessible using the new wooden walkway.

There were no comments from the public regarding the application. The following motion was made: That the Planning & Zoning Commission close the public hearing and will render a decision on this matter at a future meeting. The motion was made by Mr. Sini, seconded by Mr. DiDonna and unanimously approved.

At about 9:20 p.m., Vice Chairman Olvany then read the following agenda item:

### **GENERAL MEETING**

*Deliberations and possible decisions on the following:*

**Special Permit Application #285, Land Filling & Regrading Application #213-A, Anthony & Elizabeth Minella, 53 Horseshoe Road.** Proposing to construct a 60' x 100' sports court with associated lighting; along with a related structure attached to the existing residence; install related stormwater management; and to perform related site development activities. *DECISION DEADLINE: 5/14/2015.*

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

Mr. Olvany said that he recently found out that the son of the applicant/owner is on the baseball team that he (Mr. Olvany) now coaches. In order to avoid any perception of a conflict of interest, he will abstain from discussion or voting on this matter.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 6 OF 32

Commission members discussed the draft resolution. Mr. Sini said that he thinks there should be a performance bond regarding the planting. Mr. DiDonna said that it is very important that the applicant comply with his representations regarding the use and activities and screening of the athletic facilities. If there is non-compliance, then it would be important for the problem to be corrected at the site otherwise it will mean that that applicant has to return to the Planning & Zoning Commission. Mr. Cunningham and Mr. Sini said that it would be appropriate to require a status report after the lights have been installed and used for one year so that if there are any problems or issues, they can be corrected. It was also important to note that there is no amplified sound or noise or broadcasting. There should be no scoreboard either. Other suggested changes were proposed to the draft resolution. The following motion was made: That the Planning & Zoning Commission grant the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Voigt and seconded by Mr. Cunningham. Voting in favor were Cunningham, Voigt, Sini and DiDonna. Mr. Olvany abstained. The motion passed by a vote of 4-0-1. The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
May 5, 2015**

Application Number: Special Permit Application #285  
Land Filling & Regrading Application #213-A

Street Address: 53 Horseshoe Road  
Assessors Map #3 Lot #23

Name and Address of  
Property Owner: Anthony & Elizabeth Minella  
53 Horseshoe Road  
Darien, CT 06820

Name and Address of Applicant:  
Applicant's Representative: Lance Zimmerman  
14 Cliffview Drive  
Norwalk, CT 06850

Activity Being Applied For: Proposing to construct a 60' x 100' sport court/ice rink with associated lighting; along with a related structure attached to the existing residence; install related stormwater management; and to perform related site development activities.

Property Location: The subject property is located on the southwest side of Horseshoe Road approximately 400 feet west of its intersection with Inwood Road.

Zone: R-2

Date of Public Hearing: January 20, 2015 continued to February 24, 2015 and March 10, 2015

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

Publication of Hearing Notices

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 7 OF 32

Dates: January 9 & 16, 2015

Newspaper: Darien News

Date of Action: May 5, 2015

Action: GRANTED WITH STIPULATIONS  
AND MODIFICATIONS

Scheduled Date of Publication of Action:  
May 15, 2015

Newspaper: Darien News

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

- the proposed use and activities must comply with all provisions of Sections 400, 405b, 850, 944 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 property owners/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:

**DETAILS REGARDING THE PROPOSAL AND THE SUBJECT PROPERTY**

1. The subject application is to construct a 60' x 100' sport court/ice rink with associated lighting; along with a related structure attached to the existing residence; install related stormwater management; and to perform related site development activities. The subject property is 2.67 acres, and now contains a single-family residence and pool. It is located within the R-1 zone. There are no inland wetlands on the property and no part of it is within the Flood Hazard Zone. The house is served by public water and an on-site septic system.
2. While a pool house has been shown on the plans, it is not part of this application. It is an accessory use allowed in this zone by administrative Zoning Permit, and does not require a Special Permit. It has been shown to give Commission members a full picture of future development of this property.
3. The proposed multi-purpose seasonal sport court/ice rink and the associated lighting of such is an accessory use requiring a Special Permit under Section 405b of the Darien Zoning Regulations. The ice rink would have a number of associated chiller units, which would allow the rink to remain frozen, and thus, allow for more consistent use throughout the winter as well as use earlier and later in the winter season.
4. The proposed sports court/ice rink would be "sunk" three feet (to be at elevation 97.0), and installed generally in the northeast corner of the Minella property. The proposed house addition would block most of the view of the sport court/ice rink from the west, and substantial additional

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 8 OF 32

plantings are proposed to assist in minimizing potential noise and visual impacts to the north and east.

5. Issues regarding the proposed work presented by the neighbors and mentioned by the Commission during the public hearing process include: 1) planting/buffering/landscaping; 2) details regarding the lights; 3) stormwater management; and 4) disruption of properties during construction.

#### PLANTING/BUFFERING/LANDSCAPING DETAILS

6. At the public hearing it was noted that the applicant's submitted planting plan includes screening to the north, northeast, and east of the proposed sports court/ice rink. The proposed house addition screens the west of the sports court/ice rink. The proposed landscaping includes a series of 12-20 foot high plantings. This would be a supplement to existing plantings on the property. The length of the row of additional plantings is shown on the plans as 120' on the eastern side and over 280' on the northern/northeastern side.
7. At the public hearing, the applicant noted that there is proposed to be ten spruce trees on the south side of the proposed sport court. Other landscaping now exists between the proposed court and the northerly property line, and one spruce exists to the south of the sport court. These existing trees will provide some screening between the neighbors and the area of the proposed sport court/ice rink. The Commission finds that the additional trees to be planted to satisfy the Zoning Regulations.

#### LIGHTING DETAILS

8. At the public hearing, lighting experts from Atlantic Consulting & Engineering testified on behalf of the applicant. Significant discussion arose regarding the lights including their height, the number of lights, the use and timing of the lights, the type of technology used, and minimizing light spillage.
9. It was suggested that automatic timers be used. In response to a question from Commission members, the applicant said that he would accept a reasonable restriction on the hours of usage of the lights. The Commission agrees that hour limits on the lights are appropriate.
10. The applicant has proposed "barn door style" and other such shields for the lights in order that they comply with the Zoning Regulations. The February 26, 2015 report from Atlantic Consulting & Engineering notes that full visors were added to the screen the light source (the bulb) from view, thereby reducing glare.

#### STORMWATER MANAGEMENT DETAILS

11. As part of this application, a Stormwater Management Report was prepared by Land Engineering & Surveying LLC, and a revised version of the report dated March 5, 2015 was submitted for the record which addressed observations/comments submitted by a neighbor's engineer (From Redniss & Mead) hired to review the application on their behalf.
12. The Commission notes with respect to the drainage system around the court, the need for the applicants to file a Notice of Drainage Maintenance Plan outlining the protocol for maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 9 OF 32

property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.

13. The sport court/ice rink, as designed, complies with all yard setbacks and building coverage maximums in the Zoning Regulations.
14. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
15. The location and size of the use, the nature and intensity 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.
16. The location and nature of the proposed use are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
17. 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.
18. With the specific conditions outlined herein, 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 Special Permit Application #285 and Land Filling & Regrading Application #213-A are hereby modified and granted subject to the foregoing and following stipulations, conditions, modifications and understandings:

- A. Construction of the proposed sport court/ice rink and related plantings and stormwater management and lighting shall be in accordance with the following plan submitted to the Commission, as required to be revised herein:
  - Proposed Addition, Sport Court and Pool House property located at 53 Horseshoe Road, prepared for Anthony D. Minella & Elizabeth S. Minella, by Land Engineering & Surveying, LLC, scale 1"=20', dated Dec. 10, 2014 and last revised 3-5-15, Sheet C-100.
  - Proposed Addition, Sport Court and Pool House property located at 53 Horseshoe Road, prepared for Anthony D. Minella & Elizabeth S. Minella, by Land Engineering & Surveying, LLC, scale 1"=20', dated Dec. 10, 2014 and last revised 2-13-15, Sheets C-101, C-102 and C-103.
  - Minella Residence by Zimmerman Architecture, dated 12-18-14, Drawings No. A-1, A-2 and A-3.
  - Zoning Location and Topographic Survey #53 Horseshoe Road prepared for Anthony D. Minella Elizabeth S. Minella, by William W. Seymour & Associates, dated August 2, 2014 and received Dec 19, 2014 (showing location and number of proposed evergreen screening). The landscaping plan shall be modified to show ten spruce trees along the southern side of the sports court/ice rink so that the south side of the court is buffered/screened.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 10 OF 32

DURING CONSTRUCTION

- B. During construction, the applicant shall utilize the sediment and erosion controls illustrated on Sheets C-100 and C-101 as noted within Condition A above, and any additional measures as may be necessary due to site conditions, including the tree protection filling as mentioned above. Those sediment and erosion controls shall be installed 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 any 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 owner shall caution drivers of the construction vehicles entering and exiting the site to ensure that they do not trespass onto adjacent properties. They shall enter from the southern Minella driveway only, and avoid using other neighboring properties to maneuver.

PLANTINGS/LANDSCAPING/BUFFERING

- D. In order to assure the survival and healthy condition of the plants, and their replacement if they do not survive, prior to the issuance of a Certificate of Zoning Compliance for the sport court/ice rink, the applicant is required to post a \$5,000 performance bond for the plantings. This shall be in place for two years from the date of the CO for the house addition, as required in Condition B, above. After one planting season, the applicant may request that up to ½ of the bond be returned, if in the determination of Planning and Zoning staff, the plantings have survived. Two years after the completion of the planting, the applicant may request the return of the remaining balance of the bond. If in the determination of the Planning and Zoning staff, the plantings have survived and thrived, ½ of the bond may be returned.
- E. The approved plans show 18-20 foot high trees to the north and east of the proposed sport court/ice rink. It is the responsibility of the owner to maintain that landscaping to the south of the sport court/ice rink in good condition, and replace any landscaping that is dead, dying, or diseased with the same or better landscaping species and sizes. The goal of the landscaping is to provide visual screening of the sport court/ice rink from the adjacent properties to the north, east, and northeast, and to a lesser extent, to minimize the noise from people playing on the sport court/ice rink.
- F. The proposed house addition to the north and east of the house has been shown on the plans. It is a two-story addition, which will assist in minimizing any potential noise and visual impact of the proposed sports court/ice rink. That house addition is allowed subject to administrative Zoning Permit, and does not require Special Permit approval. The proposed Site Section shows that the house will block the view of most of the court, but not necessarily the light poles or the light fixtures. Because this has been presented as part of this application, and the house provides a screening function, if the house addition is not constructed by May 5, 2017, the applicant shall plant a row of 18'-20' arborvitae or other similar plantings in that vicinity so as to block the sports court/ice rink. An additional \$2,000 performance bond will be required for these arborvitae plantings if the house addition is not constructed.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 11 OF 32

- G. The submitted plans show a fence around the proposed chiller units and associated pump. That fence will minimize the noise and visual impact of the chillers. It shall be installed prior to the use of the sports court/ice rink.

LIMITS ON LIGHT AND COURT USAGE

- H. With the conditions imposed herein, the proposed sport court/ice rink lighting meets the requirements in Section 405b of the Zoning Regulations and is hereby approved. No light poles shall be greater than sixteen (16) feet in height and the top of the fixtures shall not exceed a height of 20 feet.
- I. In order to minimize potential impacts to neighbors, the owner shall install a timer to ensure the lights are not accidentally left on overnight. The lights shall be set on an automatic timer to turn off at 9:00 p.m. on weekdays and 10:00 p.m. on Fridays, Saturdays, and the nights before Federal holidays. After the use of lights for one year, the applicant may return to the Planning and Zoning Commission for a request to modify these maximum hours of light usage.
- J. There shall be no outdoor amplified sound and no scoreboard.
- K. The ice rink and associated chiller units may only be in use a maximum from November 1 to April 30. The sports court may be used year-round.
- L. After six months of using the lights the applicant shall prepare a report and submit it to the Planning and Zoning Commission. This report shall be prepared by an expert and shall include light readings (in foot candles) taken at the edge of the property to ensure that what has been constructed is consistent with the presentations made at the public hearings.

STORMWATER MANAGEMENT

- M. The plan submitted with the application includes the installation of a drainage system to manage the additional runoff to be created by the impervious surface. This drainage system must be installed prior to the completion of the house addition project OR the sport court/ice rink project (whichever happens first).
- N. Prior to the issuance of a Zoning or Building Permit for either the house addition or the sports court/ice rink, the applicant shall perform test pits in the location of the sports court/ice rink, and submit those results to the Planning & Zoning Department. The Department of Public Works/Town Engineer shall review the test pit data to ensure that the proposed stormwater management system will function properly with that soil type in that location. Assumptions made in design shall be confirmed by DPW prior to issuance of Zoning and Building Permits. If assumptions cannot be confirmed, revised design will need to be prepared, reviewed and approved.
- O. The applicant shall install the drainage system as shown on the submitted plans. The applicant/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 properties. 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.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 12 OF 32

- P. By July 6, 2015 (within the next 60 days) 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. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 53 Horseshoe 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 as well, within the next 60 days of this approval and prior to the start of any filling or regrading work around the house.

POST-CONSTRUCTION

- Q. Prior to the issuance of a Certificate of Zoning Compliance and/or use of the sport court/ice rink:
- 1) A final “as-built” survey from a licensed land surveyor is hereby required to certify that the sport courts/ice rink construction are in compliance with the approved plans, including the side yard setback for the court; and
  - 2) A Professional Engineer shall certify in writing that the stormwater management system, and other related drainage work has been properly completed in accordance with the approved plans.
- R. The Commission hereby requires a post-construction photogrammetric/lumens report. This report will be used to verify that the installed lighting is consistent with the representations made by the applicant during the public hearing process. This includes, but is not limited to, the requirement that there be a maximum of 0.7 foot candles at the northern and eastern perimeter property lines.
- S. The Commission also requires the filing of a letter with the Planning & Zoning Commission after one year of sport court/ice rink and light use. That letter shall summarize the status of the project, including the lights, and any neighbor issues or complaints received.
- T. In evaluating this application, the Planning & 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.
- U. The granting of this Special Permit 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. Zoning and Building Permits are required prior to the construction of the sport court/ice rink and also prior to the installation of the related house addition. The house addition and sports court/ice rink will require separate Zoning and Building Permits.
- V. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within two (2) years of this action by (May 5, 2017). This may be extended as per Sections 858 and 1009.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 13 OF 32

All provisions and details of the plan, as required to be modified herein, 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. Within sixty days of this action, and prior to the issuance of a Zoning or Building Permit, a Special Permit form and Notice of Drainage Maintenance Plan both must be filed in the Darien Land Records or this approval shall become null and void.

Vice Chairman Olvany then read the following agenda item:

**Subdivision Application #612-B, ASL Partners, LLC, 203 Long Neck Point Road.** Proposal to subdivide a 2.8+/- acre property into two rear lots, each with a 25 foot access to Long Neck Point Road.

Commission members reviewed the draft resolution. Mr. Cunningham said that in theory the project is doable (but not preferable) and he is very concerned about the potential impacts. Mr. DiDonna said that the Commission is not approving the specific development or construction activities, only the division of the rear lot into two separate properties. Several clarifications and corrections were discussed and agreed upon. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions as noted. The motion was made by Mr. Sini, seconded by Mr. DiDonna and unanimously approved. The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
May 5, 2015**

Application Number: Subdivision Application #612-B

Street Address: 203 Long Neck Point Road  
Assessor's Map #61 Lot #9

Name and Address of  
Property Owner: ASL Partners, LLC  
161 Cherry Street  
New Canaan, CT 06840

Name and Address of Applicant &  
Applicant's Representative: Amy Zabetakis, Esq.  
Rucci Law Group, LLC  
19 Old King's Highway South  
Darien, CT 06820

Activity Being Applied For: Proposal to subdivide a 2.45+/- acre property into two rear lots, each with a 25 foot access to Long Neck Point Road.

Subject Property: The subject property is an existing rear lot located on the east side of Long Neck Point Road, approximately 1,200 feet south of its southernmost intersection with Pear Tree Point Road.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 14 OF 32

Zone: R-1

Date of Public Hearing: March 24, 2015 continued to March 31, 2015

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

Publication of Hearing Notices

Dates: March 13 & 20, 2015

Newspaper: Darien News

Date of Action: May 5, 2015

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:  
May 15, 2015

Newspaper: Darien News

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

- the proposed use and activities must comply with all provisions of Section 400 of the Darien Zoning Regulations and all applicable sections of the Subdivision 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 subdivision plan, and the testimony 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. A free cut (the first time the property has been divided subsequent to the adoption of Subdivision Regulations by Darien) was implemented for this property and filed in the Darien Land Records in January 2015 as Map #5201. This map created a “front parcel” of 2.0 acres and a larger 2.45+/- acre, rear parcel served by two 25 foot wide accessways off of Long Neck Point Road. Public water and sewer is available in Long Neck Point Road. The total parcel size is 2.8 acres if one counts the accessways.
2. The applicant proposes to subdivide the rear parcel, into two lots—one of 1.386+/- acres and one of 1.073+/- acres (excluding the accessways). As shown on the submitted subdivision plan, the two lots are proposed to tie into the public water and sewer available in Long Neck Point Road. Since this two-lot subdivision does not involve more than three times the minimum lot size required in the R-1 zone, and there is no open space requirement.
3. There are no inland wetlands on the subject property. However, part of each proposed lot is in the Flood Hazard Zone, a portion of which is in Velocity Zone VE (elevation 15) and part of the

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 15 OF 32

property is in Flood Zone AE (elevation 14). The proposed parcels slope down from Long Neck Point Road (approximate elevation of 40) to Long Island Sound (approximate elevation of 4.3).

4. At the public hearing, Commission members had concern whether it seems reasonable to have two houses on the two rear lots due to the limited buildable area that is impacted by the extra large setback needed when a rear lot is created pursuant to the Zoning Regulations, and the flood hazard area and the 100 foot critical Coastal Area Management line. Attorney Zabetakis said that the submitted feasibility plan does not include any construction activity within the Coastal Area Management critical 100 foot boundary and that only a small portion of the development would be within the fringe of the Flood Hazard Zone. Ms. Cameron said that none of the development should be within the critical Coastal Area Management area and the Flood Hazard Zone, not even a pool or patio or filling or regrading.
5. At the public hearing, questions arose regarding the existing horse chestnut tree located close to the northerly property line, and whether it would be impacted due to the construction of a driveway to the rear lot. Mr. DiDonna questioned the potential impacts of development upon the chestnut tree. Attorney Zabetakis said that as part of the previously proposed development of all four acres as a single building lot, that applicant would have been able to preserve that chestnut tree. That proposal is now void. Attorney Zabetakis said that the current applicant proposing the subdivision of the property is not proposing any development or regrading or retaining walls at this time. They cannot commit to preserving the tree because they will not be the developer. Commission members noted that the developer should make their best reasonable effort to preserve the tree. They asked if it was possible to require that both rear lots share one driveway, thus eliminating the need to have a driveway near the large chestnut tree. Attorney Zabetakis said that currently there is only one rear lot but it does have two access strips and a driveway could be placed in each access strip, even if it was for just one house. They currently have two lots fronting on Long Neck Point Road and one rear lot to the east of the two parcels (the subject property).
6. A plan was submitted by McChord Engineering showing the feasibility of proposed residences and associated improvements on each of the two lots. This plan shows houses which could be built upon each of these lots if they were approved. The submitted plans show five bedroom residences with garages. The submitted Site Development Plan (which is conceptual) shows no new house construction or stormwater management or regrading within the flood hazard zone or within the 100 foot critical Coastal Area Management zone. The proposed concept plan shows all house construction meeting zoning setbacks.
7. As noted at the public hearing, the proposed residences and other improvements shown on the submitted plans do not represent proposed construction and are not the specific structures to be built. The Commission is NOT approving the construction of any residences herein, but rather, is solely approving the subdivision of the existing property into two lots. The decision on whether further review and action by the Planning & Zoning Commission is required for construction of these residences will ultimately depend upon the specific development proposed for each lot.
8. Attorney Zabetakis confirmed that buyers of the property will be responsible for complying with all Regulations and they will need to return to the Planning & Zoning Commission for all necessary permits. The applicant is demonstrating that the development of the two rear lots is feasible but the actual development would be up to the eventual buyers.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 16 OF 32

9. At the public hearing, neighbors also raised questions about the feasibility of construction and development on the north lot. It was noted that major regrading could be needed for the driveway and that such regrading would require Special Permit approval from the Planning & Zoning Commission. There is also a limited width of area for the proposed driveway. It was noted by a neighbor that the current owner still owns all four acres of land and that the driveways for each parcel and the proposed lot lines could go anywhere, yet the applicant has chosen to put the hypothetical driveways and lot lines in the manner that is proposed and in a manner which could impact the substantial vegetation on the property.
10. The Flood Zone VE on the property is very near the shoreline because it reflects the wave velocities involved. The remainder of the property up to elevation 14 is subject to the Flood Zone AE 14. One of the neighbors claimed that in storms, things blow up and wash up on to the lawn area and the drainage system could be impacted by storm conditions.
11. At the public hearing, other neighbors spoke regarding their concern with the number of proposed driveways in the vicinity of what used to be 203 Long Neck Point Road. They noted that Long Neck Point Road is used by many walkers and bikers as well as vehicular traffic. It was recommended that the Commission allow just one curb cut for the entire development and that having one curb cut would be safer than having many curb cuts.

NOW THEREFORE BE IT RESOLVED that Subdivision Application #612-B is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The subdivision shall be in accordance with the following plan submitted to and reviewed by the Commission:
  - Site Development Plan 203 Long Neck Point Road, by McChord Engineering Associates, Inc., last revised 3-25-15, Drawing SE1.
  - Construction Notes and Details 203 Long Neck Point Road, by McChord Engineering Associates, Inc., last revised 3-25-15, Drawing DT1.

The above plans prepared by McChord Engineering Associates, Inc., were submitted to demonstrate the feasibility of construction on the proposed lots. **These plans are not being approved for the actual site development or construction of buildings or driveways,** since the only application being made herein is for the subdivision approval. As noted herein, there is no specific development proposal being made as part of this application, and no specific development is being approved. The subdivision map to be filed on the Land Records should clearly specify the buildable area as defined in Condition B, below, and the other regulated areas on the property.

- B. The Commission hereby requires the buildable area on each of the proposed lots to be from the 100' CAM line (measured from the Mean High Water line) to the 90' special front yard setback line for rear lots such as these. This will ensure that no work is done within the Flood Hazard Zone (both the AE and the VE zones), and that the 100 foot critical CAM area is fully protected. The buildable areas as defined herein shall be shown on the subdivision plan filed in the Darien Land Records. This will allow any buyers to know the jurisdiction of the Commission, potential areas of construction, and the natural limitations of the property. Although site work within the

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 17 OF 32

critical 100 foot CAM area is a potential, the Commission believes that both lots can and should be developed without any site work or regrading or activities within the critical 100 foot CAM area.

- C. No site work is proposed as part of this application. In any future development application for these properties, all utilities shall be installed underground.
- D. Since there is no new road construction and no extension of public utility facilities, the Commission waives the requirement for submission of a Performance Bond.
- E. The Commission hereby requires that as part of the future development application for either of these two lots that further details be provided for staff review on the specific location and grades of any proposed driveways. This shall include details on the driveway sight lines verified by a professional engineer. No plantings or other possible obstructions shall be installed which could impede said sight lines. While no decision on the exact location or number of driveways is being made herein, the Commission strongly desires that there be one curb cut/street opening for these two subdivided lots addressed in this application. The potential for two curb cuts to become four or five curb cuts in such a short distance on Long Neck Point Road warrants scrutiny. Also, the Commission strongly recommends that grading and other activities that could negatively impact the horse chestnut tree that is in or near the northerly accessway should be avoided.
- F. Prior to filing a mylar in the Darien Land Records, the applicant/property owner will need to obtain new street addresses and lot numbers from the Darien Assessor and put onto the mylar prior to being given to the Planning & Zoning Director. Once that has been accomplished, the Planning & Zoning Director shall review the mylar to confirm it is in compliance with this resolution. If so, the map shall be signed by the Chairman and returned to the applicant for filing in the Darien Land Records. The timing of the filing must comply with Section 8-25 of the Connecticut General Statutes.
- 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. This approval of this subdivision 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. A Street Opening Permit(s) will be required for any new driveway(s), and a Sewer Connection permit will be needed from Sewer Services to hook up any new residences to the public sewer which now exists in Long Neck Point Road.

All provisions and details of the plan, as required to be revised by Conditions A and B, herein, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final plan by the Planning & Zoning Chairman.

Vice Chairman Olvany then read the following agenda item:

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 18 OF 32

**Land Filling & Regrading #160-A, David Jones, 93 Mansfield Avenue.** Proposing to fill and regrade back yard and install new associated retaining wall, and to perform related site development activities.

Commission members reviewed the draft resolution. Mr. Cunningham said that a performance bond in the amount of \$2,000 would be appropriate due to the history of this site and past problems. The Commission should also require a maintenance plan so that the property owner will know how to properly maintain the project. Other clarifications and corrections were discussed and agreed upon. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Voigt, seconded by Mr. DiDonna and unanimously approved. The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
May 5, 2015**

Application Number: Land Filling & Regrading Application #160-A

Street Address: 93 Mansfield Avenue  
Assessor's Map #17 Lot #27

Name and Address of  
Property Owner: David Jones  
93 Mansfield Avenue  
Darien, CT 06820

Name and Address of Applicant &  
Applicant's Representative: Allan Broadbent  
The Laurelrock Company  
969 Danbury Road  
Wilton, CT 06897

Activity Being Applied For: Proposing filling, regrading, and installation of retaining walls and performing related site development activities.

Property Location: The subject property is located on the west side of Mansfield Avenue, approximately 20 feet northwest of its intersection with Roland Drive.

Zone: R-1/3

Date of Public Hearing: March 24, 2015 continued to April 7, 2015

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

Publication of Hearing Notices  
Dates: March 13 & 20, 2015

Newspaper: Darien News

Date of Action: May 5, 2015

Action: APPROVED WITH CONDITIONS

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 19 OF 32

Scheduled Date of Publication of Action:  
May 15, 2015

Newspaper: Darien News

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 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 for filling, regrading, and installation of retaining walls and performing related site development activities. No new impervious surface is part of this application other than some steps and walls.
2. Stormwater management was incorporated on this property as part of the construction of the residence in 2006/2007. As part of this application, the applicant has performed on-site field verification of the depths of the drainage system and the infiltrator system and they have found that the infiltrator system is approximately three feet below grade. This will allow for easier accommodation of the proposed filling and regrading, since the underground system will not need to be modified.
3. The Environmental Protection Commission (EPC) approved this project on April 15, 2015 as part of EPC 2-2015. That approval is hereby incorporated by reference, including the requirement for the establishment of a conservation easement westerly of the proposed wall.
4. At the public hearing, Mr. Allan Broadbent, the owners' landscape architect, said that they plan to remove many of the invasive species that are located in and adjacent to the wetlands and they will create a conservation easement to permanently protect the stream corridor area. Many of the previous plantings installed when the house was constructed did not survive. Part of their plan involves construction of a 5.5 foot tall retaining wall that will be built in the embankment so that a larger flat backyard area will be created and then they will have a safety railing on top of that retaining wall. This will result in a series of smaller walls and terraces intermittently planted compared to the single large retaining wall that is located on the property to the north. Part of the regrading will lower the ground level close to the house and that material will be used as fill near the new retaining wall.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 20 OF 32

5. At the public hearing, one of the neighbors said that she is concerned about the wetlands. She is in favor of the project as long as the wetlands are protected. She brought up the fact that the dumping of leaves near the stone wall will kill any new vegetation that is planted in that area. She said that the leaves need to be properly disposed of rather than dumped in the area to be planted.
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.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #160-A is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Filling and regrading, wall construction, and plantings shall be in accordance with the following plans submitted to and reviewed by the Commission:
  - Conceptual Site Plan, Jones D Residence 93 Mansfield Ave, by the Laurelrock Company, dated 1/21/2015, Sheet L01.
- B. The Commission hereby requires a \$2,000 performance bond for the proposed plantings. Up to one-half of the performance bond may be returned after one growing season upon request to, and review and approval by, the Commission. The remainder may be returned after the second growing season, upon request to and review and approval by the Commission.
- C. A maintenance plan for yard waste and a plan for the removal of invasive species within the wetlands shall be submitted to the Planning and Zoning Department prior to the start of work.
- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the Conceptual Site Plan noted in Condition A, above, and any additional measures as may be necessary due to site conditions, including the tree protection filling as mentioned above. Those sediment and erosion controls shall be installed 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, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. A final "as-built" survey from a licensed land surveyor is hereby required to certify that the filling and regrading are all in compliance with the approved plans. This as-built survey shall show one-foot contours. The Landscape Architect shall certify that the plantings and walls have been installed pursuant to the Conceptual Site Plan. This as-built shall also show the location of the stormwater management system installed as part of the house construction in 2006-2007, of which an as-built was never submitted.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 21 OF 32

- 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.
- H. 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 (May 5, 2016). 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, or this approval shall become null and void. Work cannot begin until the Conservation Easement, required by the EPC, has been filed in the Darien Land Records.

Vice Chairman Olvany then read the following agenda item:

**Amendment of Special Permit Applications #22-O and 22-P, Coastal Site Plan Review #27-D and 27-E, Flood Damage Prevention Application #20-D and 20-E, Land Filling & Regrading Application #325, Tokeneke Club, Inc., 4 Tokeneke Beach Drive.** Proposing to amend the previously approved plans for the clubhouse and bathhouse by modifying: the width of the service driveway; the tennis courts; and the lockers; and to perform related site development activities within regulated areas.

Mr. DiDonna said that he would abstain to avoid any perception of a conflict of interest.

The draft resolution was discussed. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Voigt, seconded by Mr. Sini and approved by all members except Mr. DiDonna, who abstained. The motion passed by a vote of 4-0-1. The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
May 5, 2015**

Application Numbers: Amendment of: Special Permit Applications #22-O and 22-P;  
Coastal Site Plan Review #27-D and 27-E;  
Flood Damage Prevention Application #20-D and 20-E;  
and Land Filling & Regrading Application #325

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 22 OF 32

Street Address: 4 Tokeneke Beach Drive/Butler's Island Road  
Assessor's Map #67 Lot #83

Name and Address of Property Owner: Tokeneke Club, Inc.  
4 Tokeneke Beach Drive  
Darien, CT 06820

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

Activity Being Applied For: Proposing to amend the previously approved plans for the clubhouse and bathhouse by modifying: the width of the service driveway; the tennis courts; and the lockers; and to perform related site development activities within regulated areas.

Property Location: The subject property is located on the south side of Butler's Island Road at the southeast corner formed by its intersection with Tokeneke Beach Drive.

Zone: R-1

Date of Public Hearing: March 24, 2015

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

Publication of Hearing Notices

Dates: March 13 & 20, 2015 Newspaper: Darien News

Date of Action: May 5, 2015 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News  
May 15, 2015

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, 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 application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 23 OF 32

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

1. The application is to amend the previously approved plans for the clubhouse and bathhouse by modifying: the width of the service driveway; the tennis courts; and the lockers; and to perform related site development activities within regulated areas. The subject property is currently served with a variety of on-site septic systems.
2. At the public hearing, Attorney Wilder Gleason represented the Club and said that following the Commission's approval of the project, Club members decided that they wanted to have bigger family locker areas. Accordingly the Club now proposes to keep some of the family lockers on the north wall of the building that was to be removed. In order to do this, they will be reducing the distance or separation from the tennis courts to the locker room building. They will be reducing the court length to 118 feet and reducing the width of the internal driveway down to 13 feet. The Fire Marshal has reviewed this and indicated that as long as the area is striped as a Fire Lane with no parking, he has no objection.
3. Attorney Gleason and Architect Chris Pagliaro during the hearing reviewed the modifications to the locker room building. Mr. Pagliaro said that there is approximately 650 square feet of changed area compared to the previously approved area. Attorney Gleason said that they still will be under the allowable building coverage. The Commission notes that while this approval will allow additional development of this property, they are concerned about potential for overdevelopment on this sensitive site which fronts on Long Island Sound.
4. The Zoning Board of Appeals (ZBA) granted Calendar #15-2015 on March 11, 2015 for this project. That approval is hereby incorporated by reference. This variance allowed the amendment of the approved plans of Calendar #13-2014, which allowed alterations to the bathhouse.

FLOOD APPLICATION FINDING

5. The proposed activities, to be implemented with the conditions listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage. In accordance with the submitted engineering information, the proposed activity will have no adverse impacts on flooding on adjacent properties.

SPECIAL PERMIT FINDINGS

6. 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.
7. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
8. The nature of the proposed use is such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 24 OF 32

9. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

COASTAL SITE PLAN REVIEW FINDINGS

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 is consistent with the goals and policies in Section 22a-92 of the Connecticut General Statutes.
12. The potential adverse impacts of the proposed activity on coastal resources are expected to be *de minimus*, and are therefore, acceptable.

NOW THEREFORE BE IT RESOLVED that Amendment of: Special Permit Applications #22-O and 22-P; Coastal Site Plan Review #27-D and 27-E; Flood Damage Prevention Application #20-D and 20-E; and Land Filling & Regrading Application #325 are hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction shall be in accordance with the following plans submitted to and reviewed by the Commission:
- Addition/Renovation to 4 Butler's Island Road, by McChord Engineering Associates, last revised 2/13/15, Sheet SE1, Site Development Plan.
  - Renovation to the Existing Bathhouse, The Tokeneke Club, 4 Butler's Island Road, last revised 2015.02.11, by Pagliaro Bartels Sajda Architects and JGRA, Sheet D1.1.
  - Renovation to the Existing Bathhouse, The Tokeneke Club, 4 Butler's Island Road, last revised 2015.02.11, by Pagliaro Bartels Sajda Architects and JGRA, Sheet A1.1.
- B. During the public hearing process, the Darien Fire Marshal submitted written comments noting that the driveway used for deliveries (which goes behind the tennis court) shall be marked and signed as a Fire Lane—No Parking. That requirement is hereby imposed by the Commission and shall be fully implemented prior to the issuance of a Certificate of Occupancy.
- C. All conditions within the prior approvals are still in full force and effect unless specifically amended herein. These include all conditions and stipulations related to the following approvals:
- Amendment of Special Permit Applications #22-O and 22-P,
  - Coastal Site Plan Review #27-D and 27-E,
  - Flood Damage Prevention Application #20-D and 20-E,
  - Land Filling & Regrading Application #325
- D. All 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.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 25 OF 32

- E. During the regrading and site work, the applicant shall utilize the sediment and erosion control measures shown on the plans noted in Condition A, above, and other measures as may be necessary due to site conditions. 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.
- F. Prior to the request for the Zoning and Building Permit for the construction, the applicant or owner shall submit certification from a licensed architect or professional engineer that the final construction designs of the foundation structures and the rest of the building have been designed to withstand all flood forces and comply with the flood damage prevention requirements for structural stability.
- G. When the construction is nearing completion, written certification shall be provided from a registered Professional Architect or Professional Engineer that the construction, relocation of mechanical equipment, and flood proofing has been completed in conformance with this permit and the Zoning Regulations. This certification shall be provided to the Planning and Zoning Department prior to the issuance of a Certificate of Occupancy, per Section 829e of the Darien Zoning Regulations.
- H. Normally the Regulations would preclude use of portions of the site or building until the entire building and all aspects of the site work are completed. In this case the proposed work involves various portions of the site and various existing and proposed buildings on the site. Even though all aspects of all buildings and all of the site work will not be complete and are still being worked on, portions of the site and structures can be in use by Club members provided the applicant satisfies all health and safety requirements of the Health Department, Fire Marshal, Building Official, and Director of Planning.
- I. Prior to the request for the Certificate of Occupancy for the clubhouse, the applicant shall submit: 1) verification from a professional engineer in writing and/or photographs that all aspects of the site grading, drainage and stormwater management system have been completed in compliance with the approved plans referred to in Condition A, above; and 2) An as-built survey from a licensed land surveyor showing numerous spot elevations sufficient to allow Planning and Zoning Department staff to confirm that the grading was completed pursuant to the plans approved in Condition A, above.
- J. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. This includes, but is not limited to, final approval from the Darien Health Department.
- K. 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 this permit as it deems appropriate.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 26 OF 32

- L. This amendment of the permits shall be subject to the provisions of Sections 815, 829f, 858, and 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within three years of this action (May 5, 2018). This may be extended as per Sections 815, 829f, 858, and 1009.

All provisions and details of the plans, as required to be revised in Condition B, 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. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records to finalize this approval.

Vice Chairman Olvany then read the following agenda item:

**Coastal Site Plan Review #305, Flood Damage Prevention Application #346, Land Filling & Regrading Application #345, Kevin Kuryla, 9A Tokeneke Trail.** Proposing to construct a new single-family residence, pool, patio, on-site stormwater management and septic system, and perform related site development activities within regulated areas.

Commission members discussed the draft resolution. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. DiDonna, seconded by Mr. Sini and unanimously approved. The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
MAY 5, 2015**

Application Number: Coastal Site Plan Review #305  
Flood Damage Prevention Application #346  
Land Filling & Regrading Application #345

Street Address: 9A Tokeneke Trail  
Assessor's Map #65 Lot #8-2

Name and Address of Applicant &: Kevin Kuryla  
Property Owner: 40 Sunset Road  
Darien, CT 06820

Name and Address of:  
Applicant's Representative: D. Bruce Hill, Esq.  
Law Office of Bruce Hill  
30 Old King's Highway South  
Darien, CT 06820

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 27 OF 32

Activity Being Applied For: Proposing to construct a new single-family residence, pool, patio, on-site stormwater management and septic system, and perform related site development activities within regulated areas.

Property Location: The subject property is located on the east side of Tokeneke Trail, approximately 300 feet north of its intersection with Cross Road.

Zone: R-1

Date of Public Hearing: March 19, 2015 continued to April 7, 2015

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

Publication of Hearing Notices

Dates: February 20 & 27, 2015

Newspaper: Darien News

Date of Action: May 5, 2015

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:  
May 15, 2015

Newspaper: Darien News

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

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

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

1. As noted by the applicant, the application is to construct a new single-family residence, pool, patio, on-site stormwater management and septic system, and perform related site development activities within regulated areas. The property is currently vacant.
2. The "Summary of Proposed Development" submitted as part of the application notes that "...the proposed residence is to be located at the highest point of the property in order to comply..." with the flood regulations. The highest point on the property is now a little less than elevation 16. That area is about 110 feet from Mean High Water, toward the eastern end of the site. Almost the entire property is within the Flood Hazard Zone.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 28 OF 32

3. Attorney Bruce Hill represented the applicant and explained that this is a 2.02+/- acre, rear lot that is accessed from Tokeneke Trail. Tokeneke Brook flows on the north and east sides of this site and special setback requirements are applicable because it is a rear lot. He said that there is a 100 foot upland review area adjacent to Tokeneke Brook. Attorney Hill said that the expected flood elevation in this area is 13 feet above North American Vertical Datum 1988 and that most of the buildable portion of the property is in the flood zone. In order to develop on the property, they are requesting approval under the Coastal Area Management Program and the Flood Damage Prevention Regulations and a Special Permit for filling and regrading of the property.
4. Todd Ritchie, Professional Engineer, said that his firm conducted test holes at the site and it was determined that the design should keep the septic system on the uphill or upland side of the house rather than between the house and Tokeneke Brook. He said that the storm drainage system to manage stormwater runoff will be adjacent to the existing driveway and some will be on the north and northeast sides of the house. The storm drainage design for the driveway calls for enough infiltration area as if the entire driveway were to be paved using regular asphalt. Instead of using regular asphalt, which would be impervious, the applicant proposes to install a porous asphalt driveway at this time. By installing the drainage system and the porous asphalt driveway, the stormwater runoff system is more than adequate to handle the proposed change in the site condition. Mr. Ritchie said he has received and reviewed the comments from professional engineer Craig Flaherty of Redniss & Mead on behalf of the neighbor, and will incorporate those suggested changes in his site plan, except the proposed underdrain that would be adjacent to the driveway. He said that if the driveway eventually becomes paved, the installed drainage system will manage it properly due to the oversized design.
5. At the public hearing, Mr. DiDonna asked about the changes in the flood conditions that might occur due to the filling of the house location. Attorney Hill said that some fill will displace some flood waters at the edge or fringe of the flood zone. He said that the first floor elevation of the house would be at elevation 14.0, which is one foot higher than the base flood elevation (BFE) of 13. Mr. Ritchie said that the treatment of stormwater is designed to put water into the ground rather than to allow it flow over land toward the Brook. He said that the first inch of runoff would be managed for water quality purposes but not for flood control purposes.
6. Kate Throckmorton, Licensed Landscape Architect, said that she prepared the reports for the EPC and Coastal Area Management Report for the Planning & Zoning Commission. She said that there is some overlapping jurisdiction between the two Town agencies. She said that trees in the vicinity of the house, driveway and septic system will be removed but no shoreline trees will be removed. She also noted that the buffer area trees near the neighbor to the south will not be removed.
7. Michael Boice explained that he had prepared the landscaping plan. He said that 20 large trees in the vicinity of the proposed house or very close to the house will need to be removed; another 5 trees to the north and east need to be removed due to their condition or the fact that the root system would be impacted due to changes in the grade level. He said some of these trees are in the vicinity of the septic system and some are in the vicinity of the stormwater management detention system. He also reviewed the planting plan and noted that much of the existing lawn area will be changed to a native garden area that will have a more natural condition. He said that 36 new trees are shown on the plan and most of them are Norway Spruce trees.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 29 OF 32

8. In response to questions, John Wicko, Project Architect, said that he said that no flood vents are proposed because of the fill that is proposed would raise the ground level around the proposed house to be above the expected flood level. He said that the crawl space slab would be at Elevation 9.15 which is below the expected flood level of 13. Mr. Wicko said that the house would contain 6 bedrooms and have 3,657 square feet of floor area on the first floor and 3,723 square feet of second floor. The propane tank is proposed to be installed to the southwest of the house. The new propane tank will be underground.
9. The Darien Environmental Protection Commission approved this project (EPC #1-2015) on April 15, 2015. That approval is hereby incorporated by reference.
10. As part of this application, stormwater runoff will be treated for water quality before it is discharged to Tokeneke Brook. Because of this property's specific location within the lower 1/3 of the watershed and directly adjacent to Tokeneke Brook which flows into Long Island Sound, there is no need to address stormwater quantity—but solely the quality of the stormwater.
11. The Commission notes the need for the applicant or property owner(s) to submit a Drainage Maintenance Plan for the drainage system, including but not limited to, the rain gardens and the proposed pea stone platform area underlain with compacted gravel, and to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners and/or tenants of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential stormwater impacts.
12. The application has been reviewed by the Commission and as required to be modified herein, is in general compliance with the intent and purposes of Sections 850 and 1000.
13. The Commission finds that the proposed activities, if properly implemented, are not contrary to the goals, objectives and policies of the Coastal Area Management Program.
14. 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.
15. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
16. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
17. 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.

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 30 OF 32

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #305, Flood Damage Prevention Application #346, and Land Filling & Regrading Application #345 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction, stormwater management, plantings/landscaping and other site development activity shall be in accordance with the following plans as submitted to the Commission:
- Site Plan, Kuryla Residence 9A Tokeneke Trail, by Woodard & Curran, last revised 3/26/15, Sheet C-01.
  - Construction Notes & Details, Kuryla Residence 9A Tokeneke Trail, by Woodard & Curran, last revised 3/26/15, Sheet C-02.
  - Michael Boice Collaboration Kevin Kuryla, 9A Tokeneke Trail, Tree Removal Plan, last revised March 21, 2015.
  - Michael Boice Collaboration Kevin Kuryla, 9A Tokeneke Trail, Planting Plan, last revised March 21, 2015.
  - Kuryla Residence 9A Tokeneke Trail, by John A. Wicko, Architect, LLC, dated 10/13/14 and last revised 3-18-15, Sheets F1, A1, A2, A7, A8, A13.
- B. While the Commission recognizes the fact that this rear lot has a ninety (90) foot setback from its western property line, and that the highest point on the property is a little below elevation 16 and the flood elevation in this area is elevation 13, that the applicant shall strongly consider minor modifications to the plans approved in Condition A, above, to pull the house a little further from Tokeneke Brook and thus further out of the critical Coastal Area Management (CAM) area. Modifications to the driveway and turnaround may allow the house to be moved to the west in the range of 5-15 feet. While this would not pull the house outside of the flood zone, it may allow for a reduction in potential coastal impacts.
- C. Due to the nature of this project, the Commission hereby waives the requirement for a performance bond. However, with each Zoning Permit application for each aspect of the project, the applicant shall submit engineering or architectural certification that the final design of the structure(s) complies with all aspects of the Flood Damage Prevention Regulations.
- D. During the excavation, filling, regrading, and site work, the applicant shall utilize the sediment and erosion controls illustrated on the Site Plan referred to in Item A above, and any additional measures as may be necessary due to site conditions, including tree protection measures, 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.
- E. As part of this application, a Drainage Maintenance Plan shall be submitted for the record. This Drainage Maintenance Plan requires the property owner and all subsequent property owners of 9A Tokeneke Trail 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 address

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 31 OF 32

water quality. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this approval and prior to the issuance of a Zoning or Building Permit.

- F. The applicant shall install the stormwater management system as shown on the submitted Site Plan (in Condition A, above). The applicant/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 tidal wetlands and other environmentally sensitive areas. If such problems do become evident in the future, the owner of the property shall be responsible for remedying the situation at such owner's expense and as quickly as possible.
- G. Once the project is complete, and prior to May 5, 2017, the applicant shall certify in writing and/or photographs, and with an 'as-built' survey map that all work has been properly completed in accordance with the approved plans. This shall include written certification by the project's professional engineer that the drainage facilities have been installed according to the approved plans, and certification that all construction complies with the Flood Damage Prevention Regulations.
- H. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- I. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to: the possible need for a Blasting Permit from the Darien Fire Marshal.
- J. This permit shall be subject to the provisions of Sections 815, 829, 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 (May 5, 2016).

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 Drainage Maintenance Plan needs to be prepared and submitted per the above, and a Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the issuance of a Zoning or Building Permit for the house foundation, or this approval shall become null and void.

Vice Chairman Olvany then read the following agenda item:

*Deliberations only regarding:*

**Land Filling & Regrading Application #348, Jeffrey & Dagmar Scalise, 1 Lynn Court.** Proposal for filling and regrading associated with the construction of a replacement single-family residence, detached garage, associated patios, and stormwater management, and to perform related site development activities. The subject property (formerly known as 140 Hoyt Street) is located on the south side of Lynn Court at the southwest corner formed by its intersection with Hoyt Street, and is

PLANNING & ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
MAY 5, 2015  
PAGE 32 OF 32

shown on Assessor's Map #31 as Lot #13 in the R-1/3 Zone. *PUBLIC HEARING CLOSED 4/28/2015.*

Commission members discussed the draft resolution and noted that the building height will need to be checked at the time that the Zoning Permit application is submitted. It is also important that the applicant remove the fence along Hoyt Street to improve sight line visibility. The existing side walk along Hoyt Street seems to be adequate and does not need replacement. Staff was asked to draft a resolution for action at a future meeting.

Vice Chairman Olvany then read the following agenda item:

**Approval of Minutes**

*March 24, 2015 Public Hearing/General Meeting*

Several clarification and corrections were discussed and agreed upon. The following motion was made: That the Planning & Zoning Commission approve the minutes as corrected. The motion was made by Mr. Sini, seconded by Mr. Voigt and unanimously approved.

*March 31, 2015 Special Meeting/Public Hearing/General Meeting*

Several corrections and clarifications were discussed and agreed upon. The following motion was made: That the Planning & Zoning Commission approve the corrected minutes. The motion was made by Mr. Voigt, seconded by Mr. Sini and unanimously approved

*April 7, 2015 General Meeting/Public Hearing*

Action was postponed.

*April 21, 2015 Public Hearing/General Meeting*

Action was postponed.

There being no further business, the following motion was made: That the Planning & Zoning Commission close the meeting. The motion was made by Mr. Voigt, seconded by Mr. DiDonna and unanimously approved. The meeting was adjourned at 9:59 P.M.

Respectfully submitted,

David J. Keating  
Planning & Zoning Assistant Director