

**PLANNING AND ZONING COMMISSION  
MINUTES  
SPECIAL MEETING / PUBLIC HEARING/GENERAL MEETING  
AUGUST 4, 2014**

Place: Auditorium, Town Hall

TIME: 8:00 P.M.

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

STAFF ATTENDING: Ginsberg, Keating  
RECORDER: Fazekas  
Channel 79

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

**PUBLIC HEARING**

**Business Site Plan #33-C/Special Permit, Douglas McKay/537 Post Road, LLC, 537 Boston Post Road.** Proposing to convert office space to three apartments within 1,850+/- square feet of the second floor of the existing building at 537 Boston Post Road (above the Compleat Angler), as part of an “after-the-fact” permit. The subject property is located on the north side of Boston Post Road approximately 700 feet east of its intersection with Brookside Road, and is shown on Assessor’s Map #14 as Lot #36 in the DB-2 Zone. *POSTPONED TO SEPTEMBER 23, 2014.*

Chairman Cameron said that this agenda item has been postponed to September 23. She then read the following agenda item:

**Continuation of Public Hearing regarding Coastal Site Plan Review #184-A, Flood Damage Prevention Application #195-A, Land Filling & Regrading Application #102-A, Town of Darien, 36 and 30 Goodwives River Road, and 11 Queens Lane.** Proposing to repair the Upper Pond dam; construct a fish ladder; remove approximately 9,000 cubic yards of sediment; restore aquatic and shoreline habitats of the Upper Pond; and perform related activities within regulated areas. The subject properties are located on the Goodwives River and: at 36 Goodwives River Road (Map #63, Lot #105); 30 Goodwives River Road (Map #63, Lot #104); and 11 Queens Lane (Map #63 Lot #99), approximately 800 feet south of its intersection with Old King’s Highway South, in the R-1 Zone. *PUBLIC HEARING OPENED 7/15/2014. DEADLINE TO CLOSE PUBLIC HEARING IS 8/19/2014 UNLESS EXTENSION OF TIME IS GRANTED BY APPLICANT’S REPRESENTATIVE.*

At the applicant’s request, the public hearing regarding this matter will be continued on Tuesday, September 2<sup>nd</sup> at 8:00 P.M. in the Town Hall.

Chairman Cameron read the following agenda item:

**Continuation of Public Hearing regarding Coastal Site Plan Review #272-B, Flood Damage Prevention Application #342, Land Filling & Regrading Application #273-B, Mitch & Jody Truwit, 123 Five Mile River Road.** Proposing to raze the existing residence and garage and construct one new single-family residence and in-ground pool; install associated retaining walls;

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abandon the existing septic system and tie into existing public sewer; and perform related site development activities within regulated areas. The subject property is located on the south and east side of Five Mile River Road approximately 700 feet south of its intersection with Davis Lane, and is shown on Assessor's Map #67 as Lot #2 in the R-1/2 Zone. *HEARING OPENED 7/8/2014.*

Andy Glazer represented the applicant and said that additional information had been received regarding the retaining wall parallel to the Five Mile River. They have decided not to touch the existing wall, but rather will create a new wall just upland and inland from the existing wall.

Mr. Glazer said that the proposed plan now includes the elimination of the 46 inch diameter oak tree that would be a problem due to the layout of the driveway and access to the site. He said that there is an extensive root system for this tree because of the solid ledge on which it stands. He said that there are other areas where the vegetation will be preserved and that it would be better to remove the old oak tree at this time rather than let it die and have it become a problem to remove at a later time. He said that the oak tree stands out against the background of other smaller trees in the vicinity. This is particularly noticeable when the site is viewed from the river or the property on the Rowayton side on the east side of the Five Mile River.

Mrs. Cameron said that she believes she read in one of the reports that an oak tree of that size would be approximately 200 to 300 years old. She said that there is a letter from a neighbor that included photographs of the site and their opinion was that this particular tree should be saved because it is the most significant tree on the site. Mr. Glazer said that 200 years is a good life for a tree, but there is no assurance that it will remain healthy. He said that the applicants would not sacrifice the application in a dispute over the tree. Mr. DiDonna said that he agrees with Mrs. Cameron that the significant old tree should be preserved. He said that he has experience with a similar tree on his site that has survived the development activity.

There were no comments from the public regarding the application. Mr. Ginsberg indicated that Joseph Canas, Professional Engineer, and Michael Aurelia, Environmental Consultant, both of whom were engaged by the Town, are both present in case there are any questions for them.

There being no further questions or comments regarding the pending application, the following motion was made: That the 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.

Chairman Cameron read the following agenda item:

**Continuation of Public Hearing regarding Coastal Site Plan Review #300, Flood Damage Prevention Application #341, Land Filling & Regrading Application #329, 145 NWL, LLC, 145 Nearwater Lane.** Proposing to raze the existing residence, pool, and construct a new single-family residence and pool with associated stormwater management and perform related site development activities within regulated areas. The subject property is located on the west side of Nearwater Lane approximately 500 feet north of its intersection with Brush Island Road, and is shown on Assessor's Map #56 as Lot #24, in the R-1 Zone. *PUBLIC HEARING OPENED 7/8/2014.*

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Attorney Bruce Hill represented the applicant and explained that the Environmental Protection Commission approved the proposed filling of the man-made pond and the related site work to allow the development to proceed as proposed. They took that action on July 9<sup>th</sup>, which was the day after the Planning & Zoning Commission held the first portion of the Public Hearing.

Attorney Hill said that the proposed filling and regrading is still subject to the Special Permit proceedings of the Planning & Zoning Commission. He said that determining the grade from which to measure the building height has been a confusing issue. They are looking to the Planning & Zoning Commission for clarification to allow ground elevation 9.0 to be the point from which the building height is measured. This would result in the building height of the proposed structure to be 27 feet high, which is in compliance with the 30 foot maximum allowed by the Regulations. This also allows the structure to be constructed above the expected flood elevation.

Jeffrey McDougal, Land Surveyor from William W. Seymour Associates, explained that the pond on the property was man-made. The 1953 ground elevations can be documented prior to the excavation for the pond. He said that the top of the banks around the pond seem to be the original grade level before the pond was dug out. He said that using Elevation 9.0 as the average grade level makes sense. He displayed drawings and illustrations that had been shown to the Zoning Board of Appeals. The ZBA had granted the setback variances to allow the building and the proposed position, but struggled with the grade elevation because, at that time, neither the EPC nor Planning & Zoning Commission had approved the filling of the pond and associated regrading. He said that the pond excavation apparently started in the late 1960's. It was noted that, if the permits to fill the pond were granted and the pond were filled in and the site was left vacant for five years, there would be no debate about the existing average grade level. In this case, rather than waiting five years after filling in the pond, they want the existing ground level to reflect the fact that the pond is to be filled in rather than trying to use the existing ground levels which would be much lower. It was noted that the Base Flood Elevation (BFE) in the area is 14 and the first floor of the house must be at least one foot above that, thus the first floor must be at least Elevation 15.

There were no comments from the public regarding the application. 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. Voigt, seconded by Mr. Sini and unanimously approved.

At about 8:30 p.m., Chairman Cameron read the following agenda item:

**Continuation of Public Hearing regarding Business Site Plan #288/Special Permit, Standard Realty, LLC/Valero, 1927 Boston Post Road.** Proposing to install a 20' x 26' canopy over new fuel dispensers to be installed, and to perform related site development activities. The subject property is located on the north side of the Boston Post Road approximately 70 feet east of the intersection with Garden City Road and is shown on Assessor's Map #42 as Lot #3, in the Neighborhood Business (NB) Zone.

Mark Smith represented the applicant and explained that approvals had been obtained from the Architectural Review Board and from the Zoning Board of Appeals. The revised plan was submitted and it incorporates the comments from the staff and the approvals from the ARB and ZBA. The proposal is to remove the existing pumps and pump island and construct a new canopy

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structure to cover the new pump island and pump facilities. On the front wall of the canopy, they propose to install 10 inch letters with the Valero name and then back at the pump island they will have a 2'x3' price sign which is not illuminated. This signage complies with the Zoning Board of Appeals variance for the canopy which requires that all new signage comply with the Regulations.

Mr. Smith explained that the revised site plan also shows the dumpster relocation, the need to stripe the handicapped parking spaces, and the removal of pavement from the required 25 foot buffer adjacent to the residential zone.

Mr. Smith explained that the existing underground gas tanks need to be replaced with new double walled fuel tanks. At the same time, they will be replacing the pump island and pumps. Given market conditions, it is now appropriate to install a canopy to protect customers while they are fueling their vehicles. The proposed canopy does not comply with the front yard setback and that is why they needed a variance from the Zoning Board of Appeals. At the time that they are redeveloping the site, they will install a buffer area to provide the proper separation between the business use and the residential zone to the north. The buffer area will be grass with trees, and it will no longer be used as parking, storage, or other business usage.

Mr. Smith said that during the removal of the old fuel tanks they will be checking the site for any contamination or leak. Any leaks or contamination will be properly remediated in accordance with State requirements. Mr. Smith said that the Zoning Board of Appeals granted the variance of the front yard setback for the canopy and approved the front wall sign and stipulated that the price information would not be on the canopy as had been originally proposed.

Mr. Ginsberg said that the main change to the site is the new canopy and the proper establishment of the buffer area to the rear of the business use. He said that there is a letter in the file from a neighbor regarding the front sidewalk. The neighbor suggests that while the site is being redeveloped, the new concrete and brick sidewalk should be continued through this site.

Mr. Smith said that it would be a big expense for the property owner to redo the sidewalk in addition to the site redevelopment costs. He said that they would prefer not to do the new sidewalk. In response to questions, Mr. Smith said that the new lighting fixtures at the site will replace the old "shoe box" style. The new lights will be flush mounted LED high efficiency lighting on the underside of the canopy.

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

At about 8:40 p.m., Chairman Cameron read the following agenda item:

**Continuation of Public Hearing regarding Coastal Site Plan Review #301, Flood Damage Prevention Application #343, Land Filling & Regrading Application #332, David & Tina Madon, 15 Shennamere Road.** Proposal to construct additions and alterations to the existing residence; and perform related site development activities within regulated areas. The subject property is located on the west side of Shennamere Road approximately 700 feet south of its

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intersection with Contentment Island Road, and is shown on Assessor's Map #68 as Lot #10 in the R-1 Zone.

Mr. Ginsberg explained that he expected the earlier public hearings to last longer and had told the applicant not to arrive until 9:00 P.M. Chairman Cameron agreed to postpone this final public hearing matter until later in the evening and she read the following general meeting agenda item:

**GENERAL MEETING**

**2016 Town Plan of Conservation & Development.**

Review of consultant submittals, and selection of consultant(s).

Mr. Ginsberg said that he passed along to the Planning & Zoning Commission the e-mail from Glen Chalder from Planimetrics who was apologetic about the typographical errors in his original proposal. There was a comment that the Fitzgerald & Halliday proposal incorrectly added up the expected hours of work.

Mr. DiDonna said that it is important that the Commission chooses a consultant who would not be overextended by the project. Commission members debated the qualifications and appropriateness of the two proposed consultants who would coordinate the update of the Town Plan. Mr. Sini, Olvany and DiDonna felt that Fitzgerald and Halliday should be the consultant while Voigt, Cunningham and Cameron felt that Planimetrics should be the consultant. Eventually, Mr. Olvany changed his mind and voted for Planimetrics. Mr. Ginsberg will make the final arrangements so that Planimetrics can be hired.

Resumption of the Public Hearing portion of the meeting:  
Chairman Cameron then read the following public hearing agenda item:

**Continuation of Public Hearing regarding Coastal Site Plan Review #301, Flood Damage Prevention Application #343, Land Filling & Regrading Application #332, David & Tina Madon, 15 Shennamere Road.** Proposal to construct additions and alterations to the existing residence; and perform related site development activities within regulated areas. The subject property is located on the west side of Shennamere Road approximately 700 feet south of its intersection with Contentment Island Road, and is shown on Assessor's Map #68 as Lot #10 in the R-1 Zone.

Attorney Wilder Gleason represented the applicant and explained that some of the proposed work is in the Flood Hazard Zone. He submitted a copy of the Tax Assessor's Map highlighting the site. He said that part of the work is a cantilevered bumpout of the living space and part of the work is a fireplace and a trellis over a patio on the north side of the house facing the pond. He said that the recently updated Flood Hazard Maps have changed the expected flood height in the area. He noted that the site is roughly in the center of Contentment Island and there are no critical coastal area management resources on the property. He submitted copies of the Zoning Board of Appeals and Environmental Protection Commission approvals for the project. He said that the house was constructed in the early 1960s and is below the expected Base Flood Elevation of 14. Part of the house is at Elevation 12.5 and another part is at Elevation 13.3. He submitted a list of non-compliant issues, some of which will be remedied by the proposed construction. For example, a

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portion of the house at Elevation 9 will be raised up and the utilities will be raised up above the expected flood level. He said that any future replacement of the air conditioning units will be raised, but the existing units can stay in place for the moment and until they are replaced.

David Madon submitted letters of support from three of his neighbors. He said that he also spoke with other neighbors who have no objection to the project, but did not write letters in support.

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

Conclusion of the Public Hearings and resumption of the General Meeting:  
Chairman Cameron read the following agenda item:

**Business Site Plan #136-B, Dolcetti, 2 Squab Lane, CBD Zone.** Update on status of project.

Commission members reviewed the letter from Attorney Robert Maslan representing the property owner. He noted that this was a 2006 approval which involved a comprehensive redevelopment of three lots. Two of the proposed buildings have been constructed and the common parking area has been constructed. The third building on the site and the stairway to connect the parking area to the train station parking lot has not yet been constructed.

Commission members said that they felt that the stairway installation has been an important aspect of the project and have previously expressed to the applicant the need to install that stairway.

Mr. Ginsberg said that the property owner says that the stairway cannot be built at this time because it would inhibit the construction of the third building. It was noted that no additional parking would be created to accommodate the third building and that the existing parking seems to be occupied already.

Mrs. Cameron said that a 2012 warning letter has already been sent to the applicant indicating the Commission's displeasure with the fact that the common stairway has not been constructed.

Mr. Ginsberg said that the Commission had requested an update, and the letter from Attorney Maslan is that update, although it does not seem to please the Commission. No vote or action was taken on this matter.

Chairman Cameron then read the following agenda item:

**Discussion and deliberation ONLY on the following matters if the public hearing has been closed:**  
**Business Site Plan #288/Special Permit, Standard Realty, LLC/Valero, 1927 Boston Post Road.**  
Proposing to install a 20' x 26' canopy over new fuel dispensers to be installed, and to perform related site development activities.

Mr. Olvany said that he wants the upgraded sidewalk to be installed as part of the redevelopment of the project. Mr. DiDonna and Mr. Sini agreed that an upgraded sidewalk would be consistent with

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adjacent properties. The Commission then discussed whether a sidewalk should be required as part of the approval, or strongly recommended. Staff was directed to draft a Resolution for consideration at the next meeting.

Chairman Cameron read the following agenda item:

**Coastal Site Plan Review #301, Flood Damage Prevention Application #343, Land Filling & Regrading Application #332, David & Tina Madon, 15 Shennamere Road.** Proposal to construct additions and alterations to the existing residence; and perform related site development activities within regulated areas.

Commission members saw no problem with the project and asked the staff to draft a Resolution for action at a future meeting. Mr. Olvany noted that a zoning chart should be included.

Chairman Cameron read the following agenda item:

**Coastal Site Plan Review #272-B, Flood Damage Prevention Application #342, Land Filling & Regrading Application #273-B, Mitch & Jody Truwit, 123 Five Mile River Road.** Proposing to raze the existing residence and garage and construct one new single-family residence and in-ground pool; install associated retaining walls; abandon the existing septic system and tie into existing public sewer; and perform related site development activities within regulated areas.

Staff was asked to draft a Resolution to approve the project. Mrs. Cameron said that it would be appropriate to require that the 46 inch diameter oak tree be saved as part of the project.

Chairman Cameron read the following agenda item:

**Coastal Site Plan Review #300, Flood Damage Prevention Application #341, Land Filling & Regrading Application #329, 145 NWL, LLC, 145 Nearwater Lane.** Proposing to raze the existing residence, pool, and construct a new single-family residence and pool with associated stormwater management and perform related site development activities within regulated areas.

Commission members asked staff to draft a Resolution to approve the project. They agreed that using elevation 9.0 as the grade from which to measure the building height would be appropriate.

There being no future business, the following motion was made: That the Commission adjourn the meeting. The motion was made by Mr. Voigt, seconded by Mr. Olvany and unanimously approved. The meeting was adjourned at 9:30 P.M.

Respectfully submitted,

David J. Keating  
Assistant Director, Planning & Zoning

Jeremy B. Ginsberg  
Planning & Zoning Director