

**PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING/GENERAL MEETING  
APRIL 23, 2013**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:  
Conze, Cameron, DiDonna, Voigt

STAFF ATTENDING: Ginsberg, Keating (arrived at 10:00 P.M.)  
RECORDER: Syat  
Channel 79

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Mr. Conze read the first agenda item:

**PUBLIC HEARING**

**Continuation of Public Hearing regarding Business Site Plan #285/Special Permit, Land Filling & Regrading Application #294, Loren Meyer & Paige Ridley, 164 Old King's Highway South.**

Proposing to: establish a new commercial sales and service use generally requiring external storage or activity; construct an addition to the existing building, with a new driveway; construct associated parking and landscaping; and perform related site development activities. The subject property is located on the west side of Old King's Highway South, at its northwest corner formed by its intersection with Cross Street, and is shown on Assessor's Map #63 as Lot #19, in the SB Zone.

Attorney Wilder Gleason was present on behalf of the applicant. He then reviewed the status of the application. He noted that this property was zoned Service Business (SB) in 1957, and it is a small property. He then distributed a portion of the Zoning Regulations from 1957. He explained that the changes to the Zoning Regulations in 1985 precluded residential uses in the SB Zone. Thus, the property use became legally non-conforming at that time. Originally, he had applied for a Business Site Plan pursuant to Section 1020 of the Darien Zoning Regulations. He then noted that Section 667.1 would require Special Permit for the work being proposed. Mr. Gleason then distributed a portion of Section 667.1 of the Darien Zoning Regulations. He explained that the Planning & Zoning Commission needs to make certain findings and ensure that the project meets certain standards. He mentioned that the property has been on the market for two years. Mr. Gleason said that the SB Zone allows certain uses but not others. The proposed use in the subject application is an architect's office/contractor's yard.

As part of this application, the applicant proposes to store on site a dump trailer, about 14 feet long, and a skid steer (which is like a Bobcat). Mr. Gleason explained that the use is a hybrid. It is similar to the Kent Eppley ERI Building & Design use at 199 West Avenue, near Rings End Lumber, which is also in the Service Business Zone.

Mr. Gleason explained that they have reviewed the plans with staff in the Planning & Zoning Office. He noted that there is a requirement in this zone for a 25 foot wide buffer. He went to the Zoning Board of Appeals a few weeks ago and also went before the Darien Police Commission. He explained that in order to move the telephone pole on Cross Street, as desired by the Police Commission, it would be expensive. Mr. Gleason explained that Loren Meyer prepared Scheme A

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and Scheme B which show curb cuts on Old Kings Highway South only. These schemes attempt to preserve the 25 foot buffer to the greatest extent on Old Kings Highway South. The Planning & Zoning Commission's concern was backing onto the property from Old Kings Highway South. At the March 19, 2013 meeting before the Commission, modified plans were shown to the Planning & Zoning Commission. A letter from Chief Lovello of the Police Department dated April 22, 2013 was then submitted for the record.

Mr. Gleason believed that the 3-7-13 plan is the best, which addresses the Police Commission concerns. He said that this plan makes sense, and submitted a color copy for the record. Mr. Gleason spoke to Chief Lovello, who said that they will not approve a Cross Street curb cut. Mr. Conze then asked how sacrosanct the outdoor equipment is for Mr. Meyer. Mr. Conze said that the real issue is the heavy equipment traffic on Old Kings Highway South. Mr. Conze believed that if Mr. Meyer cannot get a curb cut on Cross Street, maybe he can store heavy equipment on the Cross Street side of the property and move proposed parking spaces 3, 4 and 5. He asked that Mr. Gleason seek out a way to minimize the traffic impacts on Old Kings Highway South.

Ms. Cameron said that she has an issue with the whole development. She said that the Planning & Zoning Commission had a tutorial on the Service Business Zone in 2011. It was noted at that time that the Service Business Zone really encourages an assemblage of properties with evergreen buffers to protect nearby neighbors. She is not sure that the purpose of this zone was to get commercial access on Old Kings Highway South. She said that that has not been the direction that the Planning & Zoning Commission has gone recently. Mr. Gleason acknowledged that that would be a policy decision on whether to allow commercial access on Old Kings Highway South. He said that to expand the existing single family residence in any way, shape or form needs a variance from the Zoning Board of Appeals. He believed that the proposal makes good sense and has a good use, if one looks at Section 660 of the Zoning Regulations. Ms. Cameron said that if one reads the Purposes and Background of Section 660, it becomes clear that this is not an appropriate sized property for the use. Mr. Gleason mentioned that the Planning & Zoning Commission can vary the buffer requirements as allowed by Section 667.1. Ms. Cameron said that the purpose of the zone was not to do this. Mr. Gleason believed that this is not a real intense use and has very low traffic impacts. It is a small business, which the Planning & Zoning Commission can regulate through the Special Permit process. He noted that they are allowed to have 20% building coverage and have only proposed 12.9%. They meet all of the developed site area requirements. They will have the parking in the front yard setback near Cross Street. He mentioned that the Planning & Zoning Commission has seen five different plans for this project. He noted Mr. Ginsberg has waived the traffic study for this project. Ms. Cameron then asked whether the Planning & Zoning Commission could ask for a traffic study. Mr. Gleason replied that they could.

Mr. Loren Meyer then spoke, and said that he now has a business called Sound Architecture. He said that generally that his construction equipment stays on job sites. When there are no active job sites going on, his equipment may come back to this property. He noted that there will be 10 to 15 trips per year to this property with his equipment, and they work at about 10 jobs per year. Mr. Meyer acknowledged that they do have a plan to screen the proposed equipment.

Attorney Wilder Gleason said that the proposed plan preserves the buffer area along Old Kings Highway South. They propose to have 8 parking spaces. He explained that the backing maneuver proposed by the applicant is infrequent. The trailer is usually on a job site, not located on the

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subject property. The Planning & Zoning Commission can limit the actual maneuvers to mid-morning and mid-afternoon when traffic is lighter on Old Kings Highway South. Mr. Gleason explained that the sight lines are good in both directions. He then showed photographs of the existing sight lines and distributed a portion of the Assessor's Map showing the location of the subject property.

Mr. Conze said that he will not be voting on this matter. He said that other less benign uses are permitted in the SB Zone and read briefly from the Zoning Regulations. He asked whether what they are proposing is less benign than automotive services. He believes that this proposed use may be less intrusive. There is certainly a question of relativity. The other Commission members will have to make the decision. Mr. Conze confirmed that other Planning & Zoning Commission members not present this evening will watch the DVD of this meeting to get "up to speed".

Mr. Gleason explained that the current sight lines near the Cross Street and Old Kings Highway South intersection are terrible and will remain that way unless redevelopment is approved. He said that they have a sight line plan, showing the improvements and showed it to the Commission (Site Plan revised 3-13-13). The new sight lines will have the trees removed or "limbed up" and the stone wall reduced. This is real progress from a safety point of view.

Mr. Meyer then reviewed the landscaping plan with the Commission and said that it can be adapted quite easily. They are keeping the two trees near Old Kings Highway South, trimming them, and proposing a neatly trimmed row of boxwoods in the front (facing Old Kings Highway South). They will also have rhododendrons on the property. Mr. Gleason confirmed that they will have an 8 foot high stockade fence with gates around the proposed equipment area. Mr. Meyer added that they will be planting that area along the north property line near the property to the northwest, which will help screen that existing building and its asphalt. This should help mitigate the view from Old Kings Highway South. Mr. DiDonna then asked what would be done to the stone wall and trees which now exist on and along Cross Street to improve things. Mr. Gleason then referred to the 3-13-13 plan revised to 4-1-13. He showed that to the Planning & Zoning Commission members illustrating his 30 foot triangle near the intersection of Cross Street and Old Kings Highway South. They will be limbing up the trees to 8 feet or Mr. Meyer can remove the trees if desired. He said that the existing holly plant is ripe for removal. In addition, Mr. Gleason confirmed that probably most of the stone wall will be removed as well. Mr. DiDonna confirmed that any Planning & Zoning Commission approval should specify these exact details. Mr. Gleason said that these details are part of the proposal. Mr. Gleason believes that it does not make sense to expand Cross Street. The driveways will have a macadam apron to look residential in character. Professional Engineer John Martucci had performed a drainage analysis and they are requesting a waiver of the need for a drainage study because the site is so small.

There are no exterior lights proposed except bollards and there are no parking lot lights existing or proposed. The enclosure area proposed will have motion sensor lights. The existing structure will have porch recessed lights and a lighted sign. Mr. Meyer confirmed that there will be no sign for the property facing Old Kings Highway South. Mr. Gleason continued by noting that there is no Dumpster proposed and he is requesting a waiver by the Commission for the required loading zone. Mr. Gleason said that the applicant is willing to stipulate that there be no trash pick-up on the property before 7 A.M. Mr. Gleason noted they are present this evening for a Business Site Plan approval under Section 1020 of the Zoning Regulations; a Special Permit approval under Section

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667.1 and Section 1000 of the Zoning Regulations and as part of those, the Commission needs to make screening finding and the typical Section 1005 findings; and they are also requesting a Land Filling & Regrading permit under Section 850 of the Regulations. Sediment and erosion controls are proposed for the property and are shown on the plan prepared by John Martucci. Mr. Martucci has proposed Cultec systems for underground drainage. Mr. Gleason mentioned that the proposed use is suitable and minimally intrusive to the neighbors compared to what is allowed. He corrected himself by noting that drywells are proposed, not Cultec units.

Mr. James Carrier of 171 Old Kings Highway South then read aloud from a prepared statement. He mentioned that this will be the only business on Old Kings Highway South. He believed this would be harmful to the neighborhood. He said that he opposes the change to a commercial use and believes that the Planning & Zoning Commission should rezone the subject property. He asked whether the Planning & Zoning Commission would require another public hearing on this matter. He acknowledged that sight lines are not great now and mentioned that he lives directly across Old Kings Highway South from this property.

Mr. Dave Miller of 179 Old Kings Highway South said that he has lived on that property for over 20 years. He said that the medical office at 1500 Boston Post Road (across Cross Street from the subject property) leaves their lights on all the time at night. That medical office also has garbage pick-up at 3 A.M. He noted that traffic is heavy on Old Kings Highway South and believes that this proposed use is adding too much traffic. Mr. Conze noted that Mr. Miller should send a letter to the Planning & Zoning Department about the late night office garbage pick-up as well as leaving their lights on throughout the night and the Zoning Enforcement Officer would be able to contact that property owner to hopefully resolve those issues in a timely manner.

Mr. Clara Sartori of 161 Old Kings Highway South said that she has lived on her property since 1984. She noted that the Darien Police Commission objected to the Cross Street curb cut. She noted the intent of Section 660 of the Darien Zoning Regulations is to preserve the Service Business District. She believed that the Planning & Zoning Commission should require and enforce the screening along Old Kings Highway South. She believes that H&L Chevrolet still has inadequate screening along Old Kings Highway South. She asked that the Commission to reconsider Section 667.1 for small lots as they should protect overdevelopment of parcels within this zone. She asked the Commission to consider the impacts on Old Kings Highway South. She asked for a stipulation that the Old Kings Highway South front yard not be used for commercial purposes. She believes that mature, dense plantings are needed to minimize the impacts on the neighbors.

Mr. Julian Bobe of 167 Old Kings Highway South said that he moved to his property 2 to 3 years ago. He said that Cross Street does not look terrible. He did not believe that the applicant will only have equipment come in and out about 10 times per year.

Mr. Gleason summarized by noting that Architect Loren Meyer works with the Commission and comes before the Commission on a frequent basis and his livelihood depends on his reputation before the Planning & Zoning Commission. Thus, he is expected to comply fully with any regulations and stipulations the Commission may have and he will certainly abide by them. Mr. Gleason noted that the Police Commission did not object to backing on Old Kings Highway South, just a curb cut on Cross Street. There being no further questions or comments from Commission

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members or the general public, Mr. Voigt made a motion to close the public hearing on this matter. That motion was seconded by Mr. DiDonna and unanimously approved. The public hearing was therefore closed.

Mr. Conze then read the next agenda item:

**Business Site Plan #24-U, Gallianos Performance Training, 25 Old King's Highway North.**

Proposing to establish a sports performance training, nutritional service, and adult strength and conditioning personal service use, in a portion of the space formerly occupied by Darien YMCA gymnastics program within the Goodwives Shopping Center. The space is located within Goodwives Shopping Center, which is located on the south side of Old Kings Highway North, approximately 150 feet southwest of its intersection with Brookside Road and is shown on Assessor's Map #71 as Lot #19, in the DC Zone.

Mr. Bill Gallagher was present to explain the subject application. He said that he works with athletes and has an existing business, but has decided to open his own space. Mr. Ginsberg then summarized the various aspects of the application, noting that they proposed to occupy a portion of the space formerly occupied by the Darien YMCA at the end of Goodwives Shopping Center. Mr. Gallagher noted that his busiest hours would be 8:30 to 10:30 A.M. and 3 to 6 P.M. He wants some small group classes. There will be no big classes as any class will have a maximum of 12 people in it. In response to a question, he said that he works with Quest Diagnostics on any necessary blood analysis that may be desired. There were no questions or comments from the general public, and there were no other questions or comments from the Commission members. Ms. Cameron then made a motion to close the public hearing on this matter. That motion was seconded by Mr. DiDonna and unanimously approved. The public hearing was therefore closed.

At 9:20 P.M., Mr. Conze then read the next agenda item:

**Land Filling & Regrading Application #300, David & Julie Gorski, 7 Pleasant Street.** Proposing to place fill and construct associated retaining wall on the western part of the property, and perform related site development activities. The subject property is located on the south side of Pleasant Street, approximately 200 feet east of its intersection with Gardiner Street, and is shown on Assessor's Map #45 as Lot #120, in the R-1/3 Zone.

Mr. David Gorski was present and explained that his engineer could not attend this evenings meeting. He proposed the construction of a new wall and grading to be installed adjacent to it. This needs to be installed before the proposed driveway. He explained that this is a necessary request to retain water on their property. He explained that the elevation was raised by about 2 to 4 feet and a drainage system was required by the Town of Darien. Mr. Gorski explained that if the wall is not built, this could impact other properties nearby. He believes that a permit may not even be required for this request. He noted that the request is incidental to the installation of the drainage. Ms. Cameron noted that she was at the site earlier today.

Mr. Gorski said that the Cultec units in the back yard are 3 to 4 feet higher than the grade around it. The back wall on his rear property line is a stone wall about 2 feet high. It will restack that rear stone wall and could place fill to smooth it out. Ms. Cameron noted that it is now soup in that area. Mrs. Gorski explained that stormwater still flows in the same direction as it previously did. Mr.

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Ginsberg explained that a permit is needed since the proposed filling and regrading activity is within 15 feet of a property line. Ms. Cameron said that in her opinion, this is a logical application. Mrs. Gorski said that their engineer has given his opinion on this. Mr. DiDonna asked why the Cultec units are so high. Mr. Gorski responded that there is a need to be above the existing water table on the property. He explained that they are amenable to constructing a field stone wall rather than a synthetic wall. They have limited the wall to 71 feet in length and can add landscaping, if the Planning & Zoning Commission requests.

Attorney Wilder Gleason was present, noting he was present to represent Jim Gleason, an adjacent property owner. He explained that he has requested a continuance of this public hearing on this matter, as his brother wishes to hire an outside professional engineer to review the application. Mr. Gleason confirmed the presence of a high water table in the area. He also noted that the new driveway will have more impervious surface. He believed that water will leach out of the Cultecs into the neighbor's yard. Ms. Cameron then asked whether the neighbors were notified of the Zoning Board of Appeals (ZBA) hearing on the replacement house that is now under construction. Mr. Gleason confirmed that the Cultec units which were installed were probably required as part of the ZBA application. He mentioned that the retaining wall and fill may not cause a problem but there is a high water table here. Mr. Conze then suggested the possibility of continuing the public hearing to May 14, 2013. Mr. Gorski mentioned that the Cultec units were signed off on by the Planning & Zoning office. Mr. Conze mentioned to Mr. Gorski that the Commission's policy is generally to give neighbors a little time to review an application such as this. It also gives the Planning & Zoning Commission a chance to get more facts on the matter. Mr. Gorski mentioned that this will hold up the construction of his driveway since he can't construct the driveway until the filling and regrading is done. He asked that the Commission consider continuing the hearing to May 7, 2013. A motion was then made by Mr. DiDonna, seconded by Ms. Cameron to continue the public hearing on this matter to May 7, 2013 at 8 P.M. in Room 206 of Town Hall. That motion was unanimously approved.

Mr. Conze then read the next agenda item:

**Coastal Site Plan Review #255-A, Flood Damage Prevention Application #285-A, Hank & Johanna Hagey, 7 Tokeneke Trail.** Proposing to install a swimming pool with associated filling and regrading, and perform related site development activities within regulated areas. The subject property is located on the east side of Tokeneke Trail, approximately 600 feet south of its intersection with Old Farm Road, and is shown on Assessor's Map #65 as Lot #38, in the R-1 Zone.

Mr. Ginsberg summarized the Hagey application by noting that Mrs. Hagey had received a permit from the Planning & Zoning Commission more than a year ago to do work on her house and for the installation of a pool. While the house addition aspects were implemented, the pool was never implemented. Mrs. Hagey came before the Commission recently to ask whether that permit was still valid and the Commission ruled that it had expired and she would need to re-apply to the Commission. She was present this evening for such re-application. Mr. Ginsberg noted that he neighbors had been notified and no comments received for the record and that the pending application is very, very similar to that previously approved by the Commission. There were no questions or comments from the Commission members on the application. Mr. Conze opened it up to the general public, and no one from the general public was present to comment. Ms. Cameron

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made a motion to close the public hearing on this matter. That motion was seconded by Mr. DiDonna and unanimously approved.

At 9:50 P.M., Mr. Conze then read the next agenda item:

**Coastal Site Plan Review #84-D, Flood Damage Prevention Application #74-D, Land Filling & Regrading Application #301, Richard & Wendy Hokin, 25 Shipway Road.** Proposing to demolish the existing residence, construct a new single-family residence with associated filling and regrading, and perform related site development activities within regulated areas. The subject property is located on the south side of Shipway Road, approximately 300 feet east of its intersection with Plymouth Road, and is shown on Assessor's Map #55 as Lot #126 in the R-1 Zone.

Professional Engineer Doug DiVesta showed plans of the existing house which was built in 1956. That house is now at elevation 9.5 with its garage on the property at elevation 6.4. He explained that the yard is generally flat, and as a result of Storm Sandy in October 2012 there was four feet of water in the house. The subject application is to raze/remove the existing house, which is now 35 feet from the sea wall and construct a new house which is over 100 feet from the sea wall. There is a new first floor elevation of 15.0, which would meet the FEMA requirements which go into effect in July 2013. They will be filling the inside of the foundation. All mechanical units proposed will be at or above elevation 14.0. They will also be lifting the garage.

Mr. DiVesta noted that the proposed residence will be served by public sanitary sewer and public water. There will also be a new driveway. For stormwater management, they have looked at stormwater quality issues. They will be providing 350 square feet of subsurface detention. Mr. Ginsberg then read aloud the comments from the Darien Public Works Department. There were no comments or questions from members of the general public and no questions or comments from Commission members. Ms. Cameron then made a motion to close the public hearing on this matter. That motion was seconded by Mr. DiDonna and unanimously approved.

At 9:55 P.M., Mr. Conze then read the next agenda item:

**Coastal Site Plan Review #284, Land Filling & Regrading Application #299, Steven & Maeve Zamsky, 66 Five Mile River Road.** Proposing to demolish the existing residence, construct a new single-family residence with associated filling and regrading, and perform related site development activities within a regulated area. The subject property is located on the west side of Five Mile River Road, approximately 450 feet southeast of its intersection with Berry Lane, and is shown on Assessor's Map #66 as Lot #49 & #13, in the R-1/2 Zone.

Professional Engineer Doug DiVesta as present on behalf of the applicant and submitted a revised plan. There will be preserving the trees in the southwest corner of the property. They will be providing evergreen trees along the west property line. The revised plans show an added detail of a sump pump and they did dig a deep test hole. (Mr. Keating then arrived at the meeting at 10 P.M.)

Mr. DiVesta noted that because of their proximity to the Five Mile River, they will be dealing with water quality. Mr. Ginsberg noted that the Zamskys have received EPC approval, in its role as the Conservation Commission, and has submitted comments for the record which have been submitted

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to the Planning & Zoning Commission. Ms. Cameron asked how much new impervious surface there was and asked whether the 24" maple shown on the submitted plans is actually maple. Mr. DiVesta responded that the 24" maple shown on the plans might actually be an ash. Mr. DiDonna asked whether the existing garage will be retained. Mr. DiVesta confirmed that the driveway near the garage will be removed but they hope to keep the garage, and turn it into another use possibly a cabana. Mr. DiDonna noted that the septic system will be abandoned. Mr. DiVesta explained that they will be tying into the sanitary sewer system in the street and they are already served by public water. Mr. DiDonna asked about the necessary cleaning of the catch basin pumps annually. Mr. DiVesta responded that there will be a notice filed in the Darien Land Records referencing the drainage maintenance plan. Mr. DiVesta said that they will be using geothermal heat and there is a proposed generator behind the new garage. He also showed the location of the proposed pool equipment. Mr. Ginsberg then read aloud the comments received from the Darien Public Works Department as well as the Southwestern Regional Planning Agency. Ms. Cameron asked whether the proposed Cultecs will impact the maple trees in the front of the property. There were no questions or comments from members of the general public and no further questions or comments from Commission members. Ms. Cameron then made a motion to close the public hearing on this matter. That motion was seconded by Mr. DiDonna and unanimously approved.

At 10:10 P.M., Mr. Conze then read the first general meeting agenda item:

**GENERAL MEETING**

*Discussion, deliberation, and possible decisions on:*

**Coastal Site Plan Review #278, Flood Damage Prevention Application #310, Land Filling & Regrading Application #284, Justin & Mary Beth Livengood, 12 Cross Road.** Proposing to raze the existing residence; construct a new single-family residence with associated septic system; modify the driveways; and perform related site development activities within regulated areas. *HEARING CLOSED ON 3/19/2013. DECISION DEADLINE IS: 5/24/2013.*

Mr. Ginsberg explained that a draft resolution was provided to the Commission previously but since that time staff has continued to modify the draft and a final draft before the Commission this evening for a potential vote. Ms. Cameron made a motion to waive the reading of the draft resolution aloud. That motion was seconded by Mr. Voigt and unanimously approved. Ms. Cameron mentioned that this is a difficult site and that the Tokeneke Association did not allow a drainage connection. Mr. DiDonna mentioned that within the resolution there are numerous protections for the neighboring property owners. Mr. Voigt explained that he was not at the public hearing on March 19, 2013 so he will not be voting on this matter. Ms. Cameron then made a motion to adopt the resolution as written. That motion was seconded by Mr. DiDonna and approved by a vote of 3-0 with 1 abstention, Mr. Voigt, as he was not at the public hearing.

The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
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Application Number: Coastal Site Plan Review #278  
Flood Damage Prevention Application #310  
Land Filling & Regrading Application #284

Street Address: 12 Cross Road  
Assessor's Map #65 Lot #1

Name and Address of Applicant &:  
Property Owner: Justin & Mary Beth Livengood  
12 Cross Road  
Darien, CT 06820

Name and Address of  
Applicant's Representative: Robert Zmarzlak  
Soundview Engineers  
239 Glenville Road, Suite 300  
Greenwich, CT 06830

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

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

Zone: R-1

Date of Public Hearing: January 8, 2013 continued to January 15, 2013, January 29, 2013,  
February 12, 2013, February 26, 2013, March 5, 2013 and  
March 19, 2013

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

Publication of Hearing Notices

Dates: December 28, 2012 and January 4, 2013 Newspaper: Darien News

Date of Action: April 23, 2013 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News  
May 3, 2013

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 redevelopment plans, and the statements of the applicant's

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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 raze the existing residence; construct a new single-family residence with associated septic system; modify the driveways; and perform related site development activities within regulated areas.
2. At the January 8, 2013 public hearing, project architect Doug VanderHorn explained that the existing house will be removed and a new residence will be constructed at 12 Cross Road, which is on the corner of Hope Drive. Driveway access will be from Cross Road and there no longer will be any access driveway to Hope Drive. The septic system is proposed to be relocated to the west and south sides of the proposed house.
3. As part of the redevelopment of the property, the property owner will be regrading the site to create several level terrace areas. This will allow the property owners to have a patio behind the house. There will be two curb cuts on Cross Road to create a half circle driveway. Some of the landscape features are designed to capture storm water. Many of the rocks on the site will be used to implement the regrading and terraces. The floor level of the new house will be 2½ to 3 feet higher than the floor level of the existing house.
4. The public hearing was originally opened January 8, 2013. At that time, there were concerns presented by two of the neighbors across Cross Road. The public hearing was continued to other nights to give the applicant additional time to attempt to address the concerns of the neighbors and the Commission.
5. Peter Finkbeiner, Professional Engineer representing the applicant, said that when this project was first being designed, he met with Darren Oustafine of the Darien Public Works regarding the management of storm water runoff. Since Cross Road and Hope Drive are not public streets (they are private streets located within the Tokeneke Neighborhood Association), Public Works was not familiar with this property, but Public Works did indicate that it would not be necessary to detain storm water for a 50 year storm duration. This is the case because this property is very close to the discharge of fresh water into the brackish water of the tidal marsh that is located just south of Cross Road and north of Long Island Sound. Mr. Finkbeiner said that proper management of the water is necessary with respect to water quality and thus they have deep sumps on the catch basins in order to trap sediments. He said that the design is to catch the storm water from this site and direct it into the drainage system adjacent to the street. It will then be directed through existing pipes into the tidal marsh area. As is the case today, when the flood waters of the Atlantic Ocean and Long Island Sound rise and inundate the tidal marsh area, the fresh water drainage system under Cross Road will become backed up because there is then no place for the water to discharge.

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6. Mr. Spain said that the neighbor appears to understand that the flooding caused by the rise of Long Island Sound is not something that will be changed, but the neighbor does appear to be concerned about the water from rainstorms and how that water will flow from this site, through the neighbor's property.
7. Mr. Finkbeiner said there will be a slight increase in the amount of impervious surface comparing the current development and the proposed development. The current drainage surface water flows downhill from the site across the street and then into the neighbors' property. It then goes over the neighbors' property and into the tidal marsh. The applicant's original plan was to collect the surface water at the bottom of the subject property and then to connect it into the pipes that will allow the water to flow under the neighbors' property and then to be discharged from the existing system into the tidal marsh at approximately Elevation 5. He said that this results in no increase to the flooding of the neighbors' property, which is primarily caused by the rise of the tide and not by the surface water. He said that the neighbor in question, Mr. Moynahan, is actually located to the east of the existing drainage pipes and east of the discharge into the watercourse.
8. Mr. Finkbeiner said that the original design had proposed two new pipes crossing under Cross Road, but this design was modified at the request of the Tokeneke Association. Now the design is just to have one pipe cross under the street and connect into the existing catch basin and pipe system that the Association maintains.
9. Numerous changes had been made to the plans during the pendency of this application, including, but not limited to, the reduction of the impervious surface such that there is now only about 28 square feet of net, new impervious surface over the existing development. They have also added on-site detention and made changes to the septic system. They have added level spreaders in order to address water quality, and shown a variety of new, proposed plantings on the plans. They have also added rain gardens upgrade of the proposed house to capture and treat water coming from properties to the north.
10. Peter Finkbeiner of SoundView Engineering said a Cultec system was proposed and water quality is the issue, since they are in the lower one-third of the watershed. They now have at the Livengood property an existing basement and sump pump. There is no sump pump or footing drain proposed. Instead, they will waterproof the basement using a membrane that bonds with the concrete.
11. Mr. Todd Ritchie, a professional engineer of GHD, Inc. was present at the March 19, 2013 public hearing on behalf of Mr. Huebsch. He explained that the Livengoods have not received permission to tie into the Tokeneke Association catch basins in the road. He explained that water will bleed out into the street both during and after construction. He mentioned that in some occasions, waterproofing systems fail. Mr. Ritchie noticed the presence of a lot of ledge on the subject property. He mentioned that as part of the construction, water table changes could occur. Mr. Ritchie explained that the proposed Cultec units are very close to the proposed house, and the foundation will be exposed to flood waters. He said that the curtain drain discharge is at Elevation 8.0.

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12. At the March 19 public hearing, Mr. Spain asked whether the proposed terracing elsewhere on the property could be installed before the work on the house which would then allow for some water pumping to occur into those areas. Mr. VanderHorn responded that they might not be able to pump to the elevation of the terraces. However, they may be able to put detainment uphill during one or two weeks of the foundation construction. Mr. VanderHorn said that they would be willing to accept a condition of approval of having no sump pump.
13. Rain gardens and other stormwater management have been proposed by the applicant. The Commission notes the need for the applicant or property owner(s) to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
14. 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.
15. 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.
16. 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.
17. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
18. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
19. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #278, Flood Damage Prevention Application #310, and Land Filling & Regrading Application #284 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction, stormwater management, and other site development activity shall be in accordance with the following plans as submitted to the Commission:
  - Site Development Plan, by Soundview Engineers & Land Surveyors, last revised 3/05/13, Sheet SDP-1.
  - Livengood Residence Landscape Site Plan Rain Garden Layout by Louis C. Fusco Landscape Architect, last revised 3-04-13, Drawing number RG-1.

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- B. Due to the nature of this project, the Commission hereby waives the requirement for a performance bond. However, to avoid potential impacts to the downhill property owners during the construction process, by May 31, 2013 the applicant shall submit a detailed plan of how storm water will be managed during the construction process, with emphasis on maximizing on-site absorption and minimizing runoff, for the purpose of protecting downhill property owners from potential temporary increases in storm water runoff and/or sedimentation from the construction site reaching their properties. The plan shall deal with storm water during the various phases of the construction project and shall be subject to review and action by the Director of Planning. If the plan is adequate and acceptable, the Zoning Permit and Building Permit for construction may be issued. If the plan is not adequate, the Director shall return it to the applicant for modifications. If the revised/modified plan is not acceptable, then the applicant can return to the Commission for further consideration and action, but if the storm water cannot be properly managed throughout the construction / redevelopment process, the Commission can void this approval.
- C. 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.
- D. The Tokeneke Association has apparently denied permission to tie into the pipe in the street right of way. Thus the applicant must deal with stormwater management completely on- site. The storm water must be absorbed on the site, not only after the project is completed but during the construction process as well. The Association did not approve the installation of the proposed new pipe under the road.
- E. At one point, the plans had included a sump pump but the sump pump has been deleted from the plans. Due to drainage concerns, the Commission hereby requires that there be no sump pump. Any future request for a sump pump for this property shall require formal Commission review and action.
- F. In order to minimize the likelihood of drainage impacts during construction, the applicant shall put detainment uphill during the construction of the foundation, as well as such infiltration sites in the uphill terraced areas as can be managed.
- G. By June 9, 2013 (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. It shall include a sequencing plan for all water management on the site during construction. 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 12 Cross Road to maintain the on-site drainage

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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 within the next 60 days of this approval and prior to the issuance of a Zoning or Building Permit for the foundation or for the house.

- H. A detailed regrading design and storm water drainage system design have been incorporated into the plans to avoid potential impacts of runoff on the adjacent properties. Prior to the request for the Certificate of Zoning Compliance, the applicant shall submit an as-built survey prepared by a licensed land surveyor for the land filling and regrading aspects of the project, and it shall show the final finished grades with spot elevations and two foot contours, as well as the foundation location of the house to verify compliance with approved setbacks and flood elevations.
- I. 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.
- J. Once the project is complete, and prior to July 13, 2014, 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.
- 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 the permit as it deems appropriate.
- L. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to: approval from the Darien Health Department for the septic system; possibly a Blasting Permit from the Darien Fire Marshal; and a Demolition Permit from the Darien Building Department.
- M. 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 (April 23, 2014).

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

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this action and prior to the issuance of a Zoning or Building Permit, or this approval shall become null and void.

Mr. Conze then read the next agenda item:

**Amendment of Coastal Site Plan Review #156-B, Flood Damage Prevention Application #268-A, Land Filling & Regrading Application #282, Contentamiento, LLC, 12 Shennamere Road.**

Proposing to build a below ground, golf practice hitting area attached to the cabana near the pool. It would be outside of the flood zone and would comply with setback requirements from property lines. It would be about 95 feet from Mean High Water, but it would be upland of the house and cabana.

Mr. Ginsberg announced that nothing has been submitted for this application, and it may be on a future agenda. Mr. Conze then read the next agenda item:

**Coastal Site Plan Review #222-A, Flood Damage Prevention Application #244-A, Land Filling & Regrading Application #176-A, James & Katherine Kane, 147 Five Mile River Road (Lot #B-1R).**

Request to construct a 15' x 15' plunge pool on the east side of the proposed dwelling on Lot #B-1R.

Mr. Conze announced that the application has been withdrawn.

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

Mr. Ginsberg noted that he had a few items to discuss under Other Business. Mr. Voigt made a motion to go into Other Business to discuss those matters. That motion was seconded by Ms. Cameron, and unanimously approved.

**Flood Map Changes**

Mr. Ginsberg explained that the Planning & Zoning Department sent out a letter date April 16, 2013 to property owners within Noroton Bay explaining changes of the Flood Insurance Rate Map and National Flood Insurance Program. This letter attempted to explain to those property owners who are in the flood zone the fact that flood insurance rates are likely to increase in the future as the federal government reorganizes FEMA, and tries to make flood insurance as self-sustaining as possible. The department believed it was necessary to get this out as soon as possible since a number of folks who live in Noroton Bay are in the process of elevating their houses and if they elevate them just a little bit more they may qualify for reduced insurance. That letter has generally seen good response and feedback from property owners; at least one of whom has discussed the possibility of lifting their house over and above what the Planning & Zoning Commission previously approved.

**Raymond, 11 Waverly Road**

Jan and Chip Raymond of 11 Waverly Road will were one of the property owners who received the FEMA letter and met with Mr. Keating and Mr. Ginsberg about the ramifications of said letter. The Raymond's were approved by the Planning & Zoning Commission to elevate from 9.56 to elevation 13.56. Since the 13.56 is still below the FEMA required elevation which takes effect in July 2013,

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the Raymond's would still be required to have substantially higher insurance, which is likely to increase even more in the future. Thus, the Raymond's are now in the process of reconsidering their prior Planning & Zoning Commission approval and will go from 13.56 either up to 14 or up to 15. Mr. Ginsberg said that because the house is now in the process of being lifted, he would run the changes by the Planning & Zoning Commission this evening and then before the Zoning Board of Appeals tomorrow (April 24, 2013) night. He explained that it is likely that the only change necessary to go from 13.56 to 14 would be in the inclusion of one step at three entry points to the house. To go from 13.56 to 15 would require three steps which will have to be shown on revised plans. The Commission was amenable to either height and noted their desire to have property owners elevate to be at or above the July 2013 base flood elevation. The Commission specifically noted that if the change be only the inclusion of stairs, then the Commission has thus approved said request. If the requested changes extend beyond just stairs, Mr. & Mrs. Raymond would have to formally come before the Commission.

**The Heights (formerly Allen O'Neill)**

Mr. Ginsberg then confirmed that he and Commission member Sue Cameron went out to The Heights site within the past week to closely review the proposed landscaping. Representatives of the developer had put stakes in the ground noting the proposed location of the landscaping as noted on the landscaping plan. Mr. Ginsberg and Ms. Cameron field adjusted some of those stakes to better provide screening for the neighbors, to account for some trees which were able to remain during construction, and to minimize too many trees in one location, or not enough trees in another location. Ms. Cameron noted that she was pleased with the final result which should provide trees where none were originally proposed, and she noted that the landscaping as proposed by the applicant provided for many trees of 6 to 8 feet in height. Mr. Conze noted that the Commission will continue to work with the contractor.

**Woodway Country Club.** Mr. Ginsberg distributed an 8-1/2" x 11" sketch showing proposed changes in the plans for the Woodway Country Club pool complex and associated parking lot area. Commission members agreed that these changes were de minimis, and unanimously approved them administratively.

**Mr. Fred Conze resignation**

Mr. Voigt confirmed that in light of Mr. Conze's resignation, which takes effect May 1, 2013, and the fact that the Commission is not scheduled to meet between now and then, this is Mr. Conze's final meeting as Commission member. Mr. Voigt and the other Commission members thanked Mr. Conze for his service to the Commission, noting that he has served about 20 years and the final 6 or 7 as Chairman, and that they appreciated his public service. Mr. Conze mentioned that he has enjoyed serving the public in this capacity and noted to the Channel 79 viewers that it is a great way to serve the community.

There being no other business, the meeting was then adjourned at 10:20 P.M.

Respectfully submitted,

Jeremy Ginsberg  
Planning & Zoning Director