

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
JUNE 11, 2013**

Place: Room 119, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Spain, Cameron, DiDonna, Voigt, Olvany

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat
Channel 79

Mr. Spain read the following agenda item:

PUBLIC HEARING

Continuation of Public Hearing regarding Coastal Site Plan Review #285, Land Filling & Regrading Application #302, James & Janeen Eckert, 165 Long Neck Point Road. Proposing to construct an in-ground pool, retaining walls, and expand on-site drainage, and perform related site development activities within a regulated area. The subject property is located on the east side of Long Neck Point Road, approximately 500 feet south of its southernmost intersection with Pear Tree Point Road, and is shown on Assessor's Map #61 as Lot #3 in the R-1 Zone. ***HEARING ORIGINALLY OPENED ON MAY 7, 2013, AND WAS CONTINUED TO JUNE 4, 2013. DEADLINE TO CLOSE THE PUBLIC HEARING IS JUNE 11, 2013 UNLESS EXTENSION IS GRANTED BY APPLICANT.***

Attorney Robert F. Maslan Jr. was present on behalf of the Eckerts. He noted the plans have been changed to present additional detail. The wall is 3.3 feet to the grade near the easement on the southern part of the property. The wall is 4 feet along the eastern face. The fence that is adjacent to the wall needs to be 4 feet high to serve as a pool fence. Mr. Maslan then submitted an e-mail from the neighbor to the south, Mr. Mathis. Mr. Eckert then explained the proposed plantings.

Mr. Tom Ryder from Land-Tech Consultants noted the plan changes. He explained that spot elevations have now been included and he showed the grade-to-drain arrow on the revised plan. He noted that there is now detailed contour 23 and he has moved the proposed lawn drain. He added a clean out on the plans and moved the proposed pipe. Mr. Ryder said that he added 8-10 foot high red cedars for screening between the Eckert property and the Mathis property to the south. They also included additional details about the proposed fence. Mr. Ryder explained that Ray Redniss of Redniss & Mead was hired by Mr. Mathis and he had no issues with the submitted plans. Mr. Ryder then referenced the April 12, 2013 email from State of Connecticut DEEP.

Mr. Matt Popp also spoke on behalf of the applicant. He submitted his resume for the record and said that in his opinion, this proposal will not have adverse impacts on coastal resources. Mr. Maslan noted that the Reardons live to the west, have a 6 foot wide right of way from their property down to the water. The fence which is proposed will be a visual boundary between the edge of the southern property line and end of the 6 foot wide right of way, which runs along the southern property line. The proposed gate which they show will be latched but not locked; and, as such, is

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
JUNE 11, 2013
PAGE 2 OF 6

permissible under easement law. The coastal regulations exempt fences beyond 100 feet from Mean High Water. Mr. Maslan said that the proposed stone wall and fence do not need Planning & Zoning Commission review, nor does the proposed landscaping.

Attorney Alan Kaufman explained that he was present on behalf of the Reardons who live to the west of the Eckert property. He confirmed that there are legal issues related to the existing easement. He then distributed a part of the Connecticut Coastal Management Act. He said the real issue is whether there is an adverse impact on visual resources. He explained that there are two pending issues, and distributed photographs of the area. Mr. Voigt looked at the photographs and said that the proposed trees to be planted by Mr. Eckert will be difficult to see from Long Neck Point Road. Mr. Kaufman agreed and said that no inventory by the Town of Darien has been made about scenic vistas and there has been no public input on such. He said that his clients do not object to the pool but are concerned about the proposed trees. Mr. Spain noted that the proposed fill as part of this application would not be visible from Long Neck Point Road. Mr. Kaufman confirmed that the objection from the Reardons is that the proposed cedar trees have a potential adverse impact.

Attorney Maslan responded that the Reardons have a private vista. He then showed large photographs on a board including the Reardon and Eckert shared driveway from Long Neck Point Road. He said that the State of Connecticut DEEP publication talks about public vistas, not private vistas. The Connecticut Coastal Manual is a guidance document to help communities, it does not impose any requirements on applicants. He noted that Mr. Kaufman did not include the entire manual for the record. Mr. Ryder added that any questions about public access are moot, since there is no public access to the water in this location. He said that the DEEP Coastal Access Guide refers to the two public beaches in Darien but does not reference this property. Mr. Maslan then read aloud an email from Sue Jacobson from the State of Connecticut DEEP. She noted that the proposed activities put forth by the Eckerts cannot be seen from Long Neck Point Road which is the only public access in this area. Mr. Voigt then summarized the photographs. Mr. Spain asked about the height expectation of the proposed cedar trees. Mr. Popp responded that these trees can grow to be 25 feet high but will be maintained at a height of 10 feet high. Mr. Olvany noted that these 10 foot high trees would then be placed atop 4 feet of fill. Mr. Ginsberg noted that Mr. Eckert earlier referenced the desire to screen the pool from the property to the south owned by Mathis. He said that there are 90 feet of red cedars to serve as a proposed screen and asked whether the extent of such cedar tree planting is really essential for the desired screening by Mr. Eckert.

Mr. Kaufman said that the State Guidance document discusses cumulative impacts. He contended that the photographs put forth by Mr. Maslan this evening are not accurate and that the idea is to mitigate an adverse impact on coastal views. Mr. Scott Reardon spoke and explained that he is the property owner of 169 Long Neck Point Road. He pointed to the photographs submitted earlier and said that the hedge, which is along Long Neck Point Road, is on and adjacent to his property and 5 feet tall. From the road, one cannot see the line where the water meets the horizon. He said that if the cedar trees grow to be 12 feet or higher, it will impact his view because the total would be 16 feet as it is on top of the proposed 4 feet of fill.

There were no other questions or comments from the Commission members or the general public, and Mr. Voigt made a motion to close the public hearing. That motion was second by Ms. Cameron and unanimously approved.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
JUNE 11, 2013
PAGE 3 OF 6

At about 9:35 P.M., Mr. Spain then read the next agenda item:

Proposed Amendments to the Darien Zoning Regulations put forth by the Planning & Zoning Commission (COZR #2-2013). Proposal to modify subsection 210 (the definition of Substantial Damage and the definition of Substantial Improvement); to modify subsection 822a Inventory of Regulated Areas to refer to the Flood Insurance Rate Maps that take effect on July 8, 2013; and to modify subsection 825f(1) by specifically referring to a Connecticut Coastal Jurisdiction Line rather than Mean High Water or High Tide Line.

Mr. Ginsberg introduced the proposed Zoning Regulation amendments and noted that these were initiated due to a January 7, 2013 letter from the State of Connecticut DEEP, which required that all towns which have flood maps that are changing must initiate these changes. Assistant Director Dave Keating explained that the Town of Darien participates in the National Flood Insurance Program (NFIP). He then described the various flood zones in Darien. He noted that FEMA has used updated calculation methods to update their Flood Insurance Rate Map (FIRM). As part of this new mapping they have expanded the flood area and modified flood heights in some areas. Mr. Keating mentioned the Town of Darien exceeds FEMA's requirements as the Town requires that the finished floor elevation of any new residential structure be at least one foot above the base flood elevation.

The proposed amendments before the Commission this evening are for changes to two definitions: "Substantial Improvement" and "Substantial Damage"; and changes to specifically reference Flood Insurance Rate Maps that take effective on July 8, 2013; and to modify subsection 825.f.1 which refers to a Connecticut Coastal Jurisdiction Line rather than Mean High Water. Mr. Keating noted that all the changes are consistent with the Town Plan of Conservation and Development. He added that insurance aspects are changing to the flood insurance program and subsidies will be phased out over the next few years.

Mr. Ginsberg noted that there is wording which won't be remaining in Section 210 Substantial Damage relative to a three year period and he confirmed that if there was any confusion as to the written proposal put forth. Ms. Cameron noted that she has some punctuation issues. Mr. Olvany mentioned that, in his opinion, equalized assessed evaluation is not market value and maybe it would be appropriate to include equalized assessed evaluation rather than market value as an appropriate reference point. Mr. Ginsberg said that market value was the wording put forth by the State of Connecticut but he can check with them on that question. If he believes equalized assessed evaluation is an appropriate substitution, the Commission can always come back for a Zoning Regulation amendment in the future. He believed however that it would be essential to get the State desired wording in the Regulations as soon as possible. Mr. Spain also noted the change relative to coastal jurisdiction lines which would replace any reference to mean high water. There was no one from the public present to comment on the Zoning Regulation amendments. There were no further questions or comments from Commission members, and Ms. Cameron made a motion to close the public hearing on this matter. That motion was seconded by Mr. Voigt and unanimously approved.

Mr. Spain then read the next agenda item:

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
JUNE 11, 2013
PAGE 4 OF 6

Amendment of Subdivision Application #544-A(7), Jaime & Christina Vicencio, 19 Morley Lane (“North Lot”). Request to modify previously approved single-family residence to be constructed on the now-vacant lot. The subject property is located on the west side of Morley Lane, approximately 1,000 feet north of its intersection with Redcoat Pass, and is shown on Assessor’s Map #63 as Lot #55A, in the R-1 Zone. ***PUBLIC HEARING WAS OPENED ON 5/28/2013 AND IMMEDIATELY CONTINUED TO JUNE 11, 2013.***

Mr. Spain noted that this public hearing will be continued to June 18, 2013.

At about 9:55 P.M., the Commission then went into its General Meeting. Mr. Spain read the following agenda item:

GENERAL MEETING

Amendment of Special Permit Application #117-D, Noroton Presbyterian Church, 2011 Boston Post Road.

Request to modify room usage within the building, as outlined in the June 5, 2013 letter from Carol Scott.

Mr. Ginsberg summarized the letter put forth by Carol Scott of Noroton Presbyterian Church about their changes to the Tot Drop program. That letter was dated June 5, 2013. Mr. Ginsberg noted that all the changes were interior and certain programs were moving within certain rooms in the building. There is no change to the program and there’s no change to the proposed external activity or the hours of operation. The applicant would still be in compliance with all State and local maximums allowed. Mr. Voigt made a motion to approve the Special Permit amendment as put forth. Mr. DiDonna seconded that motion, which was approved by a vote of 5-0.

Mr. Spain then read the next agenda item:

Coastal Site Plan Review #252-A, Land Filling & Regrading Application #278, Hans Mende (253 Long Neck Point Road, LLC), 253 Long Neck Point Road.

Request for changes to previously approved plans, as outlined within the June 7, 2013 letter from Wilder Gleason.

Mr. Ginsberg explained that a June 7, 2013 letter was received from Wilder Gleason. Attorney Gleason was present on behalf of Mr. Mende to explain the site plan changes including regrading around the driveway and turnaround. There are new construction drawings and a few drainage improvements. He specifically referred to Sheet A-01 and showed the changes to the basement and the foundation. He explained that the gallery is habitable space in the basement and is less than 50% of the square footage of the first floor and thus allowed by the Regulations. He noted that where the house is being located is now in Zone X of the Flood Regulations so they are allowed to have a basement. Mr. Gleason then summarized the other changes to the plans, including watertight construction to accommodate a very high water table. Mr. Voigt then asked about stormwater management. Mr. Gleason pointed out on the plans how stormwater management would be addressed. He explained that the property is right on Long Island Sound. Mr. Voigt then made a motion to approve the amendments as requested by the applicant. Ms. Cameron seconded that motion, which was approved by a vote of 5-0.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
JUNE 11, 2013
PAGE 5 OF 6

Mr. Spain then read the next agenda item:

Coastal Site Plan Review #257-C, Flood Damage Prevention Application #289-C, Land Filling & Regrading Application #245-C, Dale & Hillary Miller, 5 Tokeneke Beach Drive.

Request to modify previously approved plans; and request for extension of time, as outlined in the June 2013 letter from Robert Maslan.

Mr. Ginsberg explained that this project was approved by the Commission in 2012 with the Chairman at that time, Fred Conze, noting that he would have liked to have seen a smaller house. The property owner has been working since that time on designing a smaller house. Those plans are before the Commission this evening. Attorney Robert F. Maslan, Jr. was present on behalf of the property owners, the Millers. He said the proposed new residence is fully compliant with the new flood regulations and the first floor elevation is slightly higher than the previously approved house. The house has been contracted down in size and one of the driveways removed. He then reviewed the other changes with Commission members. The new house design will have the same number of bedrooms as the previous design, and the plans have been approved by the Darien Health Department. Mr. Voigt noted that they are also requesting an extension of time and he recommended that the Commission grant one year from July of 2013 to complete this project. Ms. Cameron made a motion to approve the revised plans and grant the requested extension of time. That motion was seconded by Mr. Voigt and unanimously approved.

Mr. Spain then read the next agenda item:

Review and determination on whether a public hearing is required or possible decision on:

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 modify previously approved plans by constructing a new pool cabana; enlarging the water portion of the existing pool; updating surface materials on existing terrace areas; updated pool enclosures; and installing new planting beds.

Mr. Ginsberg noted that the plans were approved in November 2012 and further modified in March 2013. Attorney Robert F. Maslan, Jr. was present on behalf of Contentamiento, LLC, the current property owner. He said that they are taking the underground area and making it a more active space. They are enlarging the carve out for the water portion of the pool. Mr. Maslan explained that all required blasting has been completed. Views will not be affected. After briefly discussing the plans, Mr. Spain made a comment that, in his opinion, no public hearing on these changes was needed. Mr. Voigt then made a motion to approve the revised plans without a public hearing. That motion was seconded by Ms. Cameron and approved by a vote of 5-0.

Mr. Spain then read the next agenda item:

Discussion, deliberation, and possible decision if public hearing has been closed:

Proposed Amendments to the Darien Zoning Regulations put forth by the Planning & Zoning Commission (COZR #2-2013). Proposal to modify subsection 210 (the definition of Substantial Damage and the definition of Substantial Improvement); to modify subsection 822a Inventory of Regulated Areas to refer to the Flood Insurance Rate Maps that take effect on July 8, 2013; and to

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
JUNE 11, 2013
PAGE 6 OF 6

modify subsection 825f(1) by specifically referring to a Connecticut Coastal Jurisdiction Line rather than Mean High Water or High Tide Line.

Mr. Spain suggested that the Commission could adopt the Regulations as put forth this evening. Mr. Ginsberg said that he would research the issue brought up by Mr. Olvany about the phrase “equalized assessed evaluation” rather than “market value”. Mr. Olvany made a motion to adopt the regulations as put forth this evening with an effective date of Sunday, June 30, 2013 at 12 noon. Mr. DiDonna seconded that motion, which was unanimously approved.

There being no further business, the meeting was then adjourned at 10:30 P.M.

Respectfully submitted,

Jeremy Ginsberg
Planning & Zoning Director

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