

**PLANNING AND ZONING COMMISSION  
RE-APPROVED MINUTES  
PUBLIC HEARING/GENERAL MEETING  
January 27, 2009**

Place: Auditorium  
Town Hall

TIME: 8:00 P.M.

**PLANNING & ZONING COMMISSION MEMBERS ATTENDING:**

Conze, Grimes, Finke, Hutchison, Bigelow, Spain

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

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**PUBLIC HEARING**

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

**Special Permit Application #172-D/Site Plan, Darien Diner (former Driftwood Diner), 171 Boston Post Road.** *POSTPONED UNTIL FEBRUARY 24, 2009.*

Chairman Conze read the following agenda item and noted that it had been withdrawn:

**Land Filling & Regrading Application #207-A, William & Rose-Marie Shanahan, 58 Sunswyck Road.** *WITHDRAWN.*

Chairman Conze read the following agenda item:

**Proposed Amendments to the Darien Zoning Regulations put forth by 333 West Avenue Associates, LLC.** A proposal put forth by 333 West Avenue Associates LLC to amend the Darien Zoning Regulations. This proposal would add a new Section 1052 to define and allow "Single-Family Open Space Development" and amend the existing Subsection 404 to allow such use as a Principal Use requiring a Special Permit.

Chairman Conze explained that a resident would like to speak on this issue, but must go to a different meeting elsewhere in the Town Hall. Therefore, he allowed her to speak first. Linda Santarella, a resident of 341 West Avenue, said that she is very interested in the application and requested a continuation or extension of the public hearing so that additional comments could be received by Commission members after the initial presentation by the applicants and at a future meeting.

John Hertz, one of the partners of 333 West Avenue Associates, LLC, explained that he has been a building contractor for many years and has considerable experience building houses in and around Darien. In this case, they have assembled six parcels of property along West Avenue in order to construct high quality single family residential houses. Rather than creating separate building lots and having one house on each building lot, they are proposing to create a coordinated development that is modeled after a conservation subdivision approach, but would not create separate subdivided lots. They would have required open space and there would be a cap on the density and the building coverage that is the same as the existing zone. Additional controls on developed site area and the

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size of the houses would give the Commission more control over how the project is developed. Mr. Hertz explained that the proposal meets the desires of many perspective buyers in that it allows for a single family detached house on land in common ownership and coordinated development with a minimal need for the individual homeowner to do exterior maintenance. The exterior maintenance would be handled by the homeowners' association. He also said the proposal meets many of the objectives within the Town Plan of Conservation and Development.

Craig Flaherty of Redniss & Mead Engineers, Surveyors and Planners, spoke on behalf of the applicants and explained that the language that they propose to add to the Regulations is contained within the submitted application materials. On the left side of the page is the proposed language. On the right side of the page is commentary regarding the proposed amendments. He submitted a new sheet that is a table showing the downsizing of parcels allowed within the Conservation Subdivision Regulations that are presently part of the Zoning Regulations. He noted that the main amendment is to add a new provision to Section 404 of the Zoning Regulations to allow a new use by Special Permit within some of the residential zones. This new use would allow more than one house per lot provided the applicant complies with the proposed new standards within Section 1052 of the Regulations and obtains a Special Permit and site plan approval from the Planning & Zoning Commission. Special standards for the development are contained within the proposed Section 1052 that the applicant has submitted for consideration by the Commission. An additional document regarding the Town Plan of Conservation and Development was distributed. Mr. Flaherty said that the proposed amendment to the Regulation complies with many aspects of the Town Plan of Conservation and Development, including the need to increase open space and to control impervious surfaces. He said that this proposed new regulation is an alternative to a standard subdivision of property.

Mr. Flaherty reviewed the proposed provisions of Section 1052 of the Regulations. He said that all of the standards of a proposed single family open space development meet or exceed the standards contained within the underlying zone. He drew particular attention to Note A which requires the deduction of wetlands and steep sloped areas and other sensitive areas of the parcel from the density calculations and calculations regarding how much of the site can be developed. He said that if a site has natural restrictions to development, then the developer cannot build on those restricted areas and cannot count the area of environmentally sensitive property in the calculations. He also noted that Number 15 limits the size of the houses to about one-half of the maximum allowed for a single family house on its own lot.

Mr. Flaherty said that the Planning & Zoning Commission had referred the proposed application to the Environmental Protection Commission and the EPC Study Committee responded. The comments from the EPC indicated that the open space area should be clearly demarcated and that the open space areas provide wildlife habitat. Mr. Flaherty submitted a hand-out sheet labeled 'Option One: Modified Language for Open Space' in which he incorporated these comments within Section 1052.3. Mr. Flaherty also discussed another hand-out that was distributed regarding neighboring towns' Zoning Regulations and how much floor area ratio could be permitted and the total amount of coverage that could be permitted. Two additional colored hand-outs showing the impervious coverage in the surrounding R-1/3 zone and impervious coverage in the near-by R-1/5 zone were submitted. In the R-1/3 zone, the impervious coverage was approximately 30% of the land area. In the R-1/5 zone, the impervious coverage was approximately 40% of the land area. Another hand-out labeled 'Option Two, Modified Standards for Coverage and Floor Area' contains possible

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adjustments to Items 12, 14 and 15 regarding maximum building coverage, maximum site development area and maximum floor area ratio.

Mr. Flaherty noted that any development under these new Regulations would require that a detailed Stormwater Management Plan be devised and submitted for review. He recognizes that the neighbors are concerned about possible flooding that might occur and, if the Commission adopts the proposed Regulations, then a detailed Stormwater Management Plan will be part of the next submission. He also noted that all off-street parking within the development would have to be located at least 10 feet away from any property line. For single family residences, there is normally no setback requirement, but for Special Permit uses within residential zones, there is normally a 25 foot setback requirement for parking spaces and access drives. He felt that the 25 foot setback for a large church parking lot would be appropriate, but since this type of development is essentially a collection of single family houses, the 25 foot setback should not apply. However, a setback of at least 10 feet would provide greater protection for the neighbors than compared to just one house on one lot. A yellow highlighted hand-out regarding the surrounding neighborhood densities was submitted. It indicates that the number of homes per acre in the vicinity is always greater than 3 units per acre and in some nearby blocks exceeds 8 units per acre. The proposed development would contain eight houses on 1.8 acres and would therefore have a density of approximately 4.3 units per acre. According to the submitted map, this is less than most of the surrounding neighborhoods.

Mr. Spain asked if the modified language submitted in the public hearing is what the applicant wishes the Commission to consider. The answer was yes. Mr. Flaherty distributed an additional hand-out comparing Phillips Lane subdivisions that are in the R- $\frac{1}{3}$  zone. If the new Regulations had been in effect when those properties were being developed, there would have been one less house that would have been allowed due to the substantial environmentally sensitive land. That sensitive land would have been deducted from the allowable density calculations. Mr. Spain asked how the Commission staff could keep track of this new feature, which is limiting the total impervious surfaces within the development. He wondered how the Commission might regulate this in the future. Mr. Flaherty said that the Commission could establish a town wide standard for all types of development or only regulate the total impervious surface on individual Special Permit uses that require site plan approval. He said that the Commission could also require as-built maps for all developments. He noted that site plan review is needed for all types of development except individual single family houses on their own separate lots. Because this type of single family open space development would be a Special Permit use, no expansion of the impervious surface area could take place without obtaining Planning & Zoning Commission approval.

Mr. Spain said that it is crucial that any proposed development allowed by the Regulations fit into the community and the neighborhood.

Betty Schley of 2 Oak Park Avenue said that re-zoning this 1.8 acre site would be spot zoning and that constructing 8 houses on this property would be too much for the neighborhood. She said eight families with children would over-burden the infrastructure and create an economic burden on the Town and have a negative impact on the neighborhood.

Ruth Sweyte at 325 West Avenue said that the proposed amendment of the Regulations is simply a manipulation of the Regulations by a developer proposing to change the language to meet their needs. She said it would not be in keeping with the character and best interest of the neighborhood.

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She said that the developer should have saved the existing single family homes rather than knock them down and try to replace them with a greater number of larger structures. She said that there were only three houses on the property and now they have been knocked down and the applicant is proposing to build eight houses. She said that the applicants purchased the property knowing about the existing Regulations and the flooding conditions that exist on the property. Now they want the Commission to change what has worked well for many years. Ms. Sweyte continued by noting that this parcel has sensitive land that floods already. She questioned how the applicant is going to gain open space if the development would change from 3 houses to 8 houses. She said that it is not logical that open space would be increased when more development is proposed. She said that the neighborhood does not need to have more large houses built for people who want to downsize. Any new houses should be of very modest size. Mr. Spain asked about the perceived difference in a house on its own separate parcel versus a group of single family houses that are on one large parcel in common ownership. Ms. Sweyte replied that the owners of an individual lot feel more direct responsibility for their own property and for the neighborhood. She said that just because someone wants to do it, it does not make it right to change the single family residential character of the neighborhood into a condominium type of development. She said that owners within the condominium would feel less direct responsibility for their home and the neighborhood. Mr. Spain asked if having four very large houses would be better or worse or more impacting.

Mr. Hutchison said that, in this case, having common ownership and a development that is subject to a Special Permit approval by the Commission would give the Town more control over what gets built and any future changes that might occur on the site.

Mrs. Luann Stuart of 348 West Avenue said that the original proposed development was 12 units on 1.87 acres. Now they have backed down to 8 units on the same area. She said that not all of the neighboring property owners have received proper notice regarding the proposed amendment to the Regulations. She felt that a continuation would be appropriate.

David Hawes, who is involved in real estate sales, said that the common ownership feature is a great way for the Town to attain control over the architecture of the development and to assure that all of the single family houses in the development will be properly maintained.

Mary Meehan of 3 Oak Park Avenue said that the applicant only owns 4 parcels of land and has an option to purchase more property. They do not actually own 1.8 acres. She said that the applicants' proposal to construct houses of 2,600 square feet in the R-1/5 zone would make these houses much bigger than what has been there and larger than other houses in the neighborhood on 1/5 acre lots. She said that the back portion of the subject property was labeled as a reserved open space property from the Patton Drive subdivision approved in the 1940s. She asked how it could be developed or counted as the open space for this development if it is a pre-existing open space. She said that the open space that they are referring to is not something that they will create, but it is something that has already been counted as open space. Mrs. Meehan said that the infrastructure in the area is insufficient to accommodate 8 new houses. She said that the drainage system is not adequate to carry all of the rain water away from the site and that has resulted in flooding on the subject property. She said that increasing the density will impact the neighborhood and that the applicant actually only has 1.2 acres of land, not 1.8 acres of land. She noted that this project does not include any affordable housing which is an important goal for the community. She said that she knows of

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other people that are opposed to the application, but they could not attend the meeting. She asked that the Commission continue the public hearing.

There were no additional people wanting to make comments at this time. The Commission members believed that the public hearing should be continued. The following motion was made: That the Commission continue the public hearing regarding this matter at 8:00 P.M. in the Town Hall Auditorium on February 24, 2009. The motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

At about 9:45 P.M., Chairman Conze read the following agenda item:

**Proposed Amendments to the Darien Zoning Regulations put forth by the Darien Planning & Zoning Commission.** Create a new Section 880 *et. seq.* of the Zoning Regulations. The purpose of these Regulations is to require storm water management plans for certain projects and applications. The Regulations define the applicability of the new Section and establishes components of Stormwater management plans.

Director of Planning, Jeremy Ginsberg, made a PowerPoint presentation regarding the proposed new Regulations. He referred to the Tighe & Bond Stormwater Report that was completed in October 2008. That report recommended changes to the Regulations to better manage storm water runoff from each development. The proposed Regulations were referred to the Environmental Protection Commission (EPC) and Town Counsel who each had numerous comments that need to be incorporated. Section 880 concerns the management of storm water runoff with respect to quantity and quality. It includes standards and applicability, required documentation for each type of development and details of designs. One of the comments received to date is that possibly too much detail would be incorporated into the Zoning Regulations. On the other hand, leaving out the details would give less authority to the Commission. Mr. Ginsberg explained that there are many issues that must be worked through, particularly the minimum project size that would be subject to the Regulations, waiver provision or modification provisions when this type of management is not necessary, and the extent of the technical information within the Regulations or whether it should be a separate document. He did read aloud the January 13, 2009 comments from the Connecticut Department of Environmental Protection (DEP). The DEP found that the proposed amendment to the Regulations was consistent with the Coastal Area Management Standards and that the proper treatment of storm water runoff would be beneficial to wildlife habitat and coastal resources. The DEP supports the proposed Regulations.

Mr. Bigelow noted that it is important that the Commission have a consistent protocol for various Town bodies that would be dealing with development. This would mean coordinating the policies of the Planning & Zoning Commission, Environmental Protection Commission, Public Works Department, Parks & Recreation Commission, Zoning Board of Appeals and other Town departments. He also noted that Town departments like the Public Works Department may not be able to handle the enforcement legally and therefore a great deal of coordination will be necessary.

Chairman Conze said that these new Regulations need to fit into the town-wide system study that is now being conducted by Milone & MacBroom Consulting. He said that rather than taking testimony, he felt it would be more efficient to have Commission members and the public put comments in writing and send them to the Director of Planning. He did not think it would be beneficial to spend

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more time discussing this matter until the Milone & MacBroom study has been completed. He said that any new Regulations need to be simple and clear and easy for the applicants to understand and comply with (rather than a windfall for consultants). He said that simplicity, clarity and consistency are keys. Other Commission members agreed.

The following motion was made: That Commission members and the public should submit written comments to the Director of Planning as soon as possible and that the public hearing regarding this matter shall be continued at a future date once the Milone & MacBroom report is received. Hopefully, that continuation can take place on February 24, 2009. The motion was made by Mr. Hutchison, seconded by Mr. Finke, and unanimously approved.

Chairman Conze read the following agenda item:

**Proposed Amendments to the Darien Subdivision Regulations put forth by the Darien Planning & Zoning Commission.** Add to Article IV Section I a new #8 requiring that all subdivisions shall comply with the requirements for Stormwater management as outlined within Section 880 *et. seq.* of the Darien Zoning Regulations.

Commission members noted that the items discussed with respect to the drainage regulations proposed for the Zoning Regulations are equally applicable to the proposed amendments of the Subdivision Regulations. The following motion was made: That the Commission continue the public hearing regarding this matter on February 24, 2009 or subsequent date as determined by the staff. The motion was made by Mr. Spain, seconded by Mrs. Grimes and unanimously approved.

### **GENERAL MEETING**

The general meeting was started at 10:13 P.M. All Commission members were present. Chairman Conze read the following agenda item:

*Discussion and deliberation regarding the following:*

**Amendment of Zoning Map #4-2008, Amendment of Zoning Regulations #8-2008, Site Plan Application #268, Special Permit Application #122-A, Land Filling & Regrading Application #219, lot line revision, Darien Housing Authority, Noroton Avenue, Elm Street, and West Avenue.** Proposing to replace the existing single-family residences and apartment building which now comprise Allen-O'Neill Homes; to amend the DMR Zoning Regulations, and rezone the properties to DMR; abandon the existing Allen-O'Neill Drive; revise lot lines; construct 24 new apartment and townhouse structures containing 116 units of housing; construct one community building; install drainage facilities; and to perform related site development activities. *PUBLIC HEARING CLOSED JANUARY 13, 2009. DECISION DEADLINE: MARCH 19, 2009.*

Mr. Ginsberg noted that the action deadline for this application is March 19, 2009. The Commission has not had an opportunity to discuss this matter as a group since the public hearing was closed. Mr. Conze said that the main issues that he sees are management type issues regarding the Regulations and rules that residents will need to abide by and the enforcement of those management policies. He said that there are some other open items that need to be resolved. He believed that it might be helpful for Commission members to write down any comments or thoughts and submit them to Director of Planning so that he can sift through those comments and

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prepare a list of those comments for consideration by all Commission members at a future meeting. Other members agreed and will submit comments to the Director of Planning.

There being no further business, the following motion was made: That the Commission adjourn at 10:17 P.M. The motion was made by Mr. Bigelow, seconded by Mrs. Grimes and unanimously approved. The meeting was adjourned at 10:17 P.M.

Respectfully submitted,

David J. Keating  
Assistant Director of Planning & Zoning

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