

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016**

Place: Auditorium

TIME: 8:00 P.M.

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

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

ALSO IN ATTENDANCE: Glenn Chalder, Planning Consultant
Channel 79

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

PUBLIC HEARING

The Darien Planning & Zoning Commission has prepared the 2016 Town Plan of Conservation & Development (POCD) in accordance with the requirements of Section 8-23 of the Connecticut General Statutes. This document includes policy sections entitled: Development Strategies, Conservation Strategies and Infrastructure Strategies. The proposed POCD is an update of the 2006 Plan. The proposed plan has been filed in the office of the Town Clerk and on the Town Internet web site at: www.darienct.gov/townplanupdate

Mr. Ginsberg noted that tonight's public hearing is the culmination of the multi-year process in preparing the Town Plan. He said that on May 2, 2016 the Darien Board of Selectmen endorsed the plan by a vote of 5-0, and also sent in written comments.

Mr. Chalder reviewed the process of updating the Town Plan of Conservation & Development that had started in October of 2014. There had been outreach to the Board of Selectmen and Board of Education and many other groups within the community. The State Statutes have been followed regarding the assembling of the Town Plan and the public hearing portion is one step in the procedural requirements. Mr. Chalder emphasized that the Plan is an advisory document that inventories existing aspects of the community then produces a strategic formulation of desired goals and then suggests policies to accomplish those goals. A key aspect is the conservation of existing resources and facilities and another aspect is recognizing that development will occur and then planning for the infrastructure and implementation necessary to accommodate that development in the appropriate manner. He said the key issues include the recognition of the downtown business area and the other commercial nodes, transportation facilities, the environment and the community character. Managing coastal resources and other natural resources has been a long time policy of the Town and will continue to be so. Acquiring and preserving open spaces by the public and private entities is another important aspect of the plan. Business development includes the maintenance and enhancement of the downtown and Noroton Heights business areas and managing residential development within the community. Mr. Chalder said that the Town Plan serves as a guide for business and economic development as well as the preservation and enhancement of natural resources. It addresses transportation needs and encourages the creation and enhancement of walking and biking and rail transit facilities.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 2 OF 26

Mr. Terry Duffy, a member of the RTM, spoke regarding the draft Town Plan of Conservation and Development. He said that overall the Commission has done a good job, but he suggested clarifying the language regarding the blight section as noted on page 29. He also noted that on page 86 it seems to be a foregone conclusion that the parking structure at the Noroton Heights train station should be three layers of parking deck. He said that there are many factors that need to be considered before deciding if a parking structure should be built and, if so, what size it should be. A gentleman asked where the building height restriction is mentioned and whether the Town Plan should indicate that it should be revisited.

Mr. Sini said that the Commission has legislative authority and discretion to adopt whatever policies and regulations it sees fit. The current Commission cannot bind a future Commission from reexamining the Regulations and maybe changing the Town Plan and/or the Regulations based on the circumstances in the future.

Mr. Olvany said that a number of people feel that the new or replacement houses are getting too big and that some limitation should be placed on the redevelopment of properties within existing neighborhoods.

Mr. Jay Hardison of 11 Nearwater Lane, and a member of the RTM, asked if anything can be included in the Town Plan that would only allow more building height to be permitted in the downtown and other business districts without allowing it to be spread through other parts of Town.

Rolf Obin of 9 Archer Lane said that the Noroton Heights neighborhood has already had considerable redevelopment including the Avalon residential development and the Allen O'Neill affordable housing project. Now there are two additional development proposals which would substantially redevelop the commercial area within Noroton Heights. He said that the existing developments have already had an impact on the community and more development will have a greater impact on the community at large. He said that it is too much density concentrated in one area. He said that the wording in the Town Plan to protect this residential neighborhood is sometimes too bland and vague. Mr. Sini noted that on page 78 it requires positive findings by the Commission prior to approval of any redevelopment projects.

Mr. Chalder reviewed the various comments that had been received in emails and other written communications. He said some of them are just clarifications and not changing policy. Others deserve some comment from the Commission. It was noted that the draft had been sent to the Connecticut Department of Energy and Environmental Protection (DEEP) and no comments had been received. Another comment indicated that the Town Plan recommends acquisition by Town for properties adjacent to existing Town-owned properties, but that statement should be broadened so that other properties can be acquired as well.

First Selectman Jayme Stevenson spoke and commented on the possible areas for expansion of facilities and services. One such location is the former United Way and Community Fund building at 701 Boston Post Road that is actually owned by the Town. Mrs. Cameron and the rest of the Commission reviewed the comment sheets with everyone. Mr. Olvany read aloud the comments from Western Connecticut Council of Government (WestCOG) which was very complimentary to the Town's efforts with respect to the Town Plan of Conservation & Development. There were no

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 3 OF 26

further comments from the public. The following motion was made: That the Commission close the public hearing. The motion was made by Mr. Olvany, seconded by Mr. DiDonna and unanimously approved.

Chairman Cameron opened the General Meeting and read the following agenda item:

GENERAL MEETING

Discussion, deliberation and possible decisions regarding:

The Darien Planning & Zoning Commission has prepared the 2016 Town Plan of Conservation & Development (POCD) in accordance with the requirements of Section 8-23 of the Connecticut General Statutes. This document includes policy sections entitled: Development Strategies, Conservation Strategies and Infrastructure Strategies. The proposed POCD is an update of the 2006 Plan. *COMMISSION TO DELIBERATE AND POSSIBLY ADOPT PLAN ONLY IF PUBLIC HEARING HAS BEEN CLOSED EARLIER IN THE MEETING.*

Commission members asked that Mr. Chalder incorporate the revisions that had been discussed and try to have that information back to the Commission within about 10 days. Mr. Olvany suggested e-mailing both a redlined and clean .pdf version. The hope is that the revisions will be incorporated so that the Commission can take action at the meeting of May 24, 2016.

At about 9:30 p.m., Chairman Cameron then read the next agenda item:

Business Site Plan Application #290/Special Permit, Land Filling & Regrading Application #375, Shake Shack, 1340 Boston Post Road. Proposing to construct a restaurant with outdoor dining, associated parking, and associated stormwater management, and to perform related site development activities. *HEARING CLOSED 3/22/2016. DECISION DEADLINE 5/26/2016.*

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

Commission members reviewed the draft resolution regarding Shake Shack at 1340 Boston Post Road. Mr. Voigt raised the question regarding the number of seats inside and outside. Mr. Ginsberg said that limiting the number of outdoor seats is necessary due to the limited number of on-site parking spaces. In response to a question, Mr. Ginsberg confirmed that the ARB is advisory. Mr. Voigt had other suggested changes to the draft. Mrs. Cameron believed that the comments from peer review Engineer Todd Ritchie needed to be incorporated into the revised plans. She also had other typos and clarifications in the draft that everyone agreed with. Mr. Olvany made several comments and suggested changes that all members agreed to. Mr. DiDonna said that he found several typos in the draft resolution and all agreed to incorporate those changes. The following motion was made: That the Planning & Zoning Commission adopt the following Resolution to approve the project subject to the conditions and stipulations as noted, and as revised tonight. The motion was made by Mr. Olvany, seconded by Mr. Sini and unanimously approved.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
May 10, 2016**

Application Number: Business Site Plan Application #290/Special Permit
Land Filling & Regrading Application #375

Street Address: 1340 Boston Post Road
Assessor's Map #63 Lot #7-9 & #24-26

Name and Address of Applicant and Property Owner: Baywater 1340 BPR, LLC
1019 Boston Post Road
Darien, CT 06820

Name and Address of Applicant's Representative: Robert F. Maslan, Jr., Esq.
Maslan Associates PC
30 Old King's Highway South
Darien, CT 06820

Activity Being Applied For: Proposing to construct a restaurant with outdoor dining, associated parking, and associated stormwater management, and to perform related site development activities.

Property Location: The property is situated on the south side of Boston Post Road approximately 225 feet northeast from its southerly intersection with Thorndal Circle.

Zones: Service Business (SB) & R-1/3

Date of Public Hearing: February 2, 2016 continued to March 22, 2016
Deliberations held on: March 29, 2016

Time and Place: 8:00 P.M. Room 206 (2/2) Auditorium (3/22) Town Hall

Publication of Hearing Notices
Dates: January 22 & 29, 2016 Newspaper: Darien News

Date of Action: May 10, 2016 Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Actions: Newspaper: Darien News
May 20, 2016

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

- the proposed use and activities must comply with all provisions of Sections 660, 850, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 5 OF 26

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

1. The application is to construct a restaurant with outdoor dining, associated parking, and associated stormwater management, and to perform related site development activities. At the public hearing on this matter, Attorney Robert Maslan represented the applicant and explained that a Business Site Plan and Special Permit, and a Land Filling and Regrading Application are being requested. He noted that this is the site of the former Chuck's Steak House, which had been on this site for many years. The subject property is 0.76 acres, and is served by public water and sewer.

2. This is a Special Permit use allowed under Section 664b of the Darien Zoning Regulations. The proposed restaurant will be 3,100 square feet with an 800+/- square foot outdoor patio. The originally submitted application showed 76 indoor seats and 44 outdoor seats. This was later revised to a maximum of 40 outdoor seats proposed (as stated at the bottom of page 5 of the February 24, 2016 Response to Traffic Impact Study). The applicant notes that 1,228 square feet of indoor space is devoted to customer tables and seating area, and the regulations require that at least 1,200 square feet be provided. As noted on page A-3 of the submitted application narrative, the number of indoor tables and seats "...may change over time". The parking requirements for this use are based upon the size of the building, not the number of indoor seats.

3. On February 23, 2016, the Architectural Review Board reviewed the exterior design of the proposed building, and the outdoor tables and umbrellas, and recommended these aspects of the application.

TRAFFIC

4. Michael Galante of FP Clark Associates was hired to peer review the applicant's Traffic Impact Statement dated November 24, 2015 and their February 24, 2016 Response to Traffic Impact Study Peer Review Comments. Mr. Galante submitted two peer review letters—one dated January 19, 2016 and the other dated March 22, 2016.

5. The submitted site plan does not show a loading or unloading area or a parking lot turnaround area. It does show an area in the northeast corner of the parking lot which will have a sign "No Parking Any Time". This will, in essence, serve as an informal parking turnaround area, and potentially a loading and unloading area for small trucks. At the public hearing, a representative from Shake Shack noted that deliveries will be done during "off-hours". It was then noted that Shake Shack only expects one or two large truck deliveries a week and that they would have garbage pick-up daily in the morning.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 6 OF 26

6. At the public hearing, the applicant's professional engineer, Jonathan Richer of Tighe and Bond, explained the State of Connecticut DOT's concern about the proposed curb cut on Boston Post Road. Questions were asked about whether there could be an extra lane exiting the property so that someone could turn right as someone was waiting to turn left out of the property. Mr. Richer then reviewed turning movement plans. It was mentioned that the State of Connecticut DOT felt that because of such a low volume of truck traffic, the curb cut as shown would be appropriate. There needs to be an increase of thirteen feet in the curb cut for the truck movement. That change will reduce the landscaped area, and make it more difficult for pedestrians, according to Mr. Richer. Mr. Ginsberg asked how DOT could ensure that any subsequent tenant would not change this. Attorney Maslan said that the Commission could condition the use on this tenant.

DELIVERIES

7. At the public hearing, a representative from Shake Shack said that there will be two large (SU-30) truck deliveries per week for food, and there will also be smaller truck deliveries. He added that if the restaurant is highly successful, a third weekly truck may be needed. The large truck deliveries will occur generally between 6:30-7 A.M.
8. Mr. Galante said that the two-lane exit drive would not be approved by the State of Connecticut DOT. He believed that the site should be designed for an SU-30 truck. He recommends the appropriate radius to accommodate these trucks. He did recommend that police be present during the opening two weeks of the restaurant, where larger than normal crowds could be expected.

PARKING

9. During the public hearing, the Commission stated its concerns regarding the sufficiency of on-site parking. The proposed 3,100 square foot restaurant requires 31 parking spaces under the Zoning Regulations (1 per 100 square feet), and the associated 800+/- square foot patio with 40 outdoor seats requires 12 parking spaces (the first 16 outdoor seats have no parking requirement, and the parking requirement after that is 1 space for each two seats). A minimum of 43 parking spaces are therefore required, and 43 are being provided.
10. At the public hearing it was noted that the restaurant does expect a lot of take-out service at this location. It was asked whether they would have any parking spaces specifically designated for take-out orders. Mr. DeAngelis of Shake Shack said that they would not. The Zoning Regulations do not allow for reservation of "take out" spaces.

STORMWATER MANAGEMENT

11. Mr. Richer outlined the rationale for the stormwater waiver based upon this property's specific location near the bottom of the Stony Brook watershed. That watershed extends from just south of downtown New Canaan to about 2-3 blocks south of Darien Town Hall. Mr. Richer believed that the site meets some of the requirements in the regulations for a waiver. They will be reducing the amount of runoff during all storms. He said that the existing Department of Transportation (DOT) system in the Boston Post Road does not have sufficient capacity.
12. Mr. Todd Ritchie, Professional Engineer of Woodard & Curran, explained that he had peer reviewed the proposed stormwater management plan. He noted that it would be important to obtain a drainage easement 15-20 feet wide extending from the south property line over the existing storm drain pipe. He acknowledged that this site is in the lower part of the watershed. He

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 7 OF 26

said that this area of the Boston Post Road does already have drainage issues. He also acknowledged that it is a small site, and they are reducing the peak rates of runoff. He said that whether to require the fresh meadow approach is up to the Commission.

OTHER ISSUES--LIGHTING, LANDSCAPING, ETC.

13. Lighting of the parking lot is proposed to include lighting fixtures which will provide a sharp cutoff to prevent glare toward the residential neighbors. Originally, sixteen foot tall light poles were proposed, but revised plans (Sheet LP.2, last revised 1.26.16) reflect shorter twelve foot high poles to better address concerns.
14. Mrs. Cameron noted that page 3 of the February 29, 2016 Response to Site & Stormwater Management Peer Review Comments letter made reference to a Phase I Environmental Site Assessment and Phase II Subsurface Investigation of the subject property. Mr. David Genovese of Baywater Properties explained that they can submit those reports as part of the record in this matter.
15. Because there would be on-site cooking, it is imperative that a hood and duct system with proper odor controls be installed and properly maintained to minimize odors that would otherwise permeate the neighboring residential and business properties.
16. A new concrete sidewalk is proposed to be installed. As shown on the submitted Landscaping Plan, street trees will also be installed near Boston Post Road.

REQUIRED FINDINGS

17. 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.
18. The nature of the use is such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, nor impair the value thereof.
19. The site plan has been reviewed by the Commission and is in general compliance with the intent, purposes and objectives of Section 1020.
20. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
21. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 8 OF 26

NOW THEREFORE BE IT RESOLVED that Business Site Plan Application #290/Special Permit and Land Filling & Grading #375 are hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

A. Construction and other site development activity shall be in accordance with the following plans as required to be modified herein:

- Town of Darien, 1340 Boston Post Road Shake Shack, by Tighe & Bond, dated November 25, 2015 revised January 27, 2016.
 - a. Typical Sections and General Notes, Sheet C1.0.
 - b. Geometric Layout Plan, Sheet C3.0.
 - c. Grading Plan, Sheet C4.0.
 - d. Drainage Plan, Sheet C5.0.
 - e. Utility Plan, Sheet C6.0.
 - f. Sedimentation and Erosion Control Plan, Sheet 7.0.
 - g. Sedimentation and Erosion Control Notes, Narrative and Details, Sheet C7.1
 - h. Site Details, Sheet C8.1.
 - i. Site Details, Sheet C8.2.
 - j. Storm Details, Sheet C8.3.
 - k. Storm Details, Sheet C8.4.
 - l. Sanitary Details, Sheet C8.5.
- Site Plan 1340 Boston Post Road, by Tighe & Bond, dated November 25, 2015 last revised 3/16/16, Sheet C2.0.
- Turning Movement Plan, 1340 Boston Post Road, by Tighe & Bond, dated November 25, 2015 last revised 3/16/16, Sheet C10.0.
- Landscape Plan 1340 Boston Post Road, by Environmental Land Solutions, dated 12.1.15 and last revised 1.26.16, Drawing No. LP.1.
- Landscape Lighting Plan 1340 Boston Post Road, by Environmental Land Solutions, dated 12.1.15 and last revised 1.26.16, Drawing No. LP.2.

The final plans shall be revised and coordinated to reflect all stipulations of this approval.

B. The Commission is hereby requiring a drainage easement at least fifteen feet wide (making sure that the existing 15 inch storm drain pipe is within the easement) extending from the south property line running from Old King's Highway South to Boston Post Road. That easement map shall be filed in the Darien Land Records prior to the issuance of a Zoning and Building Permit for the proposed restaurant.

C. The Planning and Zoning Commission is not requiring a bond for the proposed public improvements (sidewalk, lampposts, and landscaping), since a Certificate of Occupancy cannot be obtained until these are properly constructed pursuant to the plans in Condition A, above. A new sidewalk shall be provided along the entire frontage of this property as shown on the submitted plans, and as required to be reviewed and approved by the State of CT DOT. The design of the sidewalk shall be a continuous, raised concrete sidewalk through the driveway, rather than dropping down to the asphalt driveway.

D. The Commission hereby waives the requirement for a loading area under Section 909 of the Regulations, however, no delivery trucks or vehicles are allowed to stop on or make deliveries

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 9 OF 26

from the street. All trucks and delivery vehicles must be parked within the site when making any delivery.

- E. All utilities serving this property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, gas, and all other wiring.
- F. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans in Condition A, above, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.

PARKING/TRAFFIC AND SIGHT LINES

- G. At the public hearing, there was discussion regarding the appropriate width of the driveway, and its sufficiency to have space for an SU-30 truck to turn in without having to cross over the double yellow line in the center of the Boston Post Road. This was pointed out in Michael Galante's March 22, 2016 letter under "Design Vehicle Turning Radius". To accommodate this, the driveway throat would have to be wider. The Commission believes that the wider driveway throat is safer, and all plans shall be revised and coordinated accordingly.
- H. For the first two weeks of the restaurant's opening, the property owner and/or applicant shall hire a police officer to direct traffic on and adjacent to the site from 11 am to 2 pm and from 5 pm to 8 pm every day.
- I. As noted by the Shake Shack representative during the public hearing, there shall be 2-3 deliveries per week via large truck. There shall be no deliveries made from Boston Post Road. All trucks shall pull into the site.
- J. The submitted Site Plan Sheet C2.0 shows the existing bushes to the southwest of the property on the Darien Auto property as "existing bushes to be trimmed and/or removed to improve sight distance subject to owner approval." The Commission strongly encourages this, which will improve visibility to the west.
- K. Since the amount of parking spaces required is partially based upon the number of outdoor seats, the applicant has specifically shown on the submitted plans that the number of outdoor seats will not exceed 40. That cannot change without returning to the Commission. Due to the Commission's concern about the adequacy of the parking, and in order to make an affirmative finding in Sections 1005a and 1005d, the Commission hereby stipulates that there shall be no more than 76 indoor seats, as specifically proposed by the applicant in Sheet A-3 of the application narrative. There shall be no parking, even temporarily, on Boston Post Road, unless specifically authorized by the State of Connecticut DOT.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 10 OF 26

- L. The application narrative, on page A-3, notes that the proposed hours of operation will be 11 am to 11 pm seven days per week. The Commission acknowledges that employees may be on premises before and after those hours of operation for preparation and clean-up. Any modification to these proposed hours of operation requires a modification of this Special Permit, and review and action by the Planning and Zoning Commission.

FUMES & ODORS

- M. Page A-3 of the submitted application narrative dated December 14, 2015 notes that, "...the proposed building will include a hood and exhaust system that will capture cooking grease, and discharge kitchen exhaust upward from the roof."
- N. Because of this property's proximity to a residential zone, it is imperative that odors be minimized and virtually eliminated via a properly designed and functioning exhaust system. In order to minimize potential odors, the Commission hereby requires that the exhaust system include at a minimum, a kitchen hood with high performance grease and odor filters that direct the exhaust away from the Residential Zone. The filtering and exhaust system is to be installed in a manner that allows it to be easily upgraded in the future if odor is a problem. Prior to the issuance of a Certificate of Occupancy or restaurant opening for business, documentation shall be provided by the exhaust system installer to the Planning & Zoning Department that the proposed system has been properly installed. The operator is responsible for assuring that the odor control and venting system functions properly at all times. The proposed venting system shall be installed per the approved plans and pursuant to any requirements of the Darien Health Department, Fire Marshal and Building Department. The continuing operation of and proper regular maintenance of the ventilation system to prohibit the discharge of odors to the surrounding uses and/or properties is the responsibility of the restaurant operators and the owner of the property. The system shall be operated and maintained to minimize and virtually eliminate the emission of odors that could or would negatively impact adjacent property and/or be a potential nuisance to nearby residents. Odor complaints from commercial and/or residential neighbors shall also be reviewed and investigated by the Zoning Enforcement Officer (ZEO). If, in the opinion of the ZEO, there is a persistent recurring odor, the ZEO shall contact the tenant, landlord and property owner. The operator shall then take appropriate measures to minimize odors, including, if necessary in the judgment of the ZEO, the updating and improvement of the ventilation and exhaust system, including, if required by the ZEO, the installation of a full water wash filter system. In order to better understand how the proposed kitchen exhaust system functions, the operator shall submit a short written report to the Planning and Zoning Department staff within two (2) months of opening for business, noting the experience up to that point with the kitchen exhaust, whether the venting has proven to be sufficient, whether complaints have been received, and what actions have been taken to (a) ensure that there have been no fumes or odors, and/or (b) respond to said complaints.

DELIVERIES AND TRASH PICKUP

- O. It is the responsibility of the tenant/operator to inform delivery personnel that adequate delivery areas are provided in the rear of the building and to ensure that only those designated areas are utilized for deliveries and that there shall be no delivery vehicles stopped on the street.
- P. All Dumpster areas shall be maintained in a neat and orderly fashion by the operator or property owner. The Dumpster doors shall remain shut at all times that someone is not loading or

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 11 OF 26

unloading garbage. Due to this property's location near other residential properties, trash, garbage and grease pickup shall only occur between 7 a.m. and 11 a.m.

STORMWATER MANAGEMENT

- Q. At the public hearing, the applicant's engineer requested a waiver of stormwater management regulations due to the property's location at the bottom of the Stony Brook Watershed. The Commission notes the number of Cultec units proposed, and the fact that these units will decrease peak runoff in all storms. Due to this property's specific location within the watershed, the Commission requires that the proposed drainage system is to be installed and hereby waives the requirement for additional stormwater management.
- R. By July 10, 2016 (within the next 60 days) and prior to the issuance of Zoning or Building Permits for the new building, 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. This plan shall include the proposed drainage system. 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 1340 Boston Post Road to maintain the on-site drainage facilities, and will alert future property owners of the 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 prior to the issuance of a Zoning or Building Permit and within 60 days of this approval.
- S. The applicant shall install the drainage system as shown on the submitted plans. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible for remedying the situation at their expense and as quickly as possible.
- T. Rough site work for the project may commence once the sediment and erosion controls and other environmental protection measures are in place. Around the work area, the storm water runoff must be addressed on a temporary, during construction, basis. This includes limiting the potential for erosion, capturing sediment that does get created, and providing for the flow of storm water in a manner that will not create any problems for adjacent or downstream properties.

LANDSCAPING, BUFFERING, FENCING

- U. All plantings shown on an approved Site Plan shall be maintained in a healthy growing condition and all fences and walls shall be maintained in good physical condition throughout the duration of the use. Plants not so maintained shall be replaced with new materials no later than the beginning of the next immediately following growing season.

SIGNS

- V. Commission members noted that a sign variance application that had been submitted to the Zoning Board of Appeals had been denied. All signage for this business shall conform with the Darien Zoning Regulations, unless a variance is obtained from the Zoning Board of Appeals.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 12 OF 26

CHANGE OF USE

W. Any change to the nature of the proposed use will also require a modification of this Special Permit, and review and action by the Planning and Zoning Commission. This would include, but not be limited to, the hours of operation, the nature or amount of deliveries, amount of indoor or outdoor seating, or the nature of the restaurant use.

ADDITIONAL SUBMITTALS REQUIRED

X. Mrs. Cameron noted that the written documents referred to a Phase I and Phase II study of the property. Mr. David Genovese of Baywater Properties explained that they can submit those reports as part of the record in this matter. Those documents shall be submitted to the Planning and Zoning Office prior to the issuance of Zoning and Building Permits for this project.

AS-BUILTS AND CERTIFICATIONS REQUIRED

Y. Prior to issuance of the Certificate of Occupancy (CO) for this project, the applicant's engineer shall provide a certification that the parking, sidewalk, lighting, dumpster enclosure, stormwater management system and other site development aspects have been installed in full compliance with the approved plans.

Z. Also prior to the issuance of a Certificate of Occupancy, an as-built photometric plan (including, but not limited to, showing the location of the on-site lighting), is required to ensure that the property is developed according to plan and does not create impacts from lighting to surrounding neighboring properties.

AA. All aspects of the construction, including, but not limited to: stormwater management, site improvements (the installation of the sidewalk, associated lampposts) and landscaping must be completed prior to any use or occupancy.

BB. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. This includes, but is not limited to, the requirement for Zoning and Building Permit applications, and a Sewer Disconnection (as part of the demolition) and a Sewer Connection Permit from Darien Sewer Services for the new building. A Street Opening Permit from the State of CT DOT is required for the proposed driveway and other work on and within the right-of-way of Boston Post Road/Route 1, prior to the issuance of a Zoning and Building Permit. Final approval by the Darien Health Department and Fire Marshal is also required.

CC. 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.

DD. This permit shall be subject to the provisions of Sections 858, 1009 and 1025 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (May 10, 2017). This approval may be extended as per Sections 858, 1009 and 1025.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 13 OF 26

All provisions and details of the plan, as required herein to be amended, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. All completed requirements and materials shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void. A Notice of Drainage Maintenance Plan and Special Permit form must be filed prior to the issuance of a Zoning or Building Permit.

End of resolution

Mrs. Cameron then said “before we move on to the next item, there’s something that I would like to say to Shake Shack and the applicant. I sincerely hope that Shake Shack will decide to come to Darien regardless of the outcome of the ZBA application. From the outset, Planning & Zoning has stated that we are going to take a comprehensive look at our signage regulations, but that we were not going to take this up for this zone and this application.

I have seen the new submittal to the ZBA and I appreciate the argument their signage expert’s making regarding larger letters being possibly needed in zones where traffic moves more quickly, and I understand there may be peer review, and having expert views from one or more people will be very helpful for us on Planning & Zoning as we move forward with our signage regulations. That said, I am fully supportive of ZBA’s decision, whatever that may be. Theirs is a narrow review, and as a member of Planning & Zoning, I applaud their diligence in upholding our regulations in allowing variances only where they feel a case for a hardship has been made. So I hope Shake Shack will come even if their signage has to meet current regulations at this point in time, and I just want to say that I believe in any case, people are going to find them.”

And we are going to work on the sign regulations, Mr. Sini said at the conclusion of Mrs. Cameron’s statement, and Mrs. Cameron confirmed that.

Chairman Cameron then read the next agenda item:

Amendments to the Darien Zoning Regulations put forth by Knobel Hill, LLC (COZR #4-2016). Proposal to amend various subsections of Section 430 of the Zoning Regulations, which address the below market rate (BMR) units required for Active Senior Residential developments. These changes would: reduce the minimum average size of off-site BMR units to 45% of the average of the on-site market-rate units; and would remove the age restriction from the off-site BMR units. *PUBLIC HEARING CLOSED: 4/5/2016. DECISION DEADLINE: 6/9/2016.*

Commission members discussed the draft resolution and asked staff to make several revisions, including comments from Mrs. Cameron, Mr. Voigt and Mr. Sini, and other modifications so that it could be considered at the meeting in one week. No vote or action was taken, as the Commission wanted to see a redlined version.

Chairman Cameron then read the next agenda item:

Amendments to the Darien Zoning Regulations put forth by Darien ALF Property, LLC/Maplewood Darien, 599 Boston Post Road (COZR #5-2016). Proposal to amend Section 627 of the Zoning Regulations to allow that Area and Bulk Requirements for an Assisted Living Facility

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 14 OF 26

(ALF), Memory Care Facility (MCF), or a combination thereof be determined on a case-by-case basis by the Commission. The proposal seeks to correct an internal inconsistency that exists within Section 620 (DB-2 Zone). *HEARING CLOSED: 4/5/2016. DECISION DEADLINE: 6/9/2016.*

Commission members reviewed the draft resolution. After several minor modifications and clarifications suggested by Mrs. Cameron and Mr. DiDonna were discussed and agreed upon, the following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project, the requested modification of the Zoning Regulations as noted. The motion was made by Mr. Sini, seconded by Mr. Olvany. All voted in favor, except Mr. Cunningham who abstained because he had not been present for the public hearing. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
May 10, 2016**

Application Number: Amendments to the Darien Zoning Regulations
put forth by Darien ALF Property, LLC/Maplewood Darien, 599 Boston
Post Road (COZR #5-2016)

Street Address: 599 Boston Post Road
Assessor's Map #14 Lot #33

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

Names and Addresses of: Darien ALF Property, LLC
Property Owners:

Activity Being Applied For: Proposal to amend Section 627 of the Zoning Regulations to allow that Area and Bulk Requirements for an Assisted Living Facility (ALF), Memory Care Facility (MCF), or a combination thereof be determined on a case-by-case basis by the Commission. The proposal seeks to correct an internal inconsistency that exists within Section 620 (DB-2 Zone).

Zone: DB-2

Date of Public Hearing: April 5, 2016
Deliberations held on: April 26, 2016

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices
Dates: March 25 and April 1, 2016

Newspaper: Darien News

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 15 OF 26

Date of Action: May 10, 2016

Action: ADOPTED WITH MODIFICATIONS
WITH AN EFFECTIVE DATE OF SUNDAY,
JUNE 5, 2016 AT 12:05 P.M.

Scheduled Date of Publication of Action:
May 20, 2016

Newspaper: Darien News

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

- the proposed Zoning Regulation amendments must be consistent with the Town Plan of Conservation & Development for the Commission to adopt the amendments.

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

1. At the public hearing, it was noted that the proposed amendments of the Regulations would allow Maplewood at 599 Boston Post Road to expand on a property to the east (Norwalk side) of their existing facility. In 2011, the Commission adopted requested changes to the Zoning Regulations to accommodate the conversion of the existing building from a nursing home to an assisted living facility (ALF). Now Maplewood would like to expand. Due to the non-conformities of the existing building, some adjustments to the Regulations are needed if expansion is to be possible. If the Commission amends the Zoning Regulations, then a Special Permit and Business Site Plan application for building expansion will be prepared and submitted to the Planning & Zoning Commission for review.
2. The applicant's proposal was revised from that originally submitted in February 2016. The revised application narrative, titled, "March 21, 2016 Application of Rucci Law Group, LLC to Darien Planning and Zoning Commission for Change in Zone Regulations on Behalf of Maplewood Darien 599 Boston Post Road, Darien, Connecticut", proposes changes to modify Sections 621 and 627 of the Regulations.
3. The changes to Section 621 are to the Background and Purposes of the DB-2 zoning district. The additional two sentences proposed to be added confirm that Assisted Living Facilities and Memory Care Facilities are different than the other types of uses allowed in the DB-2 Zone, since these uses require larger facilities than others. The Commission finds that it is appropriate to adopt the amendments to Section 621 (Background and Purposes) as proposed by the applicant.

PARKING/TRAFFIC ISSUES

4. At the public hearing, Attorney Amy Zabetakis, the applicant's representative, discussed the existing Maplewood property, and the fact that it has an underground parking structure, which does not meet existing setbacks. It is clear in the Regulations that any new underground parking structures must meet the setback regulations, however, the existing underground parking structure at Maplewood of Darien is very close to the front property line. Changes to the regulations regarding underground parking structures will be the subject of a subsequent application.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 16 OF 26

5. It was noted that the existing on-site parking at Maplewood is insufficient for the staff and visitors. In addition, delivery vehicles park along the Boston Post Road in an unsafe manner. Commission members agree that any changes to the site in the future need to incorporate solutions to these problems. Currently, some of the parking spaces in the church parking lot across Boston Post Road are used by some of the workers at Maplewood.

BUILDING HEIGHT ISSUES

6. Attorney Zabetakis discussed the proposed amendment to the building height limitation. She said that it is 31.5 feet to the flat roof of the existing building. This does not take into account the front façade or parapet walls. They are proposing a 35 foot height limitation. Attorney Zabetakis said that the new roof would match the height of the existing roof. The existing DB-2 Regulations only allow a maximum of two stories and 28 feet, and the existing Maplewood building exists due to the granting of a variance in 1965. To expand it at the same height would require either a variance or a change in the Zoning Regulations.

CONCLUSIONS AND FINDINGS

7. The application was referred to the Western Connecticut Council of Governments (WestCOG). They responded on February 25, 2016 that the application is of local concern and with minimal intermunicipal impact.
8. The Commission has made modifications to the proposed regulations put forth by the applicant. The modifications result in the same outcome, but improve readability.
9. The subject application consists of zoning regulation amendments. As part of this request, the applicant has not proposed a specific site plan for the Commission's review or consideration. During the public hearing, concepts were discussed to assist the Commission in understanding the potential impacts of the regulation amendments. A subsequent, formal application will need to be made to the Planning & Zoning Commission for site plan and special permit approval.
10. Documentation was provided during the public hearing confirming that the proposal complies with the Town Plan of Conservation & Development. The Commission believes that this is an appropriate use in Darien, and is appropriate for this zoning district.

NOW THEREFORE BE IT RESOLVED that Amendment to Darien Zoning Regulations (COZR #5-2016), is hereby adopted subject to the foregoing and following modifications and understandings:

NEW WORDING UNDERLINED, DELETIONS IN STRIKEOUT:

Changes to Sections 621 and 627e of the Regulations
Modify Section 625, and add a new Note e.

621. Background and Purposes

This zone is intended to provide a suitable area for the establishment of business operations which require both internal and external use space and which are intended to primarily serve the needs of the general area. Special measures have been established to assure that traffic

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 17 OF 26

generation and circulation factors are adequately regulated to avoid significant intensification of existing problems or the creation of new ones. In addition, controls on the size and bulk of new structures have been established to assure that such new development is consistent with the prevailing character of this district and the surrounding residential areas.

Because of the unusually high number of basically small, legally non-conforming commercial sales and service businesses within the zone, special provisions are incorporated herein to enable the individual property owners to make further investments in their businesses with an assurance that current conditions may be continued. This zone may allow Assisted Living Facilities, Memory Care Facilities or a combination thereof via Special Permit if certain requirements and standards are met. Because of the unusual nature of these types of facilities and the need for economies of scale, extra height and bulk shall be permitted for these types of businesses subject to the requirement that sufficient open space be set aside for the use of the residents.

625. Area and Bulk Requirements

The following requirements shall be deemed to be the minimum and maximum requirements in every instance of their application. Dimensions are in feet unless otherwise indicated.

1. Minimum Lot Area	1/2 acre (21,780 sq.ft.)
2. Minimum Lot Width	80
3. Minimum Lot Frontage	80
4. Minimum Lot Depth	100
5. Minimum Front Yard	30 (See Note a)
6. Minimum Side Yard	15 (See Note b)
7. Minimum Rear Yard	25 (See Note c)
8. Maximum Height in Stories (See Note e)	2
9. Maximum Height in Feet (See Note e)	28
10. Maximum Building Coverage (See Note e)	Determined by FAR
11. Minimum Front Landscape Depth	30
12. Maximum Developed Site Area (See Note e)	70%
13. Minimum Setback from Any Residential or DOR Zone	25
14. Maximum Average Floor Area Ratios (See Note e)	0.40 of first 10,000 s.f. of lot area plus 0.20 of all lot area over 10,000 s.f.
15. Maximum Floor Area of all Dwelling Units (See Note e)	1,000 sq. ft. (See Note d.)

Notes:

- a. As stated above, except no parking shall be permitted in front of any building unless the setback from the street line is at least 75 feet. On streets of less than 50 feet width, the front yard setback shall be measured from the center line of the street and 25 feet shall

PLANNING & ZONING COMMISSION
 MINUTES
 PUBLIC HEARING / GENERAL MEETING
 MAY 10, 2016
 PAGE 18 OF 26

be added to the required front yard setback. See Subsection 372 for requirements where setback of existing buildings is greater or less than minimum requirement.

- b. As specified above, except that at least 25 feet shall be provided where the side yard furnishes vehicular access to the rear, and except that the Commission, in approving a site plan, may permit a building to abut a side line where it finds such creates a better plan.
- c. As specified above, except as follows:
 - (1) Where a rear yard abuts a Residential Zone, the rear yard requirement shall be at least equal to the rear yard requirement of the adjoining Residential Zone;
 - (2) Where the lot is a corner lot and its rear yard is not adjacent to land in any other zone, the rear yard requirement shall equal the side yard requirement.
- d. If more than 2 dwelling units, then at least 30 percent of the total number of units shall be limited to one bedroom. One additional off-street parking space per bedroom shall be required. The total number of dwelling units shall not exceed 6 dwelling units on any site.
- e. For additions to existing Assisted Living Facilities and/or Memory Care Facilities, the following provisions shall apply in lieu of their respective requirements in the above table in Section 625:

8. Maximum Height in Stories	3
9. Maximum Height in Feet	32
10. Maximum Building Coverage	35% of total lot area
12. Maximum Developed Site Area	70%
14. Maximum Average Floor Area Ratios	Not applicable
15. Maximum Floor Area for each private residential unit	800 square feet.

Due to the nature of the Assisted Living Facility and/or Memory Care Facility use, the Special Controls in Section 626a shall not apply.

627. Assisted Living Facility (ALF) and Memory Care Facility (MCF)

- a. An ALF, MCF or combination thereof shall include common rooms for use by the occupants such as living rooms, laundry, entertainment facilities, dining areas, beauty parlor, library, and kitchen facilities. An ALF, MCF or combination thereof shall also include administrative offices, service facilities, and areas for wellness, periodic medical examination, therapy, or similar uses.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 19 OF 26

- b. All Area and Bulk Requirements and Special Controls in Sections 625 and 626 shall control.
- c. The gross floor area of a private residential unit in an ALF, MCF or combination thereof shall be not less than 320 square feet.
- d. Each ALF, MCF or combination thereof shall be connected to public sanitary sewers and served by public water supply.
- e. At least 300 square feet of usable open space shall be provided for each private residential unit. The Planning and Zoning Commission may require that a conservation easement be conveyed for this required open space. Some or all of the open space may be located on the same lot but in an adjoining zone at the discretion of the Planning and Zoning Commission.
- f. To accommodate the parking needs of the residents, visitors, and staff providing services to the occupants, the following minimum off-street parking shall be provided: one space for each employee per maximum shift; plus 0.33 spaces for each ALF unit and 0.25 spaces for each MCF unit.
- g. Off-street parking design standards of Sections 226 and 900 shall be applicable.
- h. At least one off-street unloading facility shall be provided per Sections 909.1c and 909.2a-g.

At about 10:15 p.m., Chairman Cameron then read the following agenda item:

Flood Damage Prevention Application #351, Land Filling & Regrading Application #374, Blas Hernandez, 15 Waverly Road. Proposal to raze the existing residence and construct a replacement single-family residence and perform related site development activities within a regulated area. *PUBLIC HEARING CLOSED: 4/5/2016. DECISION DEADLINE: 6/9/2016.*

Commission members reviewed the draft resolution and made several comments and suggested changes that were incorporated. The following motion was made: that the Commission adopt the resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Sini. Mr. DiDonna seconded the motion for discussion purposes. All voted in favor of the motion except Mr. Olvany and Mrs. Cameron. The motion passed by a vote of 4-2. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
May 10, 2016**

Application Number: Flood Damage Prevention Application #351
Land Filling & Regrading Application #374

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 20 OF 26

Street Address: 15 Waverly Road
Assessor's Map #55 Lot #32-33

Name and Address of
Property Owner: Blas Hernandez
443 2nd Street #307
New York, NY

Name and Address of Applicant &
Applicant's Representative
As noted on Application: Robert A. Cardello
Robert A. Cardello Architects
97 Washington Street
South Norwalk, CT

Name and Address of Applicant &
Applicant's Representative:
At Public Hearing Wilder G. Gleason, Esq.
Gleason & Associates
455 Boston Post Road, Suite 201
Darien, CT 06820

Activity Being Applied For: Proposal to raze the existing residence and construct a replacement single-family residence and perform related site development activities within a regulated area.

Property Location: The subject property is located on the east side of Waverly Road approximately 450 feet south of its intersection with Shipway Road.

Zone: R-NBD

Date of Public Hearing: February 2, 2016 (no testimony taken) immediately continued to
February 23, 2016 and to March 22, 2016 and April 5, 2016
Deliberations Held: April 26, 2016

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

Publication of Hearing Notices
Dates: January 22 & 29, 2016 Newspaper: Darien News

Date of Action: May 10, 2016 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: Newspaper: Darien News
May 20, 2016

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

- the proposed use and activities must comply with all provisions of Sections 410, 820, 850, and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant's representative

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 21 OF 26

whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.

- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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

1. The proposal is to raze the existing residence and construct a replacement single-family residence and perform related site development activities within a regulated area. The entire 0.386 acre subject property is within the flood zone.
2. During the two month public hearing process, numerous revisions were made to the plans to address neighbor and Commission concerns. A February 18, 2016 letter, from the applicant's Attorney Wilder Gleason, notes that the February plans reduced the amount of fill by one foot (250 cubic yards). The amount of on-site detention structures was also increased and the yard drains relocated as part of the plan revisions.
3. The Commission hired professional engineer Joe Canas of Tighe and Bond to peer review the application relative to floodplain management and stormwater management. Mr. Canas submitted three review letters for the record—dated March 10, March 17, and March 21.

PROPOSED WORK WITHIN THE FLOOD ZONE

4. The entire subject property is entirely within the AE 14 flood zone, as is the existing residence. The existing residence, has a first floor elevation of 10.1, and was constructed prior to the establishment of flood regulations. It is below the calculated Base Flood Elevation (BFE) of 14 feet above NAVD 1988. The Flood Damage Prevention Regulations require that the lowest floor level (including basement) must be at least one foot higher than the BFE, thus the required floor elevation must be at least 15.0. The new proposed residence is proposed to have a first floor elevation of 15.0, and will meet the FEMA regulations. The garage is proposed for parking and storage only, and will be at elevation 11.0. While the Commission acknowledges that construction of new residences in a flood zone is not ideal, in this case, the proposed house is replacing an existing residence (which is non-conforming relative to the flood elevation and relative to Building Coverage) on a building lot, and the new residence and any associated HVAC units, mechanical equipment and generator(s), will comply with the flood regulations, which is an improvement over the existing situation.
5. The proposed activities, to be implemented with the conditions listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage. In accordance with the submitted engineering information, which was peer reviewed, the proposed activity will have no adverse impacts on flooding on adjacent properties.

PROPOSED FILLING AND REGRADING

6. Part of this proposal includes the request to fill and regrade. Plans were revised numerous times throughout January, February and March to address issues presented by Department staff, neighbors, and the Planning and Zoning Commission.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 22 OF 26

7. The plans last revised March 29, 2016 show the proposed driveway retaining wall pulled in from the north property line by two feet. The retaining wall will also have weep holes six feet on center. It also shows the proposed yard drains very close to the east and south property lines. The largest amount of fill proposed on site is an area of two feet maximum depth in any one spot. Filling has been pulled back from the east and south property lines, such that there is no more than three inches of fill within ten feet of those property lines. As noted previously, the amount of fill was reduced from the originally submitted application. The Commission acknowledges that the final plans will not result in a flat yard area.
8. While the Commission generally discourages fill in a flood zone, especially on such a small lot, in this specific case, the numerous modifications of the plans, combined with the thorough peer review Joe Canas provides the Commission with a comfort level that the engineering has been properly done, and that if properly implemented, the development will not impact adjacent properties.

STORMWATER MANAGEMENT

9. At the public hearings, Wayne D'Avanzo, Professional Engineer, reviewed the site plan and development aspects of the project. As shown on the submitted plans and as described at the public hearings, the applicant has included numerous Cultec units, coarse particle separators, curtain drains, and yards drains to address stormwater management.
10. As noted above, professional engineer Joe Canas peer reviewed the application. He issued March 10, 2016; March 17, 2016; and March 21, 2016 review letters. His final March 21 letter noted that his items of concern had been "satisfactorily addressed". In that final letter, he recommended two conditions of approval. First, that the retaining wall be placed two feet off of the property line, and second, that the grades on the architectural plans be consistent with the grades shown on the revised Drainage Plan.
11. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.

NOW THEREFORE BE IT RESOLVED that Flood Damage Prevention Application #351 and Land Filling & Regrading Application #374 are hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Work shall be in accordance with the plans submitted to and reviewed by the Commission entitled:
 - Drainage Plan Blas Hernandez 15 Waverly Road, by Fairfield County Engineering, LLC, dated 12-1-15 and last revised 3/29/16, Sheet 1 of 2.
 - Detail Sheet Blas Hernandez 15 Waverly Road, by Fairfield County Engineering, LLC, dated 12-1-15 and last revised 3/29/16, Sheet 2 of 2.
 - Sedimentation and Soil Erosion Control Plan Blas Hernandez 15 Waverly Road, by Fairfield County Engineering, LLC, dated 2-17-16, Sheet 1 of 1.
 - Hernandez Residence 15 Waverly Road by Robert A. Cardello Architecture +Design, dated 12.18.15, and last revised 3.29.16, Drawing #C-1.0, C-1.1, SP-1.0, A-1.0 through A-1.4 and A-2.0 through A-2.1.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 23 OF 26

- Map of Property owned by Blas Hernandez, 15 Waverly Road, by Land Surveying Services, LLC, last revised 03-30-16.

The proposed grades shall be removed from the Sediment and Soil Erosion Control Plan, since they do not reflect the final grades approved herein, and the location of the retaining wall.

The final grades to the north of the proposed driveway retaining wall shall be at or below that of the adjacent Benson property to the north.

- B. A letter dated January 29, 2016 was received from architect David LaPierre noting that in order to minimize the sound from the proposed elevated HVAC units which are to be to the east of the garage, they propose to "...install a staggered picket fence with acoustic blanket material attached to the interior of the fencing. In addition we are installing the AC condenser on vibration isolation blocks to limit low frequency vibration." That proposal is an integral part of this approval, and shall be shown on the applicable HVAC permit plans.
- C. Because of the nature of the site work involved in this project, the Commission hereby waives the requirement for a performance bond.
- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the Drainage Plan and Sediment and Erosion Control Plan and Detail Sheet in Condition A, above, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. On March 17, the applicant's engineer prepared a Stormwater Facilities Maintenance Plan for the on-site stormwater management system. Mr. Canas' March 17 letter on page 5 notes that the applicant provided the Maintenance Plan as requested. 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 and Building Permit for the proposed foundation for the new residence.

REQUIRED VERIFICATIONS, PERMITS, AND AS-BUILTS

- F. Accompanying the Zoning and Building Permit applications for the foundation, and prior to commencing construction, a certification shall be submitted from a licensed architect and/or engineer that verifies that the final design of the replacement house complies with the applicable flood damage prevention requirements. This will include specifying the brand and elevations of the flood vents and might also include the need for more flood vents for the main house and the garage. Once the foundation and house are completed, an as-built verification by the design professional is required.
- G. 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 Occupancy for the new residence, the applicant shall submit

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 24 OF 26

verification in writing and/or photographs from the professional designer of the drainage system that all aspects of the stormwater management and grading in the yard have been completed in compliance with the approved plans referred to in Condition A, above.

- H. Once the project is complete, and prior to May 10, 2017, the applicant shall submit a final “as built” map and/or other evidence that all work has been properly completed in accordance with the approved plans. This as-built survey shall reflect the location of air conditioning unit(s), generator and above ground propane tanks (if any), all of which shall comply with the required minimum flood elevations as part of this application. It shall also show topography, with spot elevations and one foot elevation contour lines, which must match, or be lower than the approved plan. No additional filling or regrading or raising of the ground level is allowed.
- I. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. A Demolition Permit from the Building Department and a Sewer Disconnect Permit from the Public Works Department will be required. Separate Zoning and Building Permits will be required for this project: one for the new foundation of the proposed residence, and one for the remainder of the proposed residence. A Sewer Connection Permit will be required for the new residence.
- J. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke this permit as it deems appropriate.
- K. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (May 10, 2017). This may be extended as per Sections 815 and 829f.

A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within the next sixty days AND prior to the issuance of the Zoning and Building Permit for the foundation permit for the new replacement residence in order to finalize this approval.

At about 10:25 p.m., Chairman Cameron then read the following agenda item:

Discussion and deliberations ONLY regarding the following:

Proposed Amendment to the Darien Zoning Map (COZM #2-2016), Proposed Amendments to the Darien Zoning Regulations (COZR #3-2016), put forth by the Darien Housing Authority, 719 Boston Post Road. Proposal to: 1) modify the Darien Zoning Map by applying the Municipal Use Zone to the subject property as an overlay zone; and 2) modify section 420 *et. seq.* of the Darien Zoning Regulations to modify the MU Zone to allow a maximum building coverage of 25 percent, and to permit more than one principal use on a parcel. *PUBLIC HEARING CLOSED ON 3/29/2016. DECISION DEADLINE: 6/2/2016.*

AND

Site Plan Application #291/Special Permit, Land Filling & Regrading Application #378, Darien Housing Authority, 719 Boston Post Road. Proposal to raze the residential structures on the

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 25 OF 26

property and construct 55 units of multi-family housing with associated parking and stormwater management and perform related site development activities. *PUBLIC HEARING CLOSED ON 4/26/2016. DECISION DEADLINE: 6/30/2016.*

Mr. Voigt departed the meeting and did not participate in the discussion in order to avoid any perception of conflict of interest.

Mr. Ginsberg explained that this is a change of the zoning map to create the municipal use (MU) overlay zone to cover the property that is currently used by the Darien Housing Authority for elderly housing at the corner of Boston Post Road and Academy Street. All the members agreed that the change of the Zoning Regulations makes sense. Mr. Olvany and Mr. Sini noted that part of the third floor at the rear of the building had been removed, but it took a long time for the Housing Authority to address the concerns with the neighbors. There is still some concern about things that are in the buffer area adjacent to the residential neighbors and about the pitch of the roof. No motion was made and no actions were taken regarding the application to change the Zoning Regulations and the application for Special Permit.

Chairman Cameron then read the next agenda item, and Mr. Voigt returned to the meeting:

Amendment to the Darien Zoning Regulations put forth by Darien ALF Property, LLC/Maplewood Darien, 599 Boston Post Road (COZR #9-2016). Proposal to amend Section 907 of the Zoning Regulations regarding the setback and location requirements for subsurface parking structures. The amendment proposes that subsurface parking levels shall not constitute stories for purposes of calculating building height. *PUBLIC HEARING CLOSED ON 5/5/2016.*

Commission members felt that there was no problem with the proposed expansion of the subsurface parking area and to amend the Regulations to allow for the proposed expansion would be appropriate. They asked the staff to draft a resolution for consideration at a future meeting.

At about 10:40 p.m., Chairman Cameron read the following agenda item:

Business Site Plan #146-D/Special Permit, Lithos, 319 Boston Post Road. Proposal to establish outdoor dining in front of the restaurant. *PUBLIC HEARING CLOSED ON 5/5/2016.*

Mr. Sini reminded the Commission that he has recused himself on this matter. Commission members felt that the exterior patio would be acceptable for this type of restaurant in this particular location provided there is no music or noise generated from the outside dining facility. They asked the staff to draft a resolution, but noted that the approval should only be temporary so that it would not become a permanent fixture of the restaurant. This would address potential concerns on the neighborhood in case the type of restaurant changes. They also noted that there might be an awning to cover some or all of the patio, but no side walls or enclosure is permitted because it would constitute creation of indoor seating. Mr. Cunningham said that he had not yet watched the DVD.

Chairman Cameron read the following agenda item:

Business Site Plan #33-F & #33-G/Special Permit, Brian McKay, 537-567 Boston Post Road. Proposal to establish a personal service tenant in the former Kempo Karate space behind Compleat

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
MAY 10, 2016
PAGE 26 OF 26

Angler at 537 Boston Post Road; and to establish a personal service tenant at 555 Boston Post Road in the first floor space formerly occupied by Core Health. *HEARING CLOSED ON 5/5/2016.*

Commission members felt that the proposed use and activities would be acceptable and asked the staff to draft a resolution for consideration at a future meeting.

There was no other business. Mr. Ginsberg noted that the meeting on May 17th would be conducted in the Auditorium and a substantial portion of the evening would be to discuss the redevelopment of the Corbin Drive and Boston Post Road portion of the downtown area. The rest of the meeting would be discussion and simple decisions regarding pending matters. The meeting of May 24th will also be in the Auditorium and it will concern the Noroton Heights redevelopment proposals and also the possible adoption of the Town Plan of Conservation and Development. There will also be a meeting on May 31st to help catch up on pending matters.

There being no further business, the motion was made to adjourn the meeting. The motion was made by Mr. Sini, seconded by Mr. Voigt and unanimously approved. The meeting was adjourned at 10:55 P.M.

Respectfully submitted,

David J. Keating
Planning & Zoning Assistant Director

05.10.2016min