

ENVIRONMENTAL PROTECTION COMMISSION
REGULAR MEETING/PUBLIC HEARING
MINUTES
November 6, 2013
7:30 P.M.
Room 206, Town Hall

Chairman Riccardo called the meeting to order at 7:30 P.M

Commission Members Present: Vickie Riccardo, Wynne Shapiro, Alan Armstrong, Rick Rohr, Ed Sweeney, Eric Joosten, and Keith Kearney.

Staff: Jacobson

Court Reporter: Syat

Channel 79 recorded

Ms. Riccardo called the following agenda item:

EPC-29-2013, Town of Darien, Department of Public Works, 95 Rose Lane, proposing to replace a storm drain with a box culvert as part of replacement of upstream drainage system. The site is shown on Assessor's Map #25 as Lot #12. (Hearing closed October 16)

Mrs. Riccardo expressed her appreciation for the alternative analysis provided by Tighe & Bond, which was a significant benefit to the Commission. She said not every neighborhood has the resources to hire their own experts to review applications on their behalf. She said the Commission needs to discuss the application first as a Wetland Agency.

Ms. Shapiro said she does not see the work in the wetland as being significantly detrimental.

Mr. Armstrong said the work would improve the channel by reducing scouring. He said the disturbance will be temporary and the applicant has agreed to replace trees as needed. He said there will be no downstream disturbance.

Mr. Joosten said he was impressed by the commitment of the neighbors but the area is an historical floodplain. He said the Milone & MacBroom study shows that, even if all of the bridges were eliminated, the area would still flood.

Mr. Rohr said he did not disagree with the previous statements.

Mr. Kearney also said he did not disagree with the other members.

Ms. Riccardo said that there are no reasons to deny a permit in the Commission's role as the Inland Wetland Agency.

Mr. Armstrong made a motion to approve the application with a minimum of 1:1 tree replacement, extending the rip-rap channel, and a planting plan approved by staff. Mr. Joosten seconded the application and it passed 6-0. Mr. Sweeney abstained.

The Commission proceeded to discuss the Intervale/Rose Lane drainage project acting as the Flood & Erosion Control Board.

Mr. Riccardo said she believes Alternative #3, Holmes Avenue, is a better alternative. She said that alternative would tie into an as yet unfunded drainage system in West Avenue.

Mr. Joosten said the Noroton River watershed extends into two towns and another city. He said the flooding solutions may include detention upstream or other measures. The Holmes Avenue alternative is more expensive and it does not solve the flooding. He said alternative #3 will require a deep trench and more traffic issues and the Rose Lane Properties could still flood.

Mr. Armstrong said all of the alternatives will cause significant delays. He said there is undisputed testimony by the engineers that there will not be any significant impacts from the project as proposed. He said the project as proposed will solve the Intervale Road neighborhood's problem.

Mr. Rohr said he believes the project will have a detrimental effect by increasing peak flow by 15% and increase the water level four inches.

Ms. Shapiro said she is also drawn to the alternative #3, Holmes Avenue, because the discharge will be to the other side of the bridge and there will be no wetland impact.

Mr. Kearney said he does not think alternative #3 is clearly superior and he does not think the 18' trench and increased disruption would be better.

Mr. Sweeney said he would also prefer to move ahead with the project as proposed and look for future plans to improve the flooding situation in the watershed.

Mr. Joosten said the more effective approach would be to push for widening the West Avenue Bridge.

Ms. Riccardo said the Commission has had a fruitful discussion. The Commission members all agreed that a recommendation from the discussion should be made to the Town officials. Mr. Jacobson will draft a memo to the Board of Selectmen for discussion at the December 6 meeting.

Ms. Riccardo called the following agenda item:

P&Z referral: Estate of Beatrice Richards, 123 Five Mile River Road, Coastal Site Plan Review and Land Filling and Re-grading Application.

To help the Commission's consideration of this P&Z referral, Ms. Riccardo said the Commission's sub-committee members (herself, Mr. Armstrong, and Mr. Joosten) reviewed the P&Z application materials, including reports from environmental experts, Mr. Aurelia, on behalf of the Town and Mr. Danzer, on behalf of the neighbors. She said they also visited the site. She

said their review resulted in a memo that was provided to the Commission for discussion (copy attached).

The Commission discussed whether the site contains a bluff or escarpment and determined that it does not. Mr. Armstrong said one area of the site meets the definition of a rocky shorefront which then requires review of the project's potential impact to such shorefront.

The Commission agreed with the experts that the site contains a rocky shorefront, and the impacts on that resource need to be better addressed in the application under consideration by the Planning & Zoning Commission.

The Commission found that there are tidal wetlands present adjacent to the property. The applicant's expert stated that would be no impact to those wetlands. Mr. Aurelia and Mr. Danzer raised concerns that there may be impacts that need to be addressed.

The Commission discussed the potential for additional impacts to tidal wetlands if new docks are constructed. The Commission noted that dock construction is not part of the current application. However, they found that it is reasonable to assume that the dock on Lot #1 will need to be removed as part of the project. The Commission also agreed with Mr. Aurelia that the weakness in the existing seawall on Lot #2 should be addressed before house construction takes place.

The Commission discussed whether the project will impact a vista or viewpoint. Mr. Danzer and Town Historian, Marion Castell, have stated that a significant vista will be destroyed. Mr. Armstrong questioned whether there is a definition of vista, or any legal precedent for protecting vistas. Ms. Shapiro said she agrees with the Town Historian that the property is an historic vista that should be protected.

The Commission discussed the removal of a significant amount of rock as it relates to Section 1025 of Darien's Zoning Regulations. The Town's regulation that requires preservation of natural terrain and features, including rock outcrops. Mr. Rohr said the extensive rock removal proposed for the project is not consistent with preserving the natural terrain or features. All of the members agreed that the development does not appear consistent with preservation of the property features.

The Commission agreed with Mr. Aurelia that potential impacts on the shellfish beds were not addressed by the applicant and need to be further addressed.

The Commission discussed the need for a better plan for tree removal and re-planting of the property.

The Commission agreed with all of the experts that an archeological assessment should be done before removing the house and that every attempt should be made to preserve beams from the house.

Staff will draft a memo to P&Z with the Commission's recommendations as a Conservation Commission.

Ms. Riccardo left the meeting at 8:50 p.m.

Mr. Rohr called the next agenda item.

EPC-41-2013, Todd & Katherine Boehly, 212 Talmadge Hill Road, proposing a drainage system, and site work related to the construction of a field house, within an upland review area. The site is shown on Assessor's Map #3 as Lots #81-2.

Todd Ritchie, P.E. represented the applicant. He introduced Howard Kelly, Architect and Bob Calvey, Contractor.

Mr. Rohr said he agreed with staff's recommendation to schedule a public hearing. He asked if there is test pit in the area of the added rain garden. Mr. Ritchie said they will provide test hole data for the rain garden. Mr. Rohr also requested the elevations of the cul-tecs.

The Commission requested the surveyor stake out the limit of the silt fence, building corners and the corner of the proposed parking area.

Ms. Shapiro requested a cross section of the pool area.

The Commission requested a tree removal plan and a planting plan.

Mr. Joosten made a motion to schedule a public hearing for December 4. Mr. Kearney seconded the motion and it passed 6-0.

Mr. Rohr called the next agenda item.

EPC-42-2013, Mary Ferrara, 6 Stony Brook Road, proposing a house addition within an upland review area. The site is shown on Assessor's Map #18 as Lot #87.

Mary Ferrara represented herself. She introduced her husband John Masamotti. They said they were proposing to an addition to the garage to accommodate a laundry room. No basement is proposed.

Mr. Armstrong made a motion to approve the application. Ms. Shapiro seconded the application and it passed 6-0.

Mr. Rohr called the next agenda item.

EPC-43-2013, Anthony Maniscalco, 53 Stephen Mather Road, proposing pool and terrace construction within an upland review area. The site is shown on Assessor's Map #1 as Lot #57.

Mike Wallach, pool contractor, represented the applicant. He said the proposed pool will encroach a few feet into the upland review area. He said they are adding to the drainage system to accommodate the pool.

Mr. Rohr asked if the walkway will be pervious or impervious. Mr. Wallach said it will be set in stone dust. Mr. Rohr asked about the large Holly adjacent to the wall. Mr. Wallach said they will transplant it elsewhere in the upland review area.

Mr. Joosten made a motion to approve the application. Mr. Armstrong seconded the motion and it passed 6-0.

Mr. Armstrong made a motion to add the following application to the agenda: EPC-44-2013, 88 Delafield Island Road, Terry Laughlen and Leslie van de Velde, generator installation. Mr. Kearney seconded the motion and it passed 5-0. Mr. Rohr abstained.

Mr. Armstrong made a motion to approve the application. Mr. Kearney seconded the motion and it passed 5-0. Mr. Rohr abstained.

Mr. Joosten made a motion to approve the minutes of October 16. Mr. Armstrong seconded the motion and it passed 5-0. Mr. Sweeney abstained.

Mr. Sweeney made a motion to adjourn. Mr. Rohr seconded the motion, and it passed 6-0. The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Richard Jacobson
Environmental Protection Officer

To: Planning & Zoning Commission

From: The Environmental Protection Commission acting as the Conservation Commission

Date: November 14, 2013

Re: Coastal Site Plan Review #273A, Land Filling & Regrading Application #273-A
Eric Richards/Estate of Beatrice Richards, 121-123 Five Mile River Road

The Environmental Protection Commission, in their role as the Conservation Commission, discussed this referral at their November 6, 2013 meeting. A sub-committee of three members of the Commission took the following actions to familiarize themselves with the project:

- Watched those portions of the DVDs that recorded the P&Z Commission's Public hearing sessions for the 123 FMR application on 10/1/13, 10/8/13, and 10/29/13.
- Visited the site on 10/20/2013 and 10/27/2013. During the 10/20/2013 visit, Mr. Armstrong and Chairman Riccardo. also viewed the site from Rowayton, CT.
- Spoke to Town Historian Marian Castell on 10/24/13 (Chairman Riccardo).
- Reviewed the following drawings and documents that are part of the P&Z Commission's file for the 123 FMR applications:
 - Coastal Site Plan Review – Preliminary Planting Plan, prepared by William Kenny Associates LLC, dated 9/30/2013.
 - Existing Lawn Area -- Prepared by William Kenny Associates LLC, dated 10/22/2013.
 - Coastal Resource Map showing free cut boundary -- Prepared by William Kenny Associates LLC, dated 10/16/2013.
 - Proposed and Existing Lawn Areas -- Prepared by William Kenny Associates LLC, dated 10/22/2013.
 - 123 Five Mile River Road Project #3 – Showing FEMA Zones, Proposed Watercourse Buffer Planting, and Proposed Rain Garden Planting, Prepared by William Kenny Associates LLC, Undated.
 - Proposed Site Plan Sheet C1, with color added to show building setback lines, 100' CAM line, VE Zone Boundary and AE/X Zone Boundary. Prepared by Frangione Engineering, dated 10/8/2013.
 - Waterside Elevation Rendering for Lots 1 and 2, Sheet A-1. Prepared by Kaali-Nagy Architect, LLC, dated 4/13/12.

- Review of CAM Policies and Goals – Proposed Lot Split and Two Single-family Residences 123 Five Mile River Road, Darien, CT, Prepared by Megan B. Raymond of William Kenny Associates LLC, dated 10/8/2013.
- Initial Comments and Concerns of Michael A. Aurelia (Professional Wetland Scientist retained on behalf of the Darien P&Z Commission), dated 10/29/13.
- Review and Comments: 123 Five Mile River Road from Steven Danzer, PhD (Environmental Consultant retained by neighbors), dated 10/29/13.

The sub-committee reported to the Commission as a whole and presented questions and open issues for discussion. This memo summarizes the finding of the EPC on this application.

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1. The EPC agrees with the findings of Mr. Aurelia and Mr. Danzer that the property includes a rocky shorefront, in contrast with Ms. Raymond’s conclusion that the property does not contain this resource. The EPC agrees with Mr. Danzer that alternative plans should be provided which are more in keeping with the intent of CT General Statutes Sec. 22a-92(b)(2)(B) which includes the provision that it is State policy to “manage rocky shorefronts so as to insure that development ... does not irreparably reduce the capability of the system to support a healthy intertidal biological community; to provide feeding grounds and refuge for shorebirds and finfish, and to dissipate and absorb storm and wave energies.”
 2. All three experts commenting agree that the property includes tidal wetlands. Mr. Aurelia also documented the shellfish concentrations area and intertidal flats adjacent to the project area, and recommended identifying the marine invertebrates that are using the intertidal area around the site. The EPC agrees with Mr. Aurelia that some activity related to removing the existing dock is more likely than not, and that any potential impacts need to be addressed with this application. Mr. Aurelia also expressed his opinion that unless weaknesses in the existing stone seawall are remedied before construction is completed (particularly on Lot 2), access for later repair activities will be by barge, potentially presenting “significant risks to the coastal resources in the intertidal zone.” The Commission recommends this issue be addressed prior to any approval of development on the property.
 3. Mr. Aurelia has additional concerns for the construction phasing and the adequacy of sediment and erosion controls, and general notes, to protect the tidal wetlands. Since Mr. Aurelia is reviewing the application on behalf of the Town, the EPC considers this opinion as an impartial comment, and recommends this issue be further addressed by the applicant.
 4. The EPC reached a majority consensus that the property contains an historic feature in the Town and that development will impact a scenic vista and viewpoint if the current plan is implemented. There was unanimous agreement that this issue should be explored further by the Planning & Zoning Commission in the context of the CAM review and existing

legal precedents.

5. The Commission was unanimous in their opinion that the proposed development and extensive rock removal is not consistent with Section 1025.9 of the Planning & Zoning Regulations, in that there has been no attempt to preserve the sensitive land features and natural terrain of the property.
6. The Commission agrees with the Town Historian, and both Mr. Danzer and Mr. Aurelia, that the site merits an archeological assessment prior to construction, and preservation of portions of the structure. The Commission recommends that any approval contain a condition of approval to that effect.
7. The Commission recommends that the extent of trees to be removed be made clearer on the proposed development plans. Mr. Danzer noted 27 of 31 specimen trees to be removed and expressed his opinion that others will be impacted by construction. The Commission also notes that Mr. Danzer is critical of the planting plan and recommends P&Z consider this plan, and possible deficiencies, in more detail.