



Norwalk Zoning Commission
(email)
c/o Bryan Baker
125 East Ave.
Norwalk CT 06856

September 20, 2022

Subject: CT DEEP LWRD Comments on Coastal Site Plan Review for 77 residential units on at 1 Cemetery Street, Norwalk CT

Dear Commission Members:

Thank you for referring the above noted coastal site plan review (CSPR) for our review and comment which we received on June 23, 2022, with subsequent revisions and submittals including an Engineering Report dated July 27, 2022. The proposal is to construct 77-unit mixed use development, 99 parking spaces and associated improvements on 1.66-acre lot at a coastal waterfront site within a Coastal Flood Hazard Area. LWRD's primary concerns include the intensification of residences within a flood hazard zone and the lack of a clear public access plan to adequately meet the Water-dependent Use standards of the CCMA. We are pleased with the thorough Engineering Report, with reduced impervious coverage, increased stormwater infiltration and pretreatment proposed. Land and Water Resources Division (LWRD) has reviewed the project for consistency with the goals and policies of the Connecticut Coastal Management Act (CCMA) and offers the following comments.

Water-dependent Use

One primary coastal management concern for this proposal is the need to adequately satisfy the water-dependent use policies of the CCMA. The site is located on Mill Pond, a coastal water body and therefore subject to the water-dependent use (WDU) criteria. The relevant CCMA policy is:

to manage existing uses in the coastal boundary through existing municipal planning, zoning, and other local regulatory authorities... *giving highest priority and preference to water-dependent uses and facilities in shorefront areas* (CGS Sec. 22a-92(b)(1)(A), emphasis added). Public access is included in the definition of water-dependent use per CCMA.

Norwalk has always been a state-wide leader in securing meaningful deed-restricted public access, and the applicant must demonstrate, and the Commission must evaluate whether the site is suited for a WDU for which there is a reasonable demand. The Commission must also determine the acceptability of any potential adverse impacts to future water-dependent development activities associated with the proposed development. Specifically, the CCMA notes:

Municipal boards and commissions reviewing coastal site plans shall determine if the *potential adverse impacts to future water-dependent development activities* are acceptable and that such impacts have been mitigated using all reasonable mitigation methods [CGS sections 22a-106(a) and (e)].

This policy speaks to the fact that once a project is approved and developed without a suitable WDU component there is no longer an opportunity to secure public access project in the future, and therefore any future impacts must be analyzed, determined, and mitigated by securing a reasonable option during the CSPR process (not at a future point in time).

Providing a meaningful deed-restricted, detailed public access plan at the site, would be a satisfactory way to meet the CCMA WDU standards by giving priority preference to such a use. Unfortunately, the current site plan notes only public access improvements on the City's adjacent public property, as "conceptual improvements." This does not in any way satisfy the CCMA's WDU standards, as it is not on the subject parcel, and therefore not legally connected to the subject proposal to satisfy such criteria.

Developing the City-owned property adjacent to the subject site is also very problematic on its own, as at least half of the entire adjacent site lies below the Coastal Jurisdiction Line of 5.4 NAVD88 and is thus subject to CT DEEP

LWRD permitting jurisdiction. It's important to note that it is extremely unlikely LWRD would authorize fill or development in areas of our jurisdiction waterward of CJL, even for (otherwise normally, priority) public access. This issue is compounded by the fact that a Tidal Wetland Structures and Dredging restoration permit was issued by this office in 1995 (TWSD KH 95-072) which includes 5 wetland created peninsulas, and the city owned "conceptual" area on the City -owned site. Our office also provided significant public funds as part of the former Coves and Embayment Grant program to the City for the restoration work, from 1991 thru 1998 with conditions and monitoring requirements.

In order to satisfy the CCMA WDU criteria, the proposal, *on the subject site itself*, should be modified and/or conditioned to mitigate the adverse impacts to future water-dependent uses consistent with applicable goals and policies of the CCMA. Publicly available elements, by example, the "courtyard" and "pollinator garden" areas on the subject site could be revised and clearly labeled as public access, with suitable amenities at a scale commensurate with the significant amount of development at a small site. All publicly available areas must be deed restricted for public use, in perpetuity, with a public easement walkway access from Cemetery Street. Also, we recommend two public parking spaces, and public access signage displayed along Cemetery Street.

Coastal Flood Hazard Area

The applicant seeks a Special Permit in the East Village T. Zone (EVTZ), and if granted, this Special Permit would allow for increase in allowable density beyond the as of right use, from 1 unit/1650sf to 1 unit/825sf of lot area. In addition, an increase in the number of stories from 2.5 to 3.5 would be allowed with the Special Permit.

The site contains a significant portion of AE14 Coastal Flood Hazard Area within the 100-year flood zone per FEMA NFIP with many of the proposed residential units proposed within areas subject to flooding. In an age of climate change uncertainty, future projections for sea level rise, with clear warnings of increased anticipated severe flooding, storm, wind, and precipitation events, exacerbating the problem.

The CCMA's Coastal Flood Hazard policy requires that threats to *life and property* be minimized, which goes well beyond meeting NFIP FEMA construction practices, as apparently proposed. We recommend that any increase in allowable density (1 unit/825sf) in the AE 14 Fema zone occur only in areas outside this zone, in keeping with the CCMA policy. Allowing increased density within a flood zone is a risk in the face of increased climate change uncertainty and inundation predictions. (See fact sheet for more information attached).

However, if the ground elevation is at 14 feet, or more, the applicant may be able to apply for a FEMA map amendment to modify the AE14 flood zone line. If granted by FEMA, doing so may remove the FEMA NFIP regulatory requirements, and minimize the CCMA flood hazard threats. This approach sometimes works at sites where the flood zone is fairly isolated relative to nearby areas, such as this, and may be worth pursuing to minimize concerns.

We hope these comments prove useful to the Commission. Comments are offered in accordance with the CGS Section 22a-104 thru 109 of the CCMA and do not necessarily reflect other planning and zoning considerations which may apply. Please feel free to contact me if you have any questions on this or any coastal management matter.

Sincerely,

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