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**CITY OF STAMFORD  
PLANNING BOARD  
LAND USE BUREAU**  
888 WASHINGTON BOULEVARD  
STAMFORD, CT 06904 -2152

**RECEIVED**

**JUN 20 2022**

**ZONING BOARD**

June 16, 2022

Mr. David Stein, Chair  
City of Stamford  
Zoning Board  
888 Washington Boulevard  
Stamford, CT 06902

**RE: ZB APPLICATION #222-17 - SOUND BEACH LANDING, LLC -  
40 SIGNAL ROAD & 0 THREAD NEEDLE LANE - Map Change**

Dear Mr. Stein & Members of the Zoning Board:

During its regularly scheduled meeting held on Tuesday, June 14, 2022, the Planning Board reviewed the above captioned application referred in accordance with the requirements of the Stamford Charter.

Applicant is proposing to rezone 40 Signal Road & 0 Thread Needle Lane from the present RA-1 Zoning District to proposed R-20 Zoning District.

After a brief discussion, the Planning Board unanimously voted to recommended *approval* of **ZB Application #222-17** and this request is compatible with the neighborhood and consistent with Master Plan Category #2 (Residential - Low Density Single Family).

Sincerely,

**STAMFORD PLANNING BOARD**

Theresa Dell, Chair

TD/lac

MAYOR  
CAROLINE SIMMONS



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**CITY OF STAMFORD, CONNECTICUT  
HARBOR MANAGEMENT  
COMMISSION**

90 Magee Avenue  
Stamford, Connecticut 06902

May 23, 2022

Ms. Vineeta Mathur  
Associate Planner  
Land-Use Bureau  
Stamford Government Center  
888 Washington Boulevard, 7th Floor  
Stamford, CT 06901

**Subject:      Application 222-16 (Revised): Sound Beach Landing, LLC, Zoning Text  
Change**

**Application 222-17 (Revised): Sound Beach Landing, LLC, Zoning Map  
Change**

Dear Ms. Mathur:

The Stamford Harbor Management Commission (SHMC) has reviewed the above-referenced applications submitted to the Zoning Board by Sound Beach Landing, LLC (the Applicant), c/o Joseph Capalbo, 1100 Summer Street, Stamford, Connecticut. The Applicant is proposing: 1) an amendment to Section 10 of the Zoning Regulations to establish standards for converting non-conforming commercial properties to residential use in the R-20 Zone; and 2) an amendment to the Zoning Map to rezone 40 Signal Road and 0 Thread Needle Lane from the present RA-1 Zoning District to the R-20 Zoning District. The Applicant's affected properties adjoin Stamford Harbor and the tidal waterbody known as the Dolphin Cove Lagoon.

Described by the Applicant, the proposed amendments to the Zoning Text and Map, along with the associated application to the Planning Board to amend the Master Plan Map, is necessary to enable the Applicant to pursue plans to develop five single family dwellings on the affected properties.

As the Applicant's zoning proposals affect property on, in, or contiguous to the Stamford Harbor Management Area, they are subject to review by the SHMC to determine their consistency with the Stamford Harbor Management Plan (Harbor Management Plan). The requirements of this review are specified in Sec. 22a-113p of the Connecticut General Statutes, Sec. 6-62 of the

Stamford Code of Ordinances, and the Plan. Pursuant to the General Statutes, City Code, and Harbor Management Plan, a 2/3 vote of all members of the Zoning Board is needed to approve a proposal that has not received a favorable recommendation from the SHMC.

The SHMC recognizes that the Applicant's current zoning applications have evolved from initial applications, reviewed by the SHMC in 2021 and subsequently withdrawn by the Applicant, that proposed rezoning of the subject properties to the RM-1 Zoning District (Multiple Family Low Density Design District). The Applicant's initial zoning applications, along with the associated initial application to amend the Master Plan Map, were for the purpose of enabling multi-family residential development on the same properties.

The SHMC reviewed the Applicant's current zoning applications during the SHMC's meeting on May 17, 2022. Included was significant discussion with the Applicant's representatives and comments heard from members of the public speaking in favor of and against the proposals. Among other things, the SHMC considered the May 6, 2022 letter to the Planning Board from Brian Thompson representing the Connecticut Department of Energy and Environmental Protection (DEEP) and transmitting DEEP's comments on the Applicant's current zoning and Master Plan proposals. (A copy of that letter is attached for your convenience.) To summarize, DEEP finds the proposals, insofar as they are understood by DEEP to increase residential density in the coastal floodplain, to be inconsistent with certain goals and policies of the Connecticut Coastal Management Act (CCMA). In response to DEEP's letter, the Applicant's representatives presented additional information to the SHMC, including a detailed analysis of the potential effect of the proposed zoning changes on currently allowable residential density in Stamford's coastal floodplain and a conclusion that the proposals should not be expected to result in a significant increase in that density, either on-site or elsewhere in the floodplain.

Following discussion, the SHMC approved a motion to express no objection to the Applicant's two zoning applications provided the Zoning Board confirms the statements by the Applicant that the proposals will not result in a marked increase in residential density in Stamford's coastal floodplain. In addition, the SHMC agreed to provide to the Zoning Board, Planning Board, and Applicant additional comments relevant to review of the Applicant's proposal and discussed during the SHMC's meeting.

Additional Comments:

1. The Harbor Management Plan recognizes the potential adverse impacts to life and property that may be associated with increased development in the coastal floodplain and includes a number of provisions to mitigate coastal flood and erosion hazards and impacts. The Plan encourages and supports application of effective and appropriate measures to reduce the risks to life and property associated with coastal flooding and calls for long-range planning for waterfront and coastal area land-use to recognize and address the potential flood and erosion impacts caused by rise in sea level.
2. The Harbor Management Plan supports the goals and policies of the CCMA and their implementation through Stamford's Municipal Coastal Program consisting of the provisions of the Master Plan and Zoning Regulations as that plan and those regulations affect the coastal area. The Harbor Management Plan calls for the authority and policies

of the CCMA, Harbor Management Plan, Master Plan, and Zoning Regulations to be applied in the most effective manner to achieve a number of harbor and coastal management objectives, including, but not limited to, continued operation of water-dependent uses, beneficial public access to the Harbor Management Area, and protection of public health, safety, and welfare.

3. During the course of the SHMC's review of the Applicant's initial and current proposal, some interesting assertions and questions were raised concerning the Public Trust Doctrine (the body of law pertaining to waters subject to the ebb and flood of the tide) and public navigation rights in Dolphin Cove Lagoon and the lagoon's entrance channel. In response, the SHMC sought confirmation from DEEP, responsible for administration of the CCMA and Public Trust Doctrine, that, as described in the Harbor Management Plan, all tidal waters are held in trust by the State of Connecticut for the benefit of the public. In the attached letter of April 16, 2021, DEEP concurs with the SHMC's understanding that all tidal waters are Public Trust waters and therefore cannot be privately owned, even where the underlying submerged lands are privately owned as is the case in the Dolphin Cove Lagoon, an excavated tidal basin created in the 1970s.
4. The Applicant's proposed project, if approved, will not cause any restrictions to or otherwise adversely impact public navigation to and from the Dolphin Cove Lagoon.
5. The Applicant has informed the SHMC that the existing dock serving the Applicant's properties will not be expanded; is to be maintained for the exclusive shared use of the residents of the anticipated new residential development; and that no other docks will be constructed on these properties. The Applicant is aware of no littoral rights conflicts involving the location and use of this existing dock and the existing dock serving the property immediately to the west of the Applicant's properties. The SHMC requests further examination of these two water-access structures to ensure that there are no littoral rights conflicts, either now or in the future.

Please be advised that the SHMC reserves its right to continue to review the Applicant's zoning proposals and provide additional comments at such time as they may be modified or be the subject of another application or applications, additional information is provided, or the proposals are the subject of a public hearing.

If you have any questions or require any additional information, please contact me at (315) 651-0070 or [dortelli@stamfordct.gov](mailto:dortelli@stamfordct.gov).

Sincerely,

*Dr. Damian Ortelli*

Dr. Damian Ortelli  
Chairman, Stamford Harbor Management Commission

Attachments

cc:

Joseph Capalbo, Attorney for Applicant

Theresa Dell, Chair, Stamford Planning Board  
Frank Fedeli, Stamford Office of Operations  
Robert Karp, Chairman, SHMC Application Review Committee  
Vineeta Mathur, Stamford Land-Use Bureau  
Karen Michaels, CT DEEP Land and Water Resources Division



April 16, 2021

Dr. Damian Ortelli, Chairman  
Harbor Management Commission  
City of Stamford  
888 Washington Blvd  
Stamford, Connecticut 06904-2152

**Re: Public Trust and Navigation Rights in Stamford Harbor Area**

Dear Dr. Ortelli:

Thank you for your letter dated April 7, 2021 regarding public trust and navigation issues in Dolphin Cove lagoon in Stamford. After reviewing the letter and attached materials, we concur with the Commission's understanding that tidal waters are subject to the public trust, even where the underlying submerged lands are privately owned.

First, it is well established in statute and caselaw that the state of Connecticut holds the submerged lands and waters waterward of the mean high water line in tidal coastal, or navigable waters in trust for the public, which may freely use these lands and waters for traditional public trust uses such as fishing, shellfishing, boating, sunbathing, or simply walking along the beach.<sup>1</sup> The landward boundary of the public trust, the mean high water line (often referred to as "high water mark" in court decisions),<sup>i</sup> is also the waterward boundary of private title. There can be an exception to this rule, however, where former upland areas have been excavated or otherwise opened to the flow of tidal or navigable waters. In such cases, the upland owner continues to own the now-

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<sup>1</sup> "Public rights include fishing, boating, hunting, bathing, taking shellfish, gathering seaweed, cutting sedge, and of passing and repassing. . ." *Orange v. Resnick*, 94 Conn. 573 (1920). "It is settled in Connecticut that the public has the right to boat, hunt, and fish on the navigable waters of the state." *State v. Brennan*, 3 Conn. Cir. 413 (1965). The public has the right to fish and shellfish over submerged private lands, *Peck v. Lockwood*, 5 Day 22 (1811). The public has the right to pass and repass in navigable rivers, *Adams v. Pease* 2 Conn. 481 (1818). The public may gather seaweed between ordinary high water and low water, *Chapman v. Kimball* 9 Day 38 (1831).

submerged substrate, but does not own or control the waters flowing above. Under the public trust doctrine, vessels may freely navigate the tidal waters above the bottomlands, so long as they do not physically affect or infringe on the bottom itself.

Whether the vessels in question are engaged in recreational, commercial or other types of travel is irrelevant. It is possible to find dicta in old cases that discuss the concept of “navigability” in terms of waterborne commerce, but this is not the prevailing law in Connecticut, if anywhere. C.G.S. §15-15-3a defines “navigable waters” as “waters which are subject to the ebb and flow of the tide shoreward to their mean high-water mark,” and “navigable waterways” as “waters which are physically capable of supporting waterborne traffic, and subject to the ebb and flow of the tide.” If navigability were conferred solely by the passage of vessels engaged in merchant commerce, very few of Connecticut’s waterways could be considered “navigable,” which flies in the face of common reality. Moreover, we are unaware of any authority that associates title in submerged bottomlands with the ability to restrict non-commercial navigation of vessels passing above.

In terms of the Dolphin Cove situation specifically, when the Lagoon was opened to Long Island Sound, the excavated area became overflowed by public trust tidal waters. With the public trust waters came the public trust rights to navigate and to fish, and these rights cannot be infringed upon by owners of title to the submerged lands. However, the private owners of the adjacent and submerged property retained their rights in the soil, which means that they may forbid the public from harvesting shellfish, excavating, sinking pilings, dropping anchor, setting mooring tackle or otherwise touching or making use of the privately owned substrate. They may not obstruct or restrict boat traffic into or out of the Lagoon.

We appreciate the Commission’s ongoing concern for balancing public and private rights to the public trust area, and hope that our comments have been helpful. If you have any questions please feel free to contact David Blatt of my staff at [David.Blatt@ct.gov](mailto:David.Blatt@ct.gov)

Sincerely,



Brian P. Thompson

Director

Land and Water Resources Division

Cc: Geoff Steadman

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<sup>i</sup> The public owns up to “high water mark,” *Simons v. French*, 25 Conn. 346 (1856). Title of riparian proprietor terminates at ordinary high water mark, *Mather v. Chapman*, 40 Conn. 382 (1873). Private ownership of submerged lands is possible, only when basins are dredged from upland, or from inland, non-navigable waters. *Michalczo v. Woodmont*, 175 Conn. 535 (1978).