

**PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
APRIL 21, 2015**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

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

STAFF ATTENDING: Ginsberg  
RECORDER: Syat  
Channel 79

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Chairman Cameron opened the meeting at 8 P.M. and read the public hearing agenda item, since it would not be proceeding this evening.

**PUBLIC HEARING**

Continuation of Public Hearing regarding the following:

By Order dated November 19, 2014 in the matter of *Christopher & Margaret Stefanoni v. The Darien Planning and Zoning Commission* – Docket No.: HHB-CV-11-5015368S (the “Appeal”), and the related case of *Gregory v. Darien Planning and Zoning Commission* Docket No.: CV-13-6023798S Judge Henry Cohn remanded the matter back to the Darien Planning & Zoning Commission for an amendment to the Commission’s October 29, 2013 resolution to specify an approved number of units or a range of numbers of units, based on the record. The legal notice for the original application read as follows:

**Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street.** Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. The subject property is located on the east side of Hoyt Street approximately 100 feet south of its intersection with Echo Drive, and is shown on Assessor’s Map #27 as Lot #168-1, within the R-1/3 zone.

Mr. Ginsberg explained that Mr. Sini has decided to recuse himself on the following matter, and Mr. Olvany was recused on the original application, and will also be recusing himself on the remand. Thus, there are not enough members present tonight to have a quorum on this matter. He noted that a quorum of the six-member Commission is four, and thus, with both Mr. Sini and Mr. Olvany recusing themselves, the remaining four Commission members must be present for this application to proceed. Thus, this application cannot proceed tonight. The earliest this application can be heard with a quorum present would be Tuesday, May 26, 2015. Mr. Ginsberg said that he has informed the neighbors and the Stefanonis of this fact. It was thus agreed to continue the matter to that date.

**GENERAL MEETING**

Chairman Cameron then read the next agenda item:

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**Amendment of Coastal Site Plan #227, Flood Damage Prevention Application #254, Site Plan, Darien Parks and Recreation Commission, Weed Beach, 155 Nearwater Lane.**

Request to install an air conditioning unit.

Interim Park and Recreation Director Jim Coghlan was present, and noted that the request is to locate an HVAC unit within a Coastal Area Management area and the Flood Hazard Zone. In response to a question, he mentioned that the existing paddle building is used year-round. The requests to use the paddle building occur year-round as well. However, they have been hampered recently by the lack of air conditioning within the building. He said that both the Park and Recreation Commission and the Board of Finance have approved this project in the operating budget, and hope that it can proceed within the next few months, prior to this summer. The air conditioning unit will be placed on a four foot high platform, so that it is at or above the existing flood elevation.

Ms. Cameron then asked on behalf of Mr. Voigt about the rates to use the building, and how many requests they get. Mr. Coghlan responded that the out-of-season rate is \$100 per hour. That rate has been set and approved by the Park and Recreation Commission. User fees are established to offset the costs of operating the building (electric, sewer, etc.) and having security present. The building is available for use by both residents and local non-profits. He expects that it will be used more frequently with air conditioning. Mr. DiDonna then asked whether the noise from the air conditioning unit will affect paddle court users. Mr. Coghlan responded that paddle tennis is usually played in October through March, so the AC unit is not likely to be operational during those times. Mr. DiDonna asked if the noise would be distracting to tennis players. Mr. Coghlan responded that the air conditioning unit would be at least forty feet from the paddle tennis courts, and it would not be distracting. He said that the heaters on the paddle courts would make more noise than the AC unit. The tennis courts are even further away from the AC unit.

Mr. Olvany then made a motion to approve the request to amend the plans accordingly to allow for the AC unit. That motion was seconded by Mr. Sini. The vote was 4-0 in favor of approval.

Chairman Cameron then read the following agenda item:

**Amendment of Special Permit # 264-A, Kirby & Company 1025 Boston Post Road.**

Request for chairs and two tables on the front sidewalk.

Ms. Elaine Kirby McCleary, the operator, was present, and described that they now serve cookies, macaroons, and coffee. Up to two tables and four chairs inside the building have been previously approved by the Planning and Zoning Commission. In this case, she wishes to place two additional tables and four chairs outside in front of the building, along with two planters. Mr. Sini asked how many seats were now indoors. Ms. McCleary responded that the number of indoor chairs will not change. The outdoor tables and chairs would likely be brought into the store every night. She will keep the planters out in the winter. Mr. Olvany noted that the sidewalk is fairly narrow. Mr. Ginsberg said that it would be important that the tables and chairs do not "stick out", thereby preventing pedestrians from using the sidewalk. Ms. McCleary noted that she may not put the tables and chairs out until the sidewalks are re-done to Model Block standards. They may also pull them in during Sidewalk Sales week. Mr. Ginsberg suggested approving the request until fall of 2016, thereby giving the applicant and Commission an opportunity to understand how they function, and coordinate this with the approval for Bodega Taco Bar, across the street. Ms. McCleary said that there would be no

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waiter/waitress service to the outdoor tables. Mr. Sini then made a motion to approve the request through fall of 2016. If the applicant wishes to have the outdoor tables/chairs/planters after that time, a subsequent request would have to be made. That motion was seconded by Mr. DiDonna, and approved by a vote of 4-0.

At about 8:15 p.m., Chairman Cameron then read the following agenda item:

**Business Site Plan #136-B and #136-C, Dolcetti, 2 Squab Lane**

Informal discussion with the Commission regarding the development plans approved in 2006.

Ms. Cameron noted that a letter was received from Attorney Robert Maslan, dated April 15, 2015, noting that he and his clients could not be present tonight. Mr. Ginsberg then updated the Commission on the status of the approval for 2 Squab Lane. He mentioned that the approval expires on September 12, 2015.

Ms. Cameron said that if Zoning and Building Permits have not been filed by May 15, 2015, then they need to come in before the Planning and Zoning Commission. She added that the Commission needs as many details as possible. If not, they must build what was previously approved. Mr. Ginsberg said that it appears that they might now have a contract with a developer to construct the approved building. Mr. DiDonna said that he thought the amended plan was very attractive. He added that the Brooks Brothers building turned out very well and that hopefully this project would be equally attractive.

Mr. Ginsberg volunteered to write a response letter to Mr. Maslan.

Ms. Cameron said that whether the new plan matches the prior plans, the approval expires in September. She said that this is an extremely large project. Mr. DiDonna agreed that it is in a difficult location. Mr. Sini said that he is concerned with the timing. The modifications clearly need a site plan amendment, and May 15 may be unlikely. Mr. Olvany reminded everyone that a Demolition Permit is needed for the existing building at 2 Squab Lane. Ms. Cameron said that it is clear--if the plans change, they need to come back before the Planning and Zoning Commission for review and action. The original approval had more than just a simple stairway up to the Darien train station property--it was a monumental stair plaza. Mr. Sini said that there did appear to be consensus amongst the Commission members. It was clear that the applicant needs to come in with a final plan. Ms. Cameron said that it is important to check the sight line on the proposed transformer location.

At about 8:30 p.m., Chairman Cameron then read the following agenda item:

*Deliberations and possible decisions on the following:*

**Business Site Plan #186-C/Special Permit, Performance Physical Therapy, 800 Boston Post Road.** Proposal to establish a physical therapy practice in a portion of the third floor of the existing building at 800 Boston Post Road.

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. Olvany, seconded by Mr. DiDonna and unanimously approved.

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Mr. Olvany and Mr. Sini noted that they have no issues with the subject application. Mr. DiDonna agreed. Mr. Sini then made a motion to adopt the draft resolution as written. That motion was seconded by Mr. DiDonna and approved by a vote of 4-0. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
April 21, 2015**

Application Number: Amendment of Business Site Plan #186-C/Special Permit  
Performance Physical Therapy

Street Address: 800 Boston Post Road  
Assessor's Map #71 Lot #1, 2, 17

Name and Address of Applicant: Todd Wilkowski  
And Applicant's Representative: Performance Health Mgmt. LLC  
333 Post Road West  
Westport, CT 06880

Name and Address of  
Property Owner: Hawthorne Realty, LLC  
c/o Mercator Companies  
38 Grove Street, Suite 201  
Ridgefield, CT 06877

Activity Being Applied For: Proposal to establish a physical therapy practice in a portion of the third floor of the existing building at 800 Boston Post Road.

Property Location: The subject property is located on the southwest corner formed by the intersection of Boston Post Road and Sedgwick Avenue.

Zone: CBD

Date of Public Hearing: March 31, 2015

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

Publication of Hearing Notices  
Dates: March 20 & 27, 2015 Newspaper: Darien News

Date of Action: April 21, 2015 Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action: Newspaper: Darien News  
May 1, 2015

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

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- the proposed use and activities must comply with all provisions of Sections 650, 1000 and 1020 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 submittals and statements by the applicant whose testimony is contained in the record of the March 31 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 establish a physical therapy practice in a 2,918+/- square foot portion of the third floor of the existing building at 800 Boston Post Road. This business operation includes: physical therapy, personal training, pilates, massage and nutritional therapy.
2. Mr. Todd Wilkowski represented at the public hearing that proposed hours of operation will likely be 6 am to 8:30 pm Monday through Friday and 7am to 2pm Saturday. It is expected that 3-4 therapists and two administrative and support staff employees will be on-site at any one time. Due to the 3 or 4 physical therapists working with patients on a one to one basis, it is anticipated that there will be a total of 30 - 40 patient/client visits per day.
3. Parking for this building is located behind the building, and is shared amongst the various tenants in the building. According to the applicant, there are now 99 parking spaces in the lot. At the public hearing, he noted that parking appeared to be adequate to accommodate his expected staff and clients.
4. The Architectural Review Board (ARB) will need to review and act upon any signage desired in the future.
5. The location and size of the use, the nature of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
6. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
7. 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.
8. 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.

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NOW THEREFORE BE IT RESOLVED that Business Site Plan #186-C/Special Permit is hereby modified and granted to allow the physical therapy practice as described in the application and at the Public Hearing, subject to the foregoing and following stipulations, modifications and understandings:

- A. The Commission hereby approves the 8-1/2" x 11" sketch entitled, "Layout with Equipment". This sketch shows the location of the proposed administrative office, office, restrooms, and equipment. The Commission acknowledges that this layout may need to be modified in response to comments/concerns by the Fire Marshal and/or Building Official.
- B. Since the subject use is internal and located within the CBD Zone, The Commission hereby does not regulate the hours of operation.
- C. Because there are other uses both adjacent to and below this tenant space, it is imperative that the applicant's operations not be disruptive to other tenants within the building.
- D. 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.
- E. The granting of this Special Permit and Site Plan amendment does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies. This includes, but is not limited to, final approval from the Darien Fire Marshal, and Zoning and Building Permits for the interior tenant fit-up.
- F. This permit shall be subject to the provisions of Section 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (April 21, 2016). This may be extended as per Section 1009.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations, the signing of the final approved plans by the Chairman, and filing of the Special Permit form in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

Chairman Cameron read the following agenda item:

**Coastal Site Plan Review #184-C, Flood Damage Prevention Application #195-C, Land Filling & Regrading Application #102-C, Town of Darien, 36 and 30 Goodwives River Road, and 15 Morley Lane.** Proposing to reconstruct the Upper Pond dam; construct a fish ladder; remove approximately 7,500 cubic yards of sediment from the lower portion of Upper Pond; restore aquatic and shoreline habitats of the Upper Pond; and perform related activities within regulated areas.

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Mr. Olvany said that he had minor comments on the draft. Mr. DiDonna said that he had typographical corrections to items 2, 3, 6, and 7 and Condition D. Mr. Sini said that he had a comment on Condition B. Ms. Cameron had a comment on item 13. Mr. Sini then made a motion to adopt the draft resolution with the changes outlined by the Commission members. That motion was seconded by Mr. Olvany, and approved by a vote of 4-0. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
April 21, 2015**

Application Number: Coastal Site Plan Review #184-C  
Flood Damage Prevention Application #195-C  
Land Filling & Regrading Application #102-C

Street Addresses: 33 and 30 Goodwives River Road & 15 Morley Lane

Name and Address of Applicant: Town of Darien  
c/o Karl Kilduff  
2 Renshaw Road  
Darien, CT 06820

Name and Address of:  
Applicant's Representative: Fuss and O'Neill, Inc.  
146 Hartford Road  
Manchester, CT 06040

Names and Addresses  
Of Property Owners: Carol Smith, 36 Goodwives River Road  
Paul & Erinn Kelly, 30 Goodwives River Road  
Martin McLaughlin, 15 Morley Lane

Activity Being Applied For: Proposing to reconstruct the Upper Pond dam; construct a fish ladder; remove approximately 7,500 cubic yards of sediment from the lower portion of Upper Pond; restore aquatic and shoreline habitats of the Upper Pond; and perform related activities within regulated areas.

Location of Properties: The subject properties are located on the Goodwives River and: at 36 Goodwives River Road (Map #63, Lot #105); 30 Goodwives River Road (Map #63, Lot #104); and 15 Morley Lane (Map #63 Lot #55), approximately 1,500 feet south of its intersection with Old King's Highway South.

Zone: R-1

Date of Public Hearing: March 24, 2015

Time and Place: 8:00 P.M. Room 119 Town Hall

Publication of Hearing Notices

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Dates: March 13& 20, 2015

Newspaper: Darien News

Date of Action: April 21, 2015

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:  
May 1, 2015

Newspaper: Darien News

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

- the proposed use and activities must comply with all provisions of Sections 400, 810, 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 development plans, and the statements of the applicant 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 applicant proposes to reconstruct the Upper Pond dam; construct a fish ladder; remove approximately 7,500 cubic yards of sediment from the lower portion of Upper Pond; restore aquatic and shoreline habitats of the Upper Pond; and perform related activities within regulated areas.
2. At the public hearing, Kristin Connell of Fuss & O'Neill explained that the work involves the proposed restoration of the Goodwives River and the ponds along the lower portion of the River. She said that the dredging project has been reduced substantially because one of the adjacent property owners does not want to allow access through its site. She said that the proposed new dam structure will have weirboards so that the level of the water can easily be adjusted and lowered in the future so that a pond can be dredged more easily if that work needs to be done.
3. Ms. Connell said that the expected dredge material is likely to be very fine grain material that is not toxic but has been contaminated by asphalt fragments from uphill streets and the Turnpike. Once the material is allowed to dry out within the site, it will be loaded on to trucks and removed from the area. Ms. Connell said that to dry out the dredged material, it will be stockpiled in the center of the large pond to allow it to be naturally de-watered over time. It is expected that there will be approximately 7,400-7,500 cubic yards of dredged material to be removed. It will be brought to landfills outside Darien.
4. At the public hearing, Ms. Connell said that Connecticut Department of Energy & Environmental Protection (DEEP) and Army Corps of Engineer permits have already been submitted and are being reviewed at this time.

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5. It was noted that a fish ladder is part of the dredging and restoration project and that this will be a great benefit to the environment.
6. During the public hearing, Mr. DiDonna said that he is concerned about truck access and the staging area and then the access to the streets. He questioned how this might be done to minimize the impact on neighbors. Ms. Connell said that the project will take approximately six weeks from commencement to completion.
7. The site is within the Coastal Boundary established within 1,000 feet of mean high water of Long Island Sound and its tidally influenced waters. The proposed work will not have any adverse impacts on coastal resources.
8. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
9. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
10. In accordance with the submitted engineering information, the proposed activity will have no adverse impacts on flooding on adjacent properties and, therefore, this proposal is consistent with the need to minimize flood damage.
11. 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.
12. The proposed activities are intended to restore the site conditions to be similar to those before the dam failed and before so much sediment accumulated in the pond. The enhancements to the pond include the fish ladder around the dam, the new plantings around the edge of the pond, and the installation of a weir structure at the north of the pond to create a smaller area of sediment accumulation. This will help make future maintenance easier and therefore more likely to occur on a routine basis. The engineer has verified to the Commission that the project will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.
13. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program. This project should greatly enhance the aquatic and shoreline habitat as well as clear a substantial amount of sediment, allowing the Upper Pond to again function as a sediment basin.
14. The proposed activity, as modified within this resolution, is consistent with the goals and policies in Section 22a-92 of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures that would mitigate any adverse impacts by the proposed activity on coastal resources.

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NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #184-C, Flood Damage Prevention Application #195-C and Land Filling and Regrading Application #102-C are hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Work shall be in accordance with the following plans submitted to the Commission entitled:
  - Town of Darien Upper Pond Dam—Plans for Maintenance and Dredging of Upper Pond, by Fuss & O’Neill, December 2014, Sheets GI-001, V-101, CS-101, CS-102, CG-101, CE-101, CD-501, CD-502, CD-503.
- B. The applicant has made it clear that the proposed access, dredging, and filling will not take place on the 11 Queens Lane property.
- C. As explained by the applicant’s representative at the public hearing, all dredged materials that are not suitable for the restoration work shall be taken off-site to locations outside the Town of Darien.
- D. Prior to the start of work on-site, the applicant shall prepare a traffic safety plan for trucks involved in this project. This plan shall show specific access for trucks from and onto Goodwives River Road so as to avoid blocking traffic and queuing on Goodwives River Road. That plan shall be submitted to the Planning & Zoning Office and reviewed by the Planning and Zoning Director. No access by vehicles to or from Queens Lane has been proposed and none is approved or allowed.
- E. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans 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.
- F. Because of the nature of the land filling and regrading portion of this project, a performance bond for the filling and regrading is hereby waived.
- G. A final “as-built” survey is hereby required to certify that the proposed work is in compliance with the approved plans.
- H. 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 final approval from the State of CT DEEP and the Army Corps of Engineers. When those other permits are obtained, a copy of each shall be submitted to the Commission for the file.
- I. 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,

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incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke this permit as it deems appropriate.

- J. This permit shall be subject to the provisions of Sections 815, 829f, and 1009 of the Darien Zoning Regulations, including but not limited to, submission of certification that the work has been completed in conformance with the permit, and implementation and completion of the approved plans for site work, and regrading within two years of this action (by April 21, 2017). This may be extended as per Sections 815, 829f, and 1009.

All provisions and details of the plans 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. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void.

At about 8:40 p.m., Chairman Cameron then read the following agenda item:

**Coastal Site Plan Review #306, Flood Damage Prevention Application #347, Land Filling & Regrading Application #347, John & Julie Hekker, 85 Goodwives River Road.** Proposal to construct parking areas on the north and south side of the existing residence with associated regrading, expand a deck, and perform related site development activities within regulated areas.

The following motion was made: That the Planning & Zoning Commission adopt the following resolution to grant the project subject to the stipulations as noted. The motion was made by Mr. Olvany, seconded by Mr. Sini, and unanimously approved by a vote of 4-0. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
APRIL 21, 2015**

Application Number: Coastal Site Plan Review #306  
Flood Damage Prevention Application #347  
Land Filling & Regrading #347

Street Address: 85 Goodwives River Road  
Assessor's Map #49 Lot #3

Name and Address of Applicant &:  
Property Owner: John & Julie Hekker  
85 Goodwives River Road  
Darien, CT 06820

Name and Address of:  
Applicant's Representative: Doug DiVesta, PE  
DiVesta Civil Engineering Assoc.  
31 Painter Ridge Road  
Roxbury, CT 06783

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Activity Being Applied For: Proposal to construct parking areas on the north and south sides of the existing residence with associated regrading, expand a deck, and perform related site development activities within regulated areas.

Property Location: The subject property is located on the west side of Goodwives River Road, approximately 150 feet south of its intersection with Sunswyck Road.

Zone: R-1

Date of Public Hearing: March 31, 2015

Time and Place: 8:00 P.M. Room 119 Town Hall

Publication of Hearing Notices

Dates: March 20 & 27, 2015

Newspaper: Darien News

Date of Action: April 21, 2015

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:  
May 1, 2015

Newspaper: Darien News

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

- the proposed use and activities must comply with all provisions of Sections 400, 810, 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 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 application is to construct parking areas on the north and south sides of the existing residence with associated regrading, expand a deck, and perform related site development activities within regulated areas.
2. The Darien Environmental Protection Commission approved this project (EPC 5-2015) on March 4, 2015. The Darien Zoning Board of Appeals approved this project as part of ZBA Calendar #43-2014 on October 15, 2014. Those approvals are hereby incorporated by reference. The ZBA stipulated that portions of the ZBA approved expansions of the house cannot take place unless and until the on street parking problem is corrected by the creation of the proposed, safer, on site parking spaces .

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3. As part of this application, stormwater runoff will be treated for water quality before it is discharged to Long Island Sound. Because of this property's specific location directly adjacent to Long Island Sound, there is no need to address stormwater quantity—but solely the quality of the stormwater.
4. The applicant submitted a Stormwater Management Operation and Maintenance Plan as Appendix A in the February 2015 Site Engineering Report. The Commission notes the need for the applicant or property owner(s) to submit a Drainage Maintenance Plan for the drainage system, and to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners and/or tenants of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential stormwater impacts.
5. The application has been reviewed by the Commission and as required to be modified herein, is in general compliance with the intent and purposes of Sections 850 and 1000.
6. The Commission finds that the proposed activities, if properly implemented, are not contrary to the goals, objectives and policies of the Coastal Area Management Program.
7. 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.
8. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
9. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
10. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #306, Flood Damage Prevention Application #347, and Land Filling & Regrading Application #347 are hereby modified and granted 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 submitted to the Commission:
  - Zoning Location & Topographic Survey 85 Goodwives River Road prepared for John M. Hekker Julie M. Hekker, scale 1"=10', by William W. Seymour & Associates, dated August 19, 2014.
  - Proposed Site Plan, Hekker Residence 85 Goodwives River Road, by DiVesta Civil Engineering Associates, Inc., last revised 03/26/15, Sheet 1 of 2.

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- Details, Hekker Residence 85 Goodwives River Road, by DiVesta Civil Engineering Associates, Inc., last revised 03/23/15, Sheet 2 of 2.
- B. Due to the nature of this project, the Commission hereby waives the requirement for a performance bond. However, with each Zoning Permit application for each aspect of the project, the applicant shall submit engineering or architectural certification that the final design of the structure(s) complies with all aspects of the Flood Damage Prevention Regulations.
- C. During the site work, the applicant shall utilize the sediment and erosion controls illustrated on the Site Plan referred to in Item A above, and any additional measures as may be necessary due to site conditions, including tree protection measures, as may be necessary. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading 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, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. As part of this application, a Stormwater Management Operation and Maintenance Plan was submitted for the record. This Plan requires the property owner and all subsequent property owners of 85 Goodwives River Road to maintain the on-site drainage facilities, A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this approval and prior to the issuance of a Zoning or Building Permit. This Notice will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to address water quality.
- E. The applicant shall install the stormwater management system as shown on the submitted Site Plan (in Condition A, above). 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 tidal wetlands and other environmentally sensitive areas. If such problems do become evident in the future, the owner of the property shall be responsible for remedying the situation at such owner's expense and as quickly as possible.
- F. Once the project is complete, and prior to April 21, 2016, the applicant shall certify in writing and/or photographs, and with an 'as-built' survey map that all work has been properly completed in accordance with the approved plans. This shall include written certification by the project's professional engineer that the drainage facilities have been installed according to the approved plans, and certification that all construction complies with the Flood Damage Prevention Regulations.
- G. 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.

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- H. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- I. This permit shall be subject to the provisions of Sections 815, 829, 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (April 21, 2016).

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Drainage Maintenance Plan needs to be prepared and submitted per the above, and a Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the issuance of a Zoning or Building Permit, or this approval shall become null and void.

Chairman Cameron read the following agenda item:

**Business Site Plan #96-J/Special Permit, PAG Connecticut LR1, LLC, 1335 Boston Post Road.**  
Proposal to construct additions and alterations to the existing building, and to perform site development activities.

Mr. Sini mentioned that the two issues appeared to be the on-site parking, and the possible presence of a “test track” for Land Rover. Mr. Olvany had a comment on the draft resolution. A brief discussion ensued regarding the limits on off-loading vehicles on Boston Post Road.

The following motion was made: That the Planning & Zoning Commission adopt the following revised resolution to approve the project subject to the conditions as noted. The motion was made by Mr. Olvany, seconded by Mr. Sini and unanimously approved. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
April 21, 2015**

Application Number: Business Site Plan #96-J/Special Permit

Street Address: 1335 Boston Post Road  
Assessor's Map #39 Lot #19

Name and Address of  
Property Owner: PAG Connecticut LR1, LLC  
475 Commerce Drive  
Fairfield, CT 06825

Name and Address of Applicant &  
Applicant's Representative: Jacek Bigosinski  
PB Architects  
110 Boston Post Road

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Darien, CT 06820

Activity Being Applied For: Proposal to construct additions and alterations to the existing building, and to perform related site development activities.

Property Location: The subject property is located on the northwest corner of the intersection formed by Boston Post Road and Thorndal Circle.

Zone: SB Zone

Date of Public Hearing: March 24, 2015

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

Publication of Hearing Notices

Dates: March 13 & 20, 2015

Newspaper: Darien News

Date of Action: April 21, 2015

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:  
May 1, 2015

Newspaper: Darien News

- the proposed use and activities must comply with all provisions of Sections 660, 1000 and 1020 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 redevelopment plans, and the statements of the applicant 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. This application is to construct additions and alterations to the existing building, and to perform related site development activities. This building is the former Nissan dealership. Since the facility has been and will be an automobile sales facility, it requires Special Permit approval from the Commission.
2. The Zoning Board of Appeals (ZBA) is now in the process of reviewing and acting upon the modified signage. If the ZBA approves the signage plans, further review and action by the Architectural Review Board (ARB) is required. The ZBA and ARB review of the signage does not affect this Special Permit and Site Plan review.

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3. At the public hearing, Jacek Bigosinski, Project Architect, said that the property at 1335 Boston Post Road has been acquired by the Penske Automotive Group and they will be selling Land Rover and Jaguar automobiles at the property. He said that the Land Rover dealership now at 90 Boston Post Road will be relocated to 1335 Boston Post Road. Mr. Bigosinski said that the slight changes proposed to the building include rounding off the two front corners of the building and changing the entrance to the service bays and squaring off the zig-zag pattern on the north side of the service bay customer entrance area and changing the pedestrian entrance porticos at the front section of the building. He said that the service entrance on the north side of the building will be shared by both brands to be sold on site (Jaguar and Land Rover). He said that the traffic flow around the building will remain unchanged.
4. There was also a question regarding the Land Rover test drive/rough area that currently exists at 90 Boston Post Road and whether it would be relocated to this site. It was noted at the hearing that the applicant will come back to the Commission if they want to relocate the test drive/rough area anywhere at this site. On some versions of the submitted plans a car display pad is shown near the right corner of the building. The Fire Marshal noted his concern with this display pad.
5. In response to questions at the public hearing, the applicant said that there would be no storage lifts or multi-level parking at this site.
6. Mr. Bigosinski said that the total proposed site development area will be less than 80% of the property and the total building coverage will be less than 20% of the property. He said that in previous years, the pavement/grass walkway areas from the parking lot to the building had been considered half landscaping and half site developed area but under the more recent survey, the land surveyor counted the entire walkway area as being site developed area. Under the revised plan, the total site developed area will be reduced to 80% of the lot area.
7. None of the proposed work requires a permit from the Environmental Protection Commission (EPC), since the work is occurring over an existing paved area, and therefore a permit from the EPC will not be needed.
8. There was a question regarding the off-loading of vehicles and it was noted at the public hearing that it is not permitted to be conducted on the street. Mr. Bigosinski said that the plan is to have delivery vehicles back in to the site but occasionally a new driver might start to unload on the street. Commission members explained that the previously approved plan did require that the automobile transporting vehicles enter the north side of the site and loop around the back of the building and discharge the vehicles on the site. This will avoid the need to back into the south side of the site and will avoid on street off-loading.
9. Commission members had questions regarding the number of vehicles in inventory, both new and pre-owned vehicles, the number of loaner cars, the number of employee vehicles, the number of customer parking spaces and the total on-site parking needs. Questions arose regarding the number of on-site parking spaces as per the submitted Seymour survey. It was noted that they propose to lose four parking spaces at the end of service write up, hence total of 203 would result. The Commission members asked that the applicant provide the detailed information regarding the number of parking spaces and the applicant agreed. That response is as follows:

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- Employee – 45
- Guest – 12
- Loaners – 10
- Service – 40
- Inventory/Sales – 96
- Total 203

10. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.

11. The location and nature of the proposed use, the size and height of the building are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.

12. 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.

13. The elements of the Site Plan, submitted as part of the Special Permit application accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

14. 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.

NOW THEREFORE BE IT RESOLVED that Business Site Plan #96-J/Special Permit is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

A. Construction of the modifications to the existing building shall be in conformance with the plans entitled:

- Zoning Location Survey depicting proposed conditions #1335 Boston Post Road prepared for PAG Connecticut LR1, LLC, by William W. Seymour & Associates, scale 1”-30’, last revised March 27, 2015.
- Exterior elevation by PB Architects, rev 3/24/15, Drawing No. A-1 and A-2. Note: The Zoning Board of Appeals and/or Architectural Review Board may require modifications to the elevations and signage shown.
- Floor Plan by PB Architects, rev 3/24/15, Drawing No. A-1. Note: This plan also shows elevations and signage. The Zoning Board of Appeals and/or Architectural Review Board may require modifications to the elevations and signage shown.

The Zoning Location Survey shall be revised to include the number of parking spaces in the zoning chart.

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The Plans shall also be modified to reflect the requirement for a new fire lane to be established on the east side by the service area, along the service bays and in the rear of the building.

- B. It is noted that Section 373 of the Darien Zoning Regulations do not allow the display of items for sale within the front yard setback. Since the front row of parking is within the front yard setback, revised plans shall be submitted noting that “No vehicles for sale shall be parked in this area”. This row of parking shall be used for customer and employee parking only.
- C. Past Commission approvals have required that all loading and unloading of vehicles occur on-site, NOT via trucks parked on Boston Post Road or Thorndal Circle. That condition is also part of this approval. The owner and operator are responsible for notifying drivers of this condition. The previously approved plan did require that the automobile transporting vehicles enter the north side of the site and loop around the back of the building and discharge the vehicles on the site. This will avoid the need to back into the south side of the site and will avoid on street off-loading.
- D. As part of this application, no changes to the existing on-site lighting is proposed. All lighting shall comply fully with Section 232 of the Darien Zoning Regulations.
- E. During construction, the applicant shall utilize any sediment and erosion control 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.
- F. 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.
- G. A final as-built drawing and certification shall be submitted by a licensed architect and surveyor confirming that the entire project, has been properly completed and complies with developed site area maximum requirements.
- H. The granting of this Special Permit does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- I. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (April 21, 2016). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan, as required to be revised herein, 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

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submitted to the Planning and Zoning Department within 60 days of this action, including the submittal of revised plans with a note on parking in the front yard setback, and the filing a Special Permit form in the Darien Land Records, or this approval shall become null and void.

Chairman Cameron read the following agenda item:

*Deliberations only on the following:*

**Special Permit Application #285, Land Filling & Regrading Application #213-A, Anthony & Elizabeth Minella, 53 Horseshoe Road.** Proposing to construct a 60' x 100' sports court with associated lighting; along with a related structure attached to the existing residence; install related stormwater management; and to perform related site development activities. *DECISION DEADLINE: 5/14/2015.*

Mr. Olvany noted that since he has started coaching Little League within the past few weeks, Mr. Minella's son is on his team, and therefore, he will have to recuse himself from voting on this application. He will thus be abstaining on any comments on it tonight, but remaining in the room, so a quorum can be achieved.

Mr. Sini said that he had given his comments to Mr. Ginsberg, but wanted to add in the need for a timer on the lights, so they automatically cut off at a certain hour. Mr. DiDonna said that it is important to set certain specific parameters. These are on the size, height, and location of the lights as well as having specific readings taken after implementation to assure that the lighting complies with the applicant's representations.

Chairman Cameron read the following agenda item:

**Amendment of Special Permit Applications #22-O and 22-P, Coastal Site Plan Review #27-D and 27-E, Flood Damage Prevention Application #20-D and 20-E, Land Filling & Regrading Application #325, Tokeneke Club, Inc., 4 Tokeneke Beach Drive.** Proposing to amend the previously approved plans for the clubhouse and bathhouse by modifying: the width of the service driveway; the tennis courts; and the lockers; and to perform related site development activities within regulated areas.

Mr. DiDonna left the podium, but remained in the room to maintain the quorum. Mr. Olvany noted that the building is defaulting to be slightly bigger. Mr. Sini emphasized that there should be no more "size creep". Mr. Ginsberg was instructed to draft a resolution for consideration at an early May meeting.

Mr. DiDonna returned to the podium, and Chairman Cameron then read the following agenda item:

**Subdivision Application #612-B, ASL Partners, LLC, 203 Long Neck Point Road.** Proposal to subdivide a 2.8+/- acre property into two rear lots, each with a 25 foot access to Long Neck Point Road.

It was noted by Mr. Olvany that there are now two tax lots--the front lot and the back lot (which has waterfront access). This is a request to subdivide the back lot with waterfront access into two rear lots,

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both within the R-1 zone. Mr. Ginsberg said that it appeared that the Commission's desire is to not have a new house constructed within the Flood Hazard Zone. Mr. Olvany confirmed that the east/west division was a free cut. Mr. DiDonna noted that the number of driveways was the subject of discussion during the public hearing. Mr. Ginsberg noted the driveway options available to the Commission. Mr. Sini said that the Commission needs to ensure that the proposed subdivision meets all of the Subdivision Regulations. He noted the neighbor concerns that were presented during the public hearing process. He said that one option was to allow only one driveway from Long Neck Point Road to serve the two back lots. Mr. Olvany said that a shared driveway situation is not unusual, and referenced a subdivision on the east side of Brookside Road. Mr. Sini said that the applicant will need to return to the Commission with concrete development plans with the driveways. Mr. Ginsberg noted that the entire 203 Long Neck Point Road property (including the front lots) have over 400 feet of frontage.

Ms. Cameron said that the building envelope can be established by the Commission from the 100' CAM line back uphill to the 90' front setback line. All structures would need to be within that area. She said that the property fronts on Long Island Sound. She noted that since sea level is rising, putting the houses too close to the water would be an obvious concern. Mr. Sini said that the Commission does need to be concerned about the future, specifically noting this within any resolution. Mr. DiDonna believed that this was a good compromise. Ms. Cameron was not sure that subdividing the property was feasible.

Chairman Cameron then read the following agenda item:

**Land Filling & Regrading #160-A, David Jones, 93 Mansfield Avenue.** Proposing to fill and regrade back yard and install new associated retaining wall, and to perform related site development activities.

Mr. Sini said that this is a good project, and one issue that was brought up during the public hearing process was the dumping of leaves in and near the inland wetlands in the back of the property. It was noted that the Conservation Easement to be placed in the area may make reference to that. Mr. Ginsberg noted that one important aspect of the application is that Allan Broadbent or another landscape architect supervise the required plantings.

Chairman Cameron read the following agenda item:

**Coastal Site Plan Review #305, Flood Damage Prevention Application #346, Land Filling & Regrading Application #345, Kevin Kuryla, 9A Tokeneke Trail.** Proposing to construct a new single-family residence, pool, patio, on-site stormwater management and septic system, and perform related site development activities within regulated areas.

Ms. Cameron said that the applicant has proposed to put the replacement house within the CAM and Flood Hazard Zone. She noted the application included an extensive planting plan prepared by Kate Throckmorton. Ms. Cameron said that she was concerned about the work in the CAM and Flood Zones. Mr. Ginsberg reminded the Commission that professional engineer Craig Flaherty was hired by the neighbor, and submitted comments for the record. His comments were incorporated by the applicant. Ms. Cameron said that the work in the flood zone is not in a VE Zone (there is no wave action), but it is a good goal to not have new houses constructed in a flood zone.

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Mr. Olvany noted that the EPC has approved the plans. Mr. Ginsberg mentioned that the EPC has a limited focus. Mr. Sini said that the Commission could recommend to the applicant that efforts be taken to move the proposed residence, shifting it slightly to be outside of the flood zone if possible, maybe by shortening the proposed driveway. This will minimize work in the CAM area. The submitted plans were briefly reviewed. It was also suggested to move the proposed sediment and erosion controls slightly to avoid work in the CAM area. Ms. Cameron said that the planting plan was well done. Mr. Ginsberg was instructed to draft a resolution for the Commission's consideration at an early May meeting.

Chairman Cameron read the following agenda item:

**Approval of Minutes**

*January 29, 2015      Public Hearing/General Meeting*

Mr. DiDonna had a comment on the draft minutes. Ms. Cameron also had some minor corrections. Mr. DiDonna made a motion to approve the minutes as amended. That motion was seconded by Mr. Olvany, and approved by a vote of 4-0.

*February 10, 2015      General Meeting*

Mr. Sini made a motion to approve the minutes as written. Mr. DiDonna seconded that motion, which was approved by a vote of 3-0-1 (Mr. Olvany abstained, since he was not at the meeting).

*February 24, 2015      Public Hearing/General Meeting*

Mr. DiDonna had comments on pages 2, 3 and 4 of the draft minutes. Mr. Sini made a motion to approve the minutes as amended by Mr. DiDonna. That motion was seconded by Mr. DiDonna, and approved by a vote of 2 in favor (Sini, DiDonna) and 2 abstentions (Cameron and Olvany, since they were not at the meeting).

*March 10, 2015      General Meeting/Public Hearing*

Mr. DiDonna noted that a number of representations were made at this meeting regarding the Minella application, and those need to be considered when drafting the resolution. Mr. Sini made a motion to approve the minutes as written. Mr. DiDonna seconded that motion, which was approved by a vote of 4-0.

*March 19, 2015      Public Hearing/General Meeting*

Mr. Olvany made a motion to approve the minutes as written. Mr. DiDonna seconded that motion, which was approved by a vote of 4-0.

*March 24, 2015      General Meeting/Public Hearing*

Due to the fact that some Commission members wished to have more time to review this set of minutes, these were not acted upon.

*April 7, 2015      Executive Session*

Mr. Sini made a motion to approve the minutes of the Executive Session as written. That motion was seconded by Mr. Olvany, and was approved by a vote of 4-0.

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There being no further business, the following motion was made: That the Planning & Zoning Commission close the meeting. The motion was made by Mr. Sini, seconded by Mr. Olvany and unanimously approved. The meeting was adjourned at 9:25 P.M.

Respectfully submitted,

Jeremy B. Ginsberg  
Planning & Zoning Director

*04.21.2015min*