

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
July 6, 2010**

Place: Auditorium, Town Hall

TIME: 7:45 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Spain, Cameron, Hutchison, Riccardo, Voigt

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

FILMED BY: Channel 79

GENERAL MEETING

Chairman Conze read the first agenda item:

Deliberation and possible decisions regarding:

Business Site Plan #135-A/Special Permit, Old Round Hill Development, LLC, 934 Boston Post Road. Proposing to raze a portion of the existing building, construct additions and alterations to the existing building, establish a restaurant within the Boston Post Road frontage of the building and a gelato/bakery in the Center Street frontage of the building with seasonal outdoor dining, and to perform related site development activities. *PUBLIC HEARING CLOSED ON 6/1/2010. DECISION DEADLINE: 8/5/2010.*

The following motion was made: That the Commission waive the process of reading each draft Resolution aloud because each Commission member has had an opportunity to review each draft prior to the meeting. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved.

Commission members discussed the draft Resolution regarding Old Round Hill Development. A number of clarifications that were incorporated including modifying stipulation letter P regarding making arrangements for off-site parking for employees. The following motion was made: That the Commission adopt the following Resolution to approve the project subject to the conditions and stipulation as noted. The motion was made by Mr. Spain, seconded by Mrs. Riccardo and unanimously approved. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 6, 2010**

Application Number: Business Site Plan #135-A/Special Permit
Old Round Hill Development, LLC, 934 Boston Post Road

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Street Address: 934 Boston Post Road
Assessor's Map #72 Lot #1

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

Name and Address of Property Owners: Old Round Hill Development, LLC
c/o Ken DeLeo & John Doherty
16 Morley Lane
Darien, CT 06820

Activity Being Applied For: Proposing to raze a portion of the existing building, construct additions and alterations to the existing building, establish a restaurant within the Boston Post Road frontage of the building (with customer area on the first floor and related restaurant offices and/or other offices on the second floor) and a gelato/bakery shop in the Center Street frontage of the building with seasonal outdoor dining, and to perform related site development activities.

Property Location: The subject property is located on the east side of Boston Post Road at its intersection with Tokeneke Road.

Zone: CBD

Date of Public Hearing: June 1, 2010

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

Publication of Hearing Notices
Dates: May 20 & 27, 2010 Newspaper: Darien News-Review

Date of Action: July 6, 2010 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: July 16, 2010 Newspaper: Darien News-Review

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

- the proposed use and activities must comply with all provisions of Sections 650, 900, 1000, 1020 and 1057 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.

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- 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 raze a portion of the existing building, construct additions and alterations to the existing building, establish a restaurant within the Boston Post Road frontage of the building and a gelato/bakery in the Center Street frontage of the building with seasonal outdoor dining, and to perform related site development activities. The subject property is served by public water and sewer. All electric and other utilities will be underground.
2. The current conditions include an existing building with an entrance on the front of the building which was formerly used by Crystal Gardens florist. The rear part of the building, which has an entrance facing Center Street, is used by D'Iorio Printing. Vehicles used by the on-site businesses and adjacent businesses park on the subject property. The applicant also noted that there are a variety of dumpsters, propane tanks and the like which have been placed on the subject property by the adjacent property owners. Part of this application is to reduce/eliminate this "clutter". Photographs submitted as part of the subject application show four unscreened dumpsters now on the property, ostensibly, all of them used by other businesses. The applicant has noted that once this project is complete, there will be no HVAC units, propane tanks, or dumpsters on the ground on the subject property. (Note that, as shown on the submitted Zoning Location Survey, there are two propane tanks and an HVAC unit behind the building at 7 Tokeneke Road, which the Survey shows as being on the 7 Tokeneke Road property, but would appear to the naked eye to be on the subject property.
3. In accordance with Section 1057 of the Darien Zoning Regulations, a Rear Building Line has been established on this and the adjacent properties. If land between Center Street and the Rear Building Line is created and dedicated for municipal parking, then the standard requirement for on site parking is waived. It was noted that a number of nearby properties along Center Street have granted land to the Town for future parking, but those areas have not yet been developed as parking because of the isolated situations. As more of the property owners participate in the municipal parking incentive, then an expansion of the municipal parking area can be undertaken in a coordinated manner. Any similar activity approved herein would fit in with those other parcels, and allow the Town to own a number of parcels in the future, with the possibility of expanding parking in this area along Center Street.
4. Much of the details of this application are set out in a five-page letter dated May 21, 2010 from Wilder Gleason to the Planning and Zoning Commission. This letter was in response to an April 23, 2010 letter from Jeremy Ginsberg.
5. During the public hearing, the applicant pointed out a proposed three foot wide outside access corridor around the perimeter of the outside dining area which will be used for potential customer and employee access to the rear of the neighboring business buildings that front on Tokeneke

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Road, as well as by deliveries to and from the site as well as trash pickup. The applicant agreed during the public hearing to widen that proposed access to be a minimum of five feet in width throughout. This will allow for deliveries via hand carts and dollies to be walked within this walkway, and garbage removal to be done by rolling the dumpsters from within the applicant's building via the walkway to the street so that the refuse can be loaded onto trucks in Center Street. The walkway shall be maintained as an open access corridor. It is not designed for, nor shall it be used for vehicles, vehicular parking, heating, air conditioning or ventilation (HVAC) equipment, the storage of materials, trash containers, fuel containers or tanks, or equipment or obstructions of any kind.

6. As part of this application, an existing utility /telephone pole will be relocated from the area adjacent to the existing Drapery Exchange to an area across the street into the Center Street North municipal parking lot.
7. The applicant proposes under Section 1057 of the Darien Zoning Regulations to dedicate land between the existing Rear Building Line and Center Street for future municipal parking purposes. At this time, it does not make sense to actually construct the parking due to the separation of this land from other land that will become expanded municipal parking. For now, and temporarily until the Commission requires that the parking actually be constructed, the area will be grass lawn and pedestrian access pathways. As allowed by Section 1057d, in this specific case, the Commission believes that a perpetual easement is more appropriate than conveyance of the land by deed. The reason why such easement is preferred over conveyance by deed is that there are new sewer lines, landscaping, pathways and a catch basin being installed by the applicant as part of this proposal. By dedication via perpetual easement rather than conveyance by deed, it will be clear that all maintenance for these amenities is the responsibility of the property owner. The area to be dedicated is clearly shown on the plan entitled, "Zoning Location Survey prepared for Old Round Hill Partners, 934 Boston Post Road, by William W. Seymour & Associates, scale 1"=10', dated April 12, 2010. The specific area is listed as "Parcel A being dedicated to parking for the Town of Darien."
8. The Architectural Review Board (ARB) reviewed this plan at its April meeting. Revised plans were submitted to the ARB, and reviewed at its May 18, 2010 meeting. Those revised plans were approved by the ARB, as outlined in a letter from ARB Chair Susan Lawrence to Wilder Gleason dated May 19th. That letter specifically notes that the applicant shall return to the ARB once exterior light fixtures and a signage plan have been determined.

STORMWATER MANAGEMENT/DRAINAGE

9. The Zoning Location Survey dated April 12, 2010 documents a reduction in impervious area and a reduction in building coverage as part of this application.
10. As shown on the submitted Site Drainage Plan, there are now existing sanitary service laterals on the subject property. Some properties fronting on Tokeneke Road are served by these sewer laterals. The applicant is working with the Darien Sewer Commission to finalize details on how best to deal with the existing laterals (whether some or all of the pipes should be replaced) and the easement (whether it continues to be an easement in favor of the Town or is converted to a

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easement in favor of the adjacent owners and is no longer the responsibility of the Town). The applicant proposes to install a landscaped patio and outdoor dining area over portions of the existing sewer easement. Such improvements are acceptable to the Planning and Zoning Commission, provided, the applicant is able to obtain similar written permission from the Sewer Commission; and with the understanding that the Town, Public Works Department, Sewer Commission and their agents are not responsible for any damage, nor for replacement costs, to any such improvements, that may result from any required maintenance or repair work undertaken with respect to the pipes or facilities within the easement.

11. A proposed storm sewer line is shown on the Site Drainage Plan, showing that water will flow into proposed and existing catch basins. The final grading of the site and extent of drain inlets to the proposed onsite stormwater drainage system for 934 Boston Post Road will be designed in the field to assure that storm water: a. is allowed to infiltrate into the voids beneath the pervious pavement and patio; b. flows into the storm drainage system which will connect to the a catch basin in Center Street; or c. flows overland to Center Street (consistent with current onsite overland flow patterns). With this, no storm water will be directed towards neighboring buildings. The Applicant has requested that the P&Z Commission require that the storm drainage system connect to the Center Street catch basin, as the current storm drainage system connects to this catch basin. Also, to the extent practicable, the storm water drainage system will be located outside of the modified sewer easement.
12. The proposed restaurant is a Special Permit use, and therefore requires action under Section 1000 of the Darien Zoning Regulations. The restaurant proposes to be open for breakfast, lunch, and dinner. Outdoor seating/dining is proposed as part of this application. The submitted plans show both indoor seating and outdoor seating. The Commission accepts the applicant's proposal for up to 90 seats within the building, subject to final approval of the detailed seating plan by the Fire Marshal and Building Official. The outdoor seating can only be used on a seasonal basis, and will be limited by the increased width of the walkway (from 3' to a minimum of 5'). Plans must be revised accordingly. The basement of the restaurant shall be for utilities and storage only. No work space, food preparation, office, rest rooms, employee lockers or other use is proposed and none is allowed. The second floor of the building shall be offices for rent and/or for the restaurant.
13. The Commission's policy regarding restaurants is to have all fumes and odors minimized. In this case, nearby uses need to be considered. The applicant proposes to comply with the established restaurant exhaust requirements accepted by the Planning & Zoning Commission. More detailed plans of the odor control and exhaust systems must be provided.
14. 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.
15. 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.

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16. 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.
17. 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.
18. The elements of the Site Plan, submitted as part of the application accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Business Site Plan #135-A/Special Permit is hereby granted subject to the foregoing and following conditions, modifications and understandings:

A. Subject to findings noted above and the required revisions and stipulations and conditions as noted below, all demolition, construction, outdoor seating, installation of plantings and pervious composite pavers, and related activity shall be in accordance with the plans submitted to and reviewed by the Commission, as required to be modified herein:

- Zoning Location Survey prepared for Old Round Hill Partners, 934 Boston Post Road, by William W. Seymour & Associates, scale 1"=10', dated April 12, 2010.
- 934 Boston Post Road, Building Development/Renovation for Old Round Hill Development, by R. Barry Goewey AIA, last revised 5-6-10, Drawing 1 of 3.
- 934 Boston Post Road, Building Development/Renovation for Old Round Hill Development, by R. Barry Goewey AIA, last revised 5-6-10, Drawing 2 of 3.
- 934 Boston Post Road, Building Development/Renovation for Old Round Hill Development, by R. Barry Goewey AIA, last revised 5-6-10, Drawing 3 of 3.
- Site Drainage Plan Old Round Hill Partners, LLC, 934 Boston Post Road, by Stearns & Wheler, LLC, scale 1"=10', dated 5/20/2010, Sheet 1.
- Planting Plan for Nearwater Investors, LLC, 934 Boston Post Rd, by bkla studio, dated April 13, 2010, Sheet P-1.
- Preliminary Landscape Plan for Old Round Hill Development, 934 Boston Post Rd, by bkla studio, dated March 31, 2010, Sheet SK-1.

It is noted that the interior floor plans may also need to be modified to meet any requirements of the Building Official, Fire Marshal and/or the Darien Health Department, and the ARB approval as outlined in its May 19, 2010 letter to Wilder Gleason.

B. Plans shall be revised to reflect:

- a clear and unobstructed walkway at least five feet wide rather than the three feet wide as shown on the submitted planting plan. The applicant in his May 21, 2010 letter and at the public hearing noted that the walkway would be modified to be at least five feet wide. This will require revisions to the outside dining area and landscape plan.

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- The outside dining area shall also be modified to clearly distinguish between the portion of the site dedicated for future municipal parking and the outside dining area. Due to the modifications of the outside dining area, the Commission is only approving outside dining for a maximum of 24 seats at this time. If the applicant can submit detailed plans to demonstrate that more outside seats can satisfy these stipulations and comply with the requirements of the Fire Marshal, Health Department, and Building Official, then the Commission will consider a request to amend this limitation.
- The Commission requires that the rear door (the door facing Center Street) shall not open out into area owned by (or eased to) the Town of Darien, which area is shown as Parcel A on the submitted plan. The door will need to be recessed and the building will have to be modified accordingly. Internal doorway widths and swings within the building may also need to be modified to comply with the requirements of the Fire Marshal, Building Official, Health Department and practicality and safety. It is acknowledged that there may be some doors of adjacent businesses that open into the walkway, but those doors are not on the subject property and not part of this application.
- Any changes required by the Architectural Review Board in its May 18th meeting and subsequent May 19th approval letter.
- The submitted Landscape Plan must be modified to reflect the revised walkway, seating area, pathways, etc.
- That Parcel A is dedicated by perpetual easement to the Town of Darien for expansion of the municipal parking area. At this time, the Commission is not requiring that the applicant create or construct the municipal parking because it would be disjointed from and not coordinated with other municipal parking. At some time in the future, the Commission shall mandate that the area be converted to paved parking and related improvements. The cost of making those improvements shall be borne by the then owner(s) of the subject property. The plans shall make it clear that the property owner is fully responsible for expenses incurred with respect to the proposed sanitary sewer lines, storm sewer lines, catch basin, utility pole relocation, and other on site and off site improvements to be installed.

C. All utilities shall be underground.

D. The Commission hereby approves two separate Special Permit uses for the first floor of the building. The front (Tokeneke Road) portion will be a restaurant, and the rear (Center Street) portion will be a gelato/bakery shop. These uses are as specifically described in the May 21, 2010 letter from Wilder Gleason and the testimony at the public hearing.

E. The Commission takes specific note that this is not a “teardown”, and that only a specified portion of the existing building is proposed to be removed. If during the demolition process, the property owner finds that compliance with the submitted plans is not possible, he shall return to the Planning and Zoning Commission for further review and action.

F. As noted by the applicant in its letter and as shown on the submitted and approved plans, the basement and attic are to be used for storage only. There shall be no finished space in either.

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- G. In order to not impede pedestrian access in the downtown, the applicant shall minimize the amount of time that the Center Street sidewalk is closed.
- H. No outdoor storage, trash dumpsters, fuel tanks, or display has been requested, and none is hereby granted. The only area where outdoor seating is allowed is as shown on the subject plans. As proposed by the applicant and approved herein, there shall be no transformers, outdoor dumpsters or garbage cans, or HVAC units on the ground. The subject building's mechanical equipment shall be placed on the roof. Old Round Hill Development will keep all exterior equipment, including the HVAC compressors, on the flat portion of the roof of the second floor. No equipment will be mounted on the ground. In addition, the property owners will be connecting to the natural gas line in the Boston Post Road, so no propane tanks will be used on the property. Part of the proposal involves eliminating the various dumpsters and outside storage and activities located on the subject site, but associated with businesses and properties fronting on Tokeneke Road. To facilitate this clean up, the applicant has included the 5 foot wide pedestrian access way along portions of the east and north property lines and is making arrangements to have the other businesses use the dumpster room to be constructed within the subject building. The other property owners and business operators will have a license to utilize the accessway and common dumpster room provided they become parties to a private agreement and conditions of use established by the applicant. By approving this arrangement, the Commission is not granting or mandating any easement that would convey rights of use, however the Commission is approving an opportunity to correct past problems and accommodate future needs of the various property owners.
- I. Prior to a Zoning and Building Permit, a mylar shall be filed in the Darien Land Records reflecting the dedication (by easement) behind the Rear Building Line. That mylar shall be filed concurrently with easement wording to be prepared by the applicant and reviewed and acted upon by Town Counsel.
- J. Because of the nature of the existing and proposed site conditions of this previously developed property, the Commission hereby waives the requirement for a loading zone as authorized by Section 909 of the Darien Zoning Regulations. No rubbish pick up and no unloading or deliveries to the business shall occur from any vehicles on the Boston Post Road or Tokeneke Road. The Commission acknowledges that all deliveries will likely come from vehicles which are parked on or along Center Street. No vehicles shall drive onto the subject property to make deliveries, including the rear building dedicated easement area.

DRAINAGE

- K. The Commission hereby approves the submitted drainage improvements as shown in the Proposed Site Plan listed above in Condition A, and specifically waives the requirements under Section 888a(3) of the Zoning Regulations. That provision allows the Commission to waive the requirement due to: "...the scope, nature, and/or amount of work proposed in the application..." In this specific case, the applicant is reducing the amount of impervious surface, and using pervious composite pavers where there is now asphalt. A letter from a professional engineer shall be submitted certifying that pervious composite pavers were used as shown on the submitted plans, as required to be revised herein.

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- L. The P&Z Commission hereby requires that the storm drainage system connect to the Center Street catch basin as the current storm drainage system connects to this catch basin. Any upgrade or modifications to the connection to the Town storm drainage system must comply with the requirements of the Department of Public Works and are subject to obtaining the proper permits from the DPW prior to undertaking such work. Also, to the extent practicable, the storm water drainage system will be located outside of the modified sewer easement. The revised sewer easement shall include wording to the effect that the Town can remove all landscaping and other improvements within the easement area without liability.
- M. In the “off-season”, the outdoor tables and chairs shall be stored indoors.
- N. By September 6, 2010 (within the next 60 days) and prior to the issuance of a Zoning or Building Permit for the proposed construction, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, including any required revisions, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 934 Boston Post Road to maintain the on-site drainage facilities, and will alert future property owners of the on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this approval by the Planning and Zoning Commission.
- O. The developer/builder shall install the drainage system as shown on the submitted plans in Condition A, above. The 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 property(ies) or the adjacent streets. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- P. There shall be no parking of vehicles on any portion of the subject property. The requirement for on site parking is waived in accordance with the provisions of Section 1057 of the Zoning Regulations. The owners of the property shall be responsible for making arrangements for off-site parking for their employees who need it.
- Q. Because of the restaurant’s specific location in downtown Darien the Commission hereby does not restrict the maximum hours of operation of the restaurant or gelato/bakery. Any change of usage may require a maximum on the hours of operation in the future.
- R. To avoid early morning or late night trash pick up that could unreasonably disturb others, garbage pickup shall be done on an “as-needed” basis, and shall occur **only** between the hours of 8:30 a.m.- 11:30 a.m., or from 1:30 p.m. to 5:00 p.m. All deliveries shall be between 7:00 a.m. and 11:30 a.m. or between 1:30 p.m. to 5:00 p.m. It is imperative that vans and/or trucks for deliveries of supplies or trucks for the pickup of trash not interfere with the internal flow of vehicles on the adjacent street and municipal parking area and private parking areas. The Commission specifically

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prohibits garbage pickup or deliveries from 11:30 a.m. to 1:30 p.m., thereby avoiding any lunch-time conflicts.

- S. The garbage container room shall contain all trash, garbage and recycling bins and containers. Those door(s) shall remain shut at all times that someone is not loading or unloading waste. The property owner is responsible for maintaining this trash area including ensuring that it is emptied frequently enough to minimize odors. It is imperative that the door(s) to the room and the doors and covers of the containers be maintained in good operating condition and that they remain closed when not in use.

ADDITIONAL CONDITIONS AND STIPULATIONS

- T. Prior to the issuance of a Zoning or Building Permit for the restaurant, final revised plans/elevations shall be submitted reflecting the installation of an approved venting system to control kitchen emission of odors and particulates. The system shall include a pollution control unit that is at least as effective at reducing odors as a water wash grease trapping design and charcoal filter and high voltage precipitator. These plans/elevations shall be reviewed by the Fire Marshal, Health Director, Planning & Zoning Director, and Building Official. This is imperative to minimize any potential odors to the nearby businesses and residences. All equipment to be installed shall be maintained by the applicant. All hood and venting systems shall be fully installed and operational prior to the issuance of a Certificate of Occupancy for the restaurant, and if odors and/or fumes are a noticeable problem, then additional control devices and measures must be incorporated into the system to address such problems.
- U. All site work, including but not limited to site improvements as shown on the approved plans and as noted herein shall be properly installed and completed prior to the use of this space and/or the issuance of a Certificate of Occupancy for the restaurant or second floor offices.
- V. A final as-built drawing and certification shall be submitted by a professional engineer confirming that the entire project, including the required drainage, lighting, parking, curbing, sidewalks, landscaping, and other site development features have been properly completed per the approved plans, as noted in Condition A, above. This certification shall be submitted prior to the issuance of a Certificate of Occupancy for the project, and/or use of the building.
- W. As noted on the submitted Site Plan, all lighting shall comply fully with Section 232 of the Darien Zoning Regulations.
- X. 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.
- Y. 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. This includes, but is not limited to, final approval from the Darien Fire Marshal for venting and emergency lighting; and final kitchen review by the Darien Health Department; and a

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Demolition Permit from the Building Department. If the applicant's grease trap will be outside the building envelope, a permit from Darien Public Works Department is required. A Street Opening Permit/Curb Cut Permit from the Darien Public Works Department will be required for the work within Center Street (such as closing the existing curb cut). Final approval from the Darien Sewer Commission is also required prior to the issuance of a Zoning or Building Permit.

- Z. 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 (July 6, 2011). This may be extended as per Sections 1009 and 1028.

All provisions and details of the Site Drainage Plan, Zoning Location Survey, Planting Plan and Preliminary Landscape Plan, and the submitted floor plans, 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, including, but not limited to any modified floor plans regarding kitchen venting shall be submitted to the Planning and Zoning Department within 90 days of this action or this approval shall become null and void. A Special Permit form and Drainage Maintenance Plan shall be filed in the Darien Land Records within sixty days of this approval, or this permit shall become null and void.

Chairman Conze read the following agenda item:

Coastal Site Plan Review #237-A, Flood Damage Prevention Application #263-A, Foster Kaali-Nagy, 70 Five Mile River Road. Proposing to install an access walkway, dock, ramp and float, and perform related site activities within regulated areas. *DECISION DEADLINE: 8/5/2010.*

Mr. Ginsberg noted that the draft Resolution had come up for discussion at a previous meeting. Comments from the Commission had been incorporated into this revised draft. Mr. Voigt noted that he was concerned about similar types of development where narrow strips of land would be created adjacent to rivers and watercourses to allow access to the water for multiple non-waterfront lots. Mr. Voigt believed that a stipulation should be added to permanently limit the use of the facility being proposed to the residents of the existing house at 70 Five Mile River Road and to make sure that the rights to access were not given to any other properties or individuals. It was also noted that the Commission did not want this type of disjointed development to re-occur and that the property layout had been in this condition for many years. Staff was asked to revise the draft Resolution for consideration at a future meeting.

Mr. Conze read the following agenda item:

Special Permit Application #260, Land Filling & Regrading Application #221-A, Robert & Katherine Lavin, 480 Middlesex Road. Proposing to construct a new driveway, relocate a parking area, and install a tennis court, and to perform related site development activities. *PUBLIC HEARING CLOSED: 5/25/2010. DECISION DEADLINE: 7/29/2010.*

Mr. Spain noted a number of minor clarifications and typographical errors that need to be corrected. He also noted that the history of this property has involved several problems with respect to the

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previous regrading that has taken place. The proposed redevelopment will need very careful monitoring by the applicant and by Town staff. The following motion was made: That the Commission adopt the following Resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Hutchison, seconded by Mr. Voigt and unanimously approved. The Adopted Resolution read as follows:

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ADOPTED RESOLUTION
July 6, 2010**

Application Number: Special Permit Application #260
Land Filling & Regrading Application #221-A

Street Address: 480 Middlesex Road
Assessor's Map #6 Lot #158

Name and Address of Applicant & Property Owner Robert & Kitty Lavin
480 Middlesex Road
Darien, CT 06820

Name and Address of Applicant's Representative: Dean Martin
Grumman Engineering, LLC
22 Knight Street
Norwalk, CT 06851

Activity Being Applied For: Proposing to construct a new driveway, relocate a parking area, and install a tennis court, and to perform related site development activities.

Property Location: The subject property is located on the east side of Middlesex Road, approximately 350 feet south of its intersection with Saddle Ridge Road.

Zone: R-2 Zone

Date of Public Hearing: May 25, 2010

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

Publication of Hearing Notices

Dates: May 13 & 20, 2010

Newspaper: Darien News

Date of Action: July 6, 2010

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
July 16, 2010

Newspaper: Darien News

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

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.

- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant and 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 subject application is to construct a new driveway, relocate a parking area, and install a tennis court, and to perform related site development activities. The driveway into the site is currently very steep, and one aspect of the proposal is to substantially regrade the driveway to make it safer and more compliant with the Zoning Regulations. As part of this driveway reconfiguration, the property owner will need to replace the existing septic system. Other aspects of the application include: the installation of a tennis court; potential replacement of the existing house with a new single-family residence; and creation of a new parking area adjacent to the front of the new house. The work will be done in phases over a period of time. A future pool is shown on the submitted Site Improvement Plan. That pool is not part of this application, and may or may not need future review and action by the Planning and Zoning Commission.
2. Portions of the existing driveway have an 18% slope, and there is no flat area near the base of the driveway (adjacent to the Middlesex Road) as required by the Regulations to create a safe stopping area. A revised driveway has been designed to incorporate the flat area (no more than 2% slope for the first 30 feet adjacent to the street) and the rest of the driveway will not exceed a 10% slope. The opening of the driveway to the street will be relocated to the north because that portion of Middlesex Road is slightly higher than the existing driveway location. In order to create the new driveway, the property owner will need to cut or excavate into the ground a depth of six or seven feet to create the 2% (relatively flat) grade area. Retaining walls will be needed on both sides of the new driveway. The maximum height of the retaining walls would be eight feet. Trees and/or a safety fence are to be placed on top of the retaining wall.
3. Storm water infiltrators have been designed to accommodate the entire proposed development, including the new driveway, the new tennis court, new guest parking area, and new house. The septic system to be installed will be large enough to accommodate a six bedroom house. Mr. Lavin's engineer for this project, Mr. Martin, of Grumman Engineering, said that the proposed regrading will remove approximately 22 large trees and many smaller trees. At least 40 new trees

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will be planted around the tennis court to provide year round screening. These trees are shown on the submitted "Landscape Plan".

4. The applicant's engineer, Mr. Martin, explained during the public hearing that due to the proposed installation of storm water infiltrators, the runoff from the site will actually be reduced even though the amount of impervious surface is being increased. He said that there would be no storm water detention for the lower parts of the driveway, but that the storm water detention would be concentrated on the upper and middle portions of the site. Mr. Martin also noted that when the excavation work has started, the Health Department will require additional tests of the soil conditions to verify that the proposed septic field location data thus obtained is consistent with State Health Code requirements.
5. The Commission acknowledges that during the previous regrading of the site, the Public Works Department had experienced a number of problems with sediment and erosion impacting Middlesex Road. The DPW has recommended that a performance bond be retained by the Planning and Zoning Commission to make sure that such problems are less likely to occur in the future, and to assure that the Town would not have to pay for clean-up of any problems that do occur.
6. The Commission notes the need for the applicants to file a document outlining the protocol for maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. Although such a notice was filed with Mr. Lavin's previous approval (Land Filling & Regrading Application #221), this additional notice can reference the additional drainage improvements which are proposed and required as part of this application.
7. 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.
8. The proposal, as modified herein, conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Special Permit Application #260 and Land Filling and Regrading Application #221-A are hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Land filling and regrading work, driveway installation, tennis court construction, and installation of new parking area in front of a potential replacement house shall be in accordance with the following plans submitted to and reviewed by the Commission:
 - "Lavin Property Site Improvement Plan" by Grumman Engineering, LLC, scale 1 inch=20 feet, dated 3-15-10 and last revised 4-26-10, Sheet 1 of 3.
 - "Lavin Property Landscape Plan Driveway Profiles" by Grumman Engineering, LLC, scale 1 inch=30 feet, dated 4-26-10, Sheet 2 of 3.

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- “Lavin Property Details & Notes” by Grumman Engineering, LLC, dated 3-15-10 and last revised 4-26-10, Sheet 3 of 3.
- B. The submitted plans do not show any lights for the tennis court. At the public hearing, in response to a question, both Mr. Martin and Mr. Lavin confirmed that the tennis court will not have any lights. None are hereby requested or approved. Any future request for lighting the tennis court will require an additional Special Permit from the Planning & Zoning Commission.
- C. Prior to the start of any filling, regrading, or construction work on the property, the applicant shall perform a soil perc test and any additional tests required and/or recommended by the Health Department on the proposed septic area, and submit a copy of the results to the Darien Health Department and the Planning and Zoning Office. A valid Health Department approval for the replacement septic system shall be obtained prior to commencement of any on-site work for the new driveway, tennis court or site regrading.
- D. During the public hearing, the applicant’s engineer noted that the project sequence order for the installation would be the new driveway, then the tennis court and septic system replacement. Any change to that order needs to be reviewed and acted upon by the Planning and Zoning Commission. In order to minimize the amount of land under construction during this project, and to minimize construction impacts to neighbors, no Zoning Permit may be issued for a replacement residence until the driveway has been completed to at least subgrade, and the tennis court is fully complete, and disturbed soils near the driveway and tennis court have been revegetated and stabilized, and has received a Certificate of Zoning Compliance, and Condition G below has been fulfilled.
- E. It was also noted that during the previous regrading of the site, the Public Works Department had experienced a number of problems with sediment and erosion impacting Middlesex Road. The DPW has recommended that a performance bond be retained by the Planning and Zoning Commission to make sure that such problems are less likely to occur in the future, and to assure that the Town would not have to pay for clean-up of any problems that do occur. Due to the nature of the project (the steepness of the slope, the extent of land disturbance involved, and the multiple aspects of the project over multiple years) the Planning and Zoning Commission will require a \$15,000 Performance Bond secured by cash or an irrevocable letter of credit. The Bond shall be to assure that adequate anti-tracking areas, erosion controls and sediment control measures are installed and maintained on the site and that any problems that impact the street and/or any down slope property(ies) caused by the work are promptly corrected at the applicant’s expense. If the applicant fails to promptly correct any problems (such as mud in the street, sediment in the street or town drainage system or sediment that has reached any downhill property), then the monies in the Bond shall be used to reimburse the Town and/or property owners for the costs incurred to correct the problem(s). If any portion of the Bond money is needed for such purposes, then the site work shall not proceed until the Bond is replenished by the applicant. If the site work has progressed properly and without incident, up to half of this bond may be released by the Commission once the tennis court receives its Certificate of Zoning Completion, the driveway is fully constructed per the approved plans, the regrading work and tree planting and drainage work associated with the tennis court and driveway and soil stabilization is completed per the approved

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plans, and the required as-built map and drainage certification submitted to the Planning & Zoning Office. The remainder of the bond shall be held until completion of the replacement house and associated new parking area. If the applicant decides not to proceed with those aspects of the application, the bond shall be returned. This bond shall be in place for the duration of the work on the entire multi-phase project.

- F. During the regrading and site work, the applicant shall utilize the sediment and erosion controls illustrated on the plan in Condition A, above, and any additional measures as may be necessary due to site conditions, including tree protection. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and shall be maintained 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.
- G. The applicant shall install the drainage system as shown on the submitted plans listed in Condition A, above. The 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 property(ies) or the adjacent streets. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- H. Because of the multi-phase nature of this project, and the history and unique circumstances of the site, the Commission hereby requires that a professional engineer hired by Mr. Lavin closely monitor and inspect the site at least once a week and submit a detailed weekly report to the Planning and Zoning Department. This report shall include the status of the sediment and erosion controls, an update on the work completed, progress on disturbed area stabilization and a report on whether all work is proceeding in full compliance with this approval.
- I. All aspects of the drainage, regrading, and landscaping associated with the tennis court construction shall be completed prior to the issuance of a Certificate of Zoning Compliance and/or use of the tennis court.
- J. Upon completion of each phase of the work, the applicant shall provide written verification and photographs documenting the completion of the project and compliance with the approved plans. This shall include written certification for the project's professional engineer that the approved grading, landscaping, and the drainage facilities have been installed according to the approved plans. The applicant shall provide as-built map(s) and drawings to illustrate the final finished grade, and installed drainage system, the trees and landscaping that have been planted, and that the soil has been properly stabilized.
- K. Prior to the issuance of a Zoning Permit for the tennis court, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval, and revisions as may be required by the two

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Directors, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 480 Middlesex Road to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well, within the next 60 days of this approval and prior to the start of any filling or regrading work.

- L. 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.
- M. 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. This includes, but is not limited to approval from the Darien Health Department for septic system review and approval, and approval from the Darien Public Works Department for a street opening permit for the closing of the existing driveway and the new curb cut on Middlesex Road.
- N. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within two (2) years of this action (July 6, 2012). This may be extended as per Sections 858 and 1009. This two year approval is due to the multi-faceted nature of the application (tennis court, driveway, new septic system, and potentially a new replacement residence and associated parking area).

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 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 start of any filling or regrading work and prior to the issuance of a Zoning Permit for the tennis court, or this approval shall become null and void.

Mr. Conze read the following agenda item:

Special Permit Application #261, Robert LeBlanc, d/b/a Distinctive Dezigns 770 Boston Post Road.
Proposal to establish a custom furniture showroom within a portion of the existing building.
PUBLIC HEARING CLOSED ON 6/22/2010. DECISION DEADLINE: 8/26/2010.

Commission members reviewed the draft Resolution. Mr. Spain had minor corrections and modifications. The following motion was made: That the Commission adopt the following Resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Spain and seconded by Mr. Hutchison. All voted in favor of the motion except Mr. Conze and Mr. Voigt who had not been at the public hearing regarding this matter. The motion passed by a vote of 4 to 0 to 2. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 6, 2010**

Application Number: Special Permit Application #261
Robert LeBlanc, d/b/a Distinctive Dezigns 770 Boston Post Road

Street Address: 770 Boston Post Road
Assessor's Map #16 Lot #106

Name and Address of Applicant & Applicant's Representative: Robert LeBlanc
Classic Country Kitchens
470 Stormville Mt. Rd.
Holmes, NY 12531

Name and Address of Property Owner: Kevin Sherwood
770 Boston Post Road
Darien, CT 06820

Activity Being Applied For: Proposal to establish a custom furniture showroom within a portion of the existing building.

Property Location: The subject property is located on the south side of Boston Post Road, approximately 50 feet northeast of its intersection with Sedgwick Avenue.

Zone: DB-1

Date of Public Hearing: June 22, 2010

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

Publication of Hearing Notices
Dates: June 10 & 17, 2010 Newspaper: Darien News-Review

Date of Action: July 6, 2010 Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action: July 16, 2010 Newspaper: Darien News-Review

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

- the proposed use and activities must comply with all provisions of Sections 650, 900, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.

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- the size, nature, and intensity of the proposed use and activities are described in detail in the application 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 establish a custom furniture showroom within a portion of the existing building. The use at this site does not involve the manufacture or production of the furniture. This building was formerly occupied by Bohemia Chic, and is presently occupied in part by Allstate Insurance. Distinctive Dezigns proposes to occupy the remainder of the first floor of the building. The subject property is served by public water and sewer, and is located within the DB-1 Zone. Section 614a of the Darien Zoning Regulations allows Commercial Sales and Services uses per Special Permit in the DB-1 Zone. This use is considered Commercial Sales and Services.
2. The applicant noted at the hearing that he will be open 3-4 days a week to have clientele look at furniture pieces he makes. He is the only employee of the business. He explained that since Monday is the busiest day of the week for the Allstate insurance business in the building, he would not be open on Mondays. The submitted application materials note that the showroom would have limited hours, but primarily would be by appointment.
3. There are no exterior changes proposed for the property other than the installation of a sign for the business.
4. 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.
5. 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.
6. 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.
7. 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 Special Permit Application #261 is hereby granted subject to the foregoing and following conditions, modifications and understandings:

- B. The custom furniture showroom business shall be established as described within this Resolution, the submitted application materials, and within the meeting minutes of June 22, 2010. This includes the condition, as proposed by the applicant, that his business not be open on Mondays, so as to avoid any conflict with traffic and parking associated with the Allstate insurance business now also within the building. Any change in the days of operation or the nature of the business requires further review and action by the Commission.
- B. Because of the nature and location of the proposed use, and because of the existing site conditions of this previously developed property, the Commission hereby waives the requirement for a loading zone as authorized by Section 909 of the Darien Zoning Regulations. Any change in use may require a loading zone in the future. No unloading or deliveries to the business shall occur from any vehicles on the Boston Post Road.
- C. Section 888 of the Darien Zoning Regulations allows the Commission to waive the stormwater management requirements under certain circumstances. Because there are no exterior changes to the subject property, the Commission hereby waives the requirement for stormwater management as allowed by Section 888a(3)—due to the scope, nature, and/or amount of work proposed within the application. Since there is no new impervious surface created as part of this application, the Commission is waiving the stormwater requirement.
- 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 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. This includes, but is not limited to, final approval from the Darien Fire Marshal.
- 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 (July 6, 2011). This may be extended as per Section 1009.

All provisions and details of this approval 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 sixty days of this approval or this permit shall become null and void.

Mr. Conze read the following agenda item:

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Land Filling & Regrading Application #244, Rafael & Megan Solis, 62 Stanton Road. Proposing to remove a portion of the existing driveway, fill and regrade, and expand the existing parking area, and to perform related site activities. *PUBLIC HEARING CLOSED ON 6/22/2010.*

Commission members reviewed the draft Resolution. The following motion was made: That the Commission adopt the following Resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mrs. Cameron and seconded by Mrs. Riccardo. All voted in favor except Mr. Conze and Mr. Voigt who abstained because they had not been able to attend the public hearing regarding this matter. The motion passed by a vote of 4 – 0 – 2. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 6, 2010**

Application Number: Land Filling & Regrading Application #244

Street Address: 62 Stanton Road
Assessor's Map #46 Lot #63

Name and Address of
Property Owner: Rafael & Megan Solis
62 Stanton Road
Darien, CT 06820

Name and Address of Applicant &
Applicant's Representative: David W. Verespy
Rock Spring Design, LLC
15 Rock Spring Road
Trumbull, CT 06611

Activity Being Applied For: Proposing to remove a portion of the existing driveway, fill and regrade, and expand the existing parking area, and to perform related site activities.

Property Location: The subject property is located on the north side of Stanton Road approximately 1,050 feet north of its intersection with Gardiner Street.

Zone: R-1/2

Date of Public Hearing: June 22, 2010

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

Publication of Hearing Notices
Dates: June 10 & 17, 2010

Newspaper: Darien News-Review

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Date of Action: July 6, 2010

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
July 16, 2010

Newspaper: Darien News-Review

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

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted 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 subject application is to remove a portion of the existing driveway, fill and regrade, and expand the existing parking area, and to perform related site activities.
2. The work is a minor reconfiguration of an existing loop driveway. There is a net increase of about 275 square feet of impervious surface as part of this project. Because of this limited amount of change in impervious surface, the applicant requested a waiver of the stormwater management requirements of Section 880 of the Darien Zoning Regulations.
3. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
4. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #244 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Land filling and regrading work shall be in accordance with the following plans submitted to and reviewed by the Commission:
 - Solis Residence 62 Stanton Road, by Rock Spring Design Group, dated 5-14-2010, Sheet Number: SP-1.0.
 - Solis Residence 62 Stanton Road, by Rock Spring Design Group, dated 5-10-2010, Sheet Number: SP-2.0.

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- B. Because of the scope, nature and amount of work proposed within the application, the Commission hereby waives the requirement for stormwater management per Section 888a(3) of the Darien Zoning Regulations.
- C. During the site work, the property owner shall utilize the sediment and erosion controls illustrated on the submitted plan referred to in Condition A above, and any additional measures as may be necessary due to site conditions, including tree protection 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. 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 approval does not relieve the property owner of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- F. This permit shall be subject to the provisions of Sections 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 (July 6, 2011). This may be extended as per Sections 858 and 1009.

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 Special Permit form shall be filed in the Darien Land Records within 60 days of this action and prior to any filling or regrading work, or this approval shall become null and void.

Chairman Conze read the following agenda item:

Amendment of Coastal Site Plan Review #238 Land Filling & Regrading Application #210, Glazer Construction, 135 Five Mile River Road.

Request to modify area near pool, including stairs and enlargement of pool patio.

Mr. Ginsberg noted that the applicant had submitted a Memorandum dated June 15, 2010 regarding proposed modifications to the approved site plan. The modifications would result in a larger patio and two new/replacement stairways from the higher elevation pool patio down toward the waters of the Five Mile River. It was noted that, according to the Department of Environmental Protection (CT DEP), there was a violation on the site. Mr. Ginsberg said that he understands that Mr. Glazer is

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working with the DEP to resolve that matter. Mr. Spain noted that the plans seem to eliminate the proposed galleries and the shed. Tom Ryder of Land Tech Consulting noted that that was an error in the mapping. The only changes are those that are highlighted in red. Other than that, everything else is the same. Mrs. Cameron noted the propane tank and one of the sheds had been removed.

After further discussion, the following motion was made: That the Commission approve the requested modifications regarding the patio and stairways. The motion was made by Mr. Spain and seconded by Mrs. Cameron. Voting in favor of the motion were Mr. Conze, Mrs. Riccardo, Mrs. Cameron and Mr. Spain. Opposed were Mr. Voigt and Mr. Hutchison. The motion passed by vote of 4 to 2.

Mr. Conze then read the following agenda item:

Amendment of Special Permit #254/Site Plan, Espresso Neat, 20 Grove Street, CBD Zone.

Requested modifications to conditions B and C of the June 2, 2009 Adopted Resolution. The first proposed change is related to the maximum hours of operation. The second proposed change is related to additional menu items.

The Commission members reviewed the June 25, 2010 e-mail request to modify the previous approval regarding the slightly modified menu and the extended hours of operation on weekdays and on Sundays. Commission members noted that the proposal would now allow the coffee shop to be open for 15 hours on Sundays. It was also noted that being in a downtown location, it is much different than being in a Neighborhood Business (NB) zone. Mr. Voigt noted that on Sunday mornings the shop could open up at 7:00 a.m. which is very early given the fact that it is directly below second story residences. He asked if any of the upstairs residents had received notification of the requested change. Mr. Ginsberg said that the applicant has requested a minor change of the Special Permit and none of the neighbors were notified. If the Commission members felt that a public hearing is necessary, they could require a public hearing before taking an action on the application. He also noted that the applicant has already instituted the expanded hours and is requesting approval after the fact. No complaints have been received from any of the neighbors. Mr. Conze said that it is a fairly benign use of the site.

The following motion was made: that the Commission approve the requested modifications with respect to the changes in the menu to include ice cream and the extended hours of operation as specified in the June 25th request. The motion was made by Mrs. Cameron, seconded by Mr. Hutchison and unanimously approved.

Chairman Conze then read the following agenda item:

Land Filling & Regrading Application #145-B, Sykes, 5 Homewood Lane.

Request for extension of time.

Mr. Ginsberg explained that this is special permit regarding land filling and regrading and the applicant has requested an additional 12 months to complete the project. The following motion was made: that the Commission grant a one year extension for this special permit for land filling and regrading.

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The motion was made by Mr. Spain, seconded by Mr. Voigt and unanimously approved.

Mr. Conze then read the following agenda item:

Approval of Minutes

June 1, 2010 Public Hearing/General Meeting

Several typographical errors and minor clarifications were discussed and agreed upon by all members. The following motion was made: That the Commission adopt the revised Minutes. The motion was made by Mrs. Riccardo, seconded by Mrs. Cameron and unanimously approved.

June 15, 2010 General Meeting/Public Hearing

The following motion was made: That the Commission adopt the Minutes as presented. The motion was made by Mr. Voigt, seconded by Mr. Spain. All voted in favor except Mrs. Cameron and Mr. Conze who had not attended the meeting.

June 22, 2010 Public Hearing/General Meeting

The following motion was made: That the Commission adopt the Minutes as presented. The motion was made by Mrs. Cameron, seconded by Mrs. Riccardo. All voted in favor except Mr. Conze and Mr. Voigt who had not attended the meeting.

PUBLIC HEARING

Chairman Conze opened the public hearing portion of the meeting and read the following agenda item:

Coastal Site Plan Review #256, Flood Damage Prevention Application #287, Melissa B. Hubner, 9 Butler's Island Road. Proposing construction of a fixed pier and ramp and float on the westerly shore of the property and to perform related site activities within regulated areas. The subject property is located on the north side of Butler's Island Road at the northwest corner formed by its intersection with North Road, and is shown on Assessor's Map #67 as Lot #69, and is in the R-1 Zone.

Jeffrey McDougal of William W. Seymour & Associates, Land Surveyors, explained that the proposal is to construct a pier structure on the property. This structure will be replacing a dock that had been on the property until the 1970's. It has recently been approved by the Connecticut Department of Environmental Protection and the United States Army Corps of Engineers under the General Permit Provisions which allowed for simplified projects such as this. He noted that there are no tidal wetlands in the vicinity of the dock and that is why that specific location was selected. Mr. Hutchison said that he had reviewed the plans and found them to be very detailed and very clear. He appreciated the applicant's efforts to provide all of the appropriate information.

Mr. Ginsberg said that the application to the Commission had been referred to the Connecticut Department of Environmental Protection. He read aloud the June 9, 2010 response from DEP indicating that they have no comments on the application since a permit had already been issued by the DEP.

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Mr. Ginsberg said that he knew of no comments from the neighbors being submitted to the Commission. Mr. Conze asked if there were any comments from the public. There were none.

The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mrs. Riccardo and unanimously approved.

At about 8:25 p.m., Mr. Conze read the following agenda item:

Continuation of Public Hearing regarding Special Permit Application #66-L, Coastal Site Plan Review #234-A, Site Plan Application #259-A, Darien YMCA, 2420 Boston Post Road. Proposal to a) reconstruct westerly portion of existing building which houses Holly Pond School; b) construct a youth gymnastics addition to the building; and c) renovate and enlarge the existing parking lot with new sidewalk, associated landscaping, and drainage; and perform related site development activities within a regulated area. The subject property is located on the south side of Boston Post Road, approximately 350 feet east of its intersection with Weed's Landing, and is shown on Assessor's Map #53 as Lot #60 in the R-1/2 Zone. *PUBLIC HEARING OPENED ON JUNE 1, 2010. DEADLINE TO CLOSE PUBLIC HEARING IS JULY 6, 2010, UNLESS EXTENSION IS GRANTED BY APPLICANT.*

Mr. Conze noted that this is a continuation of the hearing that had been opened on June 1, 2010. Mr. Conze said that he had not been able to attend the first part of the hearing, but had watched the video recording of the meeting.

Barbara Coughlin explained that she is an attorney representing several of the adjacent property owners and asked that those owners be given an opportunity to speak and then she would summarize on behalf of her clients.

Mrs. Kirchhoff of 5 Seagate Road explained that she lives next to the property at 2390 Boston Post Road, the former Atkinson property that has recently been acquired by the YMCA. She said that the YMCA has not honored its past commitments to the neighbors or to the Town and that the approval to expand the facility should not be approved. She said that at the previous hearing, the representative of the Board of Education indicated that the Office of Civil Rights (OCR) was investigating the YMCA's gymnastics facility at Goodwives Shopping Center. She said that all of those charges have been dismissed and the gymnastics facility has been found to be in compliance. She also noted that people who are not members of the YMCA can register for virtually all of the programs conducted at or by the YMCA. Based on this, even though the membership numbers in the YMCA may have dropped since the previous application, the actual uses of the facility could have increased. She said that the YMCA does not need new members to actually increase the amount of activities or the intensity to which those activities are utilized. Mrs. Kirchhoff also said that the Board of Selectmen do not have a plan or a project for a swimming pool and that the Town's plans about that are only hypothetical and are not yet being implemented.

Mrs. Kirchhoff said that the YMCA has proposed several agreements with the neighbors, if the neighbors will not oppose the application. These promises include designating the use of 2390 Boston Post Road as a single family home for as long as the YMCA owns the facility and a promise that the YMCA would not expand the building beyond 63,000 square feet for the next 25 years and the

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relocation of the trash dumpster to be farther away from some of the neighbors and closer to the property at 2390 Boston Post Road, and the institution of traffic control personnel when necessary. She said that apparently no agreement has been reached with the neighbors and therefore, the use of 2390 Boston Post Road is still unspecified. She fears that if the proposal is not supported by the neighbors, and not approved by the Planning & Zoning Commission, then the YMCA will not restrict the use of 2390 Boston Post Road and that land could be added to the YMCA's special permit site and used for YMCA special permit uses and activities. She said that this is the third proposed expansion of the YMCA facilities since she has moved to the neighborhood in 2003. She also noted the traffic guard proposal and no parking being allowed within the residential neighboring areas is already a condition of approvals since 1978. She said that the YMCA has no internal check or balance on its growth. They pay no taxes and must spend money that they receive in order to remain a non-profit operation. Mrs. Kirchhoff said that in 1995 the YMCA was granted approval by the Planning & Zoning Commission for the gymnastics facility at the site subject to a number of conditions and restrictions. Instead, the YMCA, chose to move the gymnastics facility off-site to the Goodwives Shopping Center location. Now, they should have to abide by that decision and continue to have the gymnastics facility off site because the relocation of the gymnastics facility to the site would be more than the facility could accommodate.

Samantha Wright, speaking on behalf of her parents who own 8 Seagate Road, read aloud a letter dated May 30, 2010 from William & Sarah Wright. That letter emphasizes that the YMCA is a special permit use in the residential zone and that the intensity of use has been maximized and any further intensity of use, such as having the gymnastics facility at the site, would be detrimental to the residential neighborhood. Sarah Wright expressed concern about the expansion of the parking lot so close to the residential neighbors and that the noise and activity in the parking lot is a noticeable impact upon the neighbors. She also noted the relocation of the electrical transformer on the side of the YMCA building so that it would not be noticeable from the YMCA's perspective, but it would be very near to the residential neighbors. She also noted that no trees should be planted down along the water's edge because it would block the view currently enjoyed by the neighbors.

Kate O'Brien of 2 Seagate Road explained that she has been a 7 year member of the YMCA and that the YMCA parking lot is frequently full in the morning for various activities and sessions. She noted that there are photographs taken in March, April and May of cars having to be parked illegally, along the curbs and on the grass and in other unauthorized locations because the YMCA does not have enough parking to accommodate its current uses and activities. She opposed the expansion of the facility to accommodate the gymnastics program.

John Shaker of 9 Seagate Road explained that he has been a resident since 1989 and his property is adjacent to the YMCA and Holly Pond. Before purchasing the property, he had checked and there were no previous proposals to expand the YMCA in the 10 years before he purchased his property. This all changed in 1994 through 1997 when numerous applications were submitted. The result was the relocation of the gymnastics facility at the offsite location (to Goodwives Shopping Center) and the approval of The Wellness Center within the YMCA. He said since then the YMCA has continued to apply to the Commission to amend their permit and expand their activities. If the Commission has not approved the applications, the YMCA has appealed the denial. He said that the YMCA is not acting in

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partnership with the Town when it appeals any decision that goes against their proposals. He also noted that the YMCA does not pay taxes to the Town.

Mr. Shaker said that in 1997 there was litigation where the YMCA had appealed the Commission's decision. The result of that litigation was that the YMCA moved the gymnastics permanently offsite. They now propose to not live up to that commitment and to relocate the gymnastics facility to the YMCA which is located in the midst of a residential neighborhood. He also expressed concern that the YMCA did not give adequate notice to the neighbors regarding the potential acquisition of 2390 Boston Post Road, when the YMCA knew it would be of great concern to the neighbors. He asked how the neighbors and Commission could believe the YMCA's promises about any future uses if they have not abided by their past promises, such as taking and keeping the gymnastics program off site.

Mr. Shaker said that in 1995 and 2005, the Commission's approvals required that traffic control officers were needed for special events, but the YMCA has not done so. He also said that the YMCA has been required to adjust their programming and scheduling to avoid parking congestion and the need for off site parking, yet the photographs have documented that the YMCA scheduling and programming creates parking congestion and people parking in illegal locations on the site. Mr. Shaker said that the YMCA has reneged on its promise that employees would park off site at the Christian Science Church because the Director has indicated that he could not, in good conscience, have his employees taking the risk of crossing the Boston Post Road. Now, the YMCA proposes to expand the parking lot from 146 to 196 on site parking spaces and this is in the midst of a residential neighborhood. Mr. Shaker said that it is not the YMCA's duty to take on all the responsibilities of the Board of Education with respect to providing gymnastics facilities and/or swimming facilities that the Town has not constructed. If the YMCA wants to have more activities, they need to do it at an off site location, rather than concentrating all of those activities in the neighborhood that surrounds the existing YMCA.

Mr. Shaker said that his yard has been flooded on two occasions when the YMCA was doing construction in 1998. He would hope that if any modifications are to take place at the YMCA site as a result of the pending application, that provision be made to install drainage facilities early in the process, rather than causing more damage to his property. He also noted that catch basins within the site are cleaned once per year, but per past approvals, they are supposed to be cleaned at least three times per year.

Mr. Shaker suggested that the drainage berm proposed along the easterly boundary line of the YMCA property line should be built first so that during any construction work, the flooding that he has experienced in the past would not reoccur. He said that the past approval of the Commission had allowed the lap pool, expansion of the parking lot and reconstruction of the nursery school. Now the YMCA proposes to delete the lap pool and instead to build the gymnastics facility that had been denied in the past. He said that the lap pool would likely accommodate 6 people at a time and deleting it does not equate to the intensity of use that would be created by the gymnastics facility and gymnastics program. He said that the gymnastics program has been off site for years because of the YMCA's previous choice. It should not be allowed to be created in this residential zone. He submitted a copy of his comments and a copy of his 2008 letter and photographs.

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Althea Perley of 3 Seagate Road said that the YMCA has purchased the property immediately adjacent to her and she is fearful that in the future, the YMCA would be able to use that site for parking or facilities or some other YMCA activity. She said that she has been active in the YMCA for 13 years and notes that the facility is already overused and that there is insufficient on-site parking and drop off area. She said that several years ago the lap pool had been approved, but it was never built. If it had been built, it would be well used. She said that the YMCA is a Special Permit use within the residential zone and that the previously proposed 10,000 square foot gymnastics facility had been denied. The Commission concluded at that time that the gymnastics facility should be located elsewhere and not in this residential neighborhood.

Mrs. Nichol of Seagate Road said that she has been active in YMCAs in the area for many years. She said that the proposed gymnastics facility is large enough that it could accommodate regional gym meets. She said that this YMCA is located in a residential neighborhood and the proposed 10,000 square foot facility would be approximately 1/5 the size of the newly constructed Whole Foods Market. When the YMCA was denied having the gymnastics facility on site several years ago, they should have gone out and acquired other sizeable parcels. Since that denial, the Avalon project, Whole Foods Market and the new Library have all been built within Town. It's not that there has been a lack of sizeable sites for the YMCA to acquire to accommodate the gymnastics facility, it has been the YMCA's desire to move the gymnastics facility to this site within the residential zone. Mrs. Nichol said that 20 or so parking spaces on site are typically occupied by employees. It is only 530 steps from the Christian Science Church to the YMCA site, and the Y should have the employees park off site. The proposal to relocate the gymnastics facility to the main site of the YMCA is a YMCA want, not a community need. She noted that, despite the fact that the nursery school reconstruction project was approved several years ago, the YMCA has taken no action to implement that approval. She said that the lack of space for programs and other facilities should be addressed by building at other locations, not further encroaching upon the surrounding residential neighborhood. She said that YMCA's scheduling is supposed to avoid parking problems, but instead, as documented by the photographs, the scheduling does create on site parking problems. She said that the gymnastics program could accommodate up to 900 people in various programs. Many of these gymnasts would practice three to five times per week. This amount of usage is too much for this site in a residential zone.

Morgan Whitehead spoke as captain of the High School Gymnastics Team. She said that the existing gymnastics facility at the Goodwives Shopping Center is utilized for practices and other activities approximately 8 hours per day. At times, the Y must share the facilities with two other teams. All of them must dodge a support structure that is near some of the apparatus. She said that up to 25 participants are on the travel team. Miss Whitehead said that the new gymnastics facility would have two sets of everything, including two exercise floors so that they would avoid conflicts and clashes of the various teams using the facilities. She also noted that special needs classes can be conducted on Saturdays. On Sundays, they could have private parties for 15 to 25 kids.

Peter Gogolak of 24 Arrowhead Way spoke in support of the YMCA proposal. He said that the YMCA is a true community organization and it is financially sound thanks to the wonderful management team. He said that the YMCA provides swim space for special needs persons.

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Jim Schell said that he has been affiliated with the YMCA for 20 years and has been on the Board of Directors since 1991. He said that the Wellness and Fitness Center has been built and they now need to rebuild the nursery school facility. In order to do that, they will build the shell of the gymnastics facility and house the nursery school in that space for one year. After the nursery school facility has been rebuilt, the gymnastics facility would be available for use by the gymnastics programs.

Mark Mirabile of 8 Hillside Avenue said he runs the YMCA Indian Guides and Princesses Program for childrens' grades 1 through 4. He said this program touches approximately 450 people per year and is one of the many examples of YMCA programs for the community. He said that the YMCA is currently crowded and needs to expand the facilities. He supports the proposed application.

Nicole Capitan said she is employed by Darien Gymnastics and said that she is disheartened as to how they are portrayed. She said that the gymnastics program needs a new facility and that she supports the YMCA proposal.

Martha Rhein said that she is a 28 year resident and YMCA member. She said that bringing the gymnastics facility to the main YMCA site will help create a greater interaction with other generations that also use the YMCA. She said that Goodwives Shopping Center facility is not conducive to an overall good gymnastics program nor does it create the intergenerational relations. She said that the new facility would be a valuable asset to Darien.

Sheila Buckley Shaker of 9 Seagate Road explained that her property is immediately adjoining the YMCA site. She said that as part of the 1966 Permit, an area adjacent to the neighbors in the east was designated as an inactive zone for emergency access only. Now the YMCA wants to place the dumpster and transformer into this area. This would be unfair to the neighbors because it would create more undesirable activity in close proximity to the neighbors. She said that the new playground proposal is contrary to the 1995 and 1996 approvals granted by the Planning & Zoning Commission.

Attorney Barbara Coughlin said that many of her clients are neighbors who are members of the YMCA and noted that many of the supporters do not live next door to or in close vicinity to the YMCA. They can support the application because they would not be impacted by the increased activities. She said that the Special Permit provisions of the Regulations include a requirement that in order for the Commission to approve the project, they must find that the parking and/or traffic will not have negative impacts on the residential character of the neighborhood. She said that it would impact the neighbors. She said that a key issue is whether the YMCA proposal would offend the as-of-right residential uses around it. Section 1005 of the Regulations requires that in order to approve the project, the Commission must find that the project is in harmony with the surrounding properties and shall not hinder or impair the value of the surroundings sites. She contends that it will not be in harmony and that it will hinder or impair the value of the surrounding sites. She said that the only real change between the previous application that was denied and the current proposal is the deletion of the lap pool. She said there is no real change in the parking circumstances. She referred to Findings 24 and 25 of the previous action of the Commission which denied the gymnastics facility and noted that the Shaker property has had a lower assessed value due to its proximity to the YMCA. She said that the proposed 63,381 square foot building would be more than two times what was originally approved by the Planning & Zoning Commission and that the 85,000 square foot parking lot would be much too

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large for this residential neighborhood and should be denied. She said that the alleged changes in circumstances are very minimal and that deleting the pool does not equate to the intensity of use of the gymnastics program. She said that the use of traffic control officers and parking of employees at the off site church facility are already requirements of the previous special permits and that the change to an all day kindergarten should not mean that the Planning & Zoning Commission should change its rule, nor change the fact that it needs to protect the residential neighbors. She said that the decline in membership is not important because in 2008 the Commission noted that more people would be on the site even though the membership was not changed, but demands for parking and traffic would be greater and noise would be increased. She also noted that the weekend parties were not accounted for by the traffic consultant. She said that relocating the traffic dumpster to be farther away from the YMCA building and closer to the neighbors and freeing up a few parking spaces by having the employee who resides at 2390 Boston Post Road not park in the parking lot are not significant changes that would necessitate changing the Commission's previous decision to deny the gymnastics facility at the site. She said that individually or taken as a whole, the alleged changes are not significant to offset the impacts to the neighbors. She said that the YMCA has also not demonstrated that it is not feasible to relocate the gymnastics facility to another site. She said that the application is not in compliance with the provisions of Section 1005 and therefore should be denied.

Director of Planning Jeremy Ginsberg referred to the May 28, 2008 comments from the Connecticut Department of Environmental Protection. He read them aloud, noting that they found no inconsistencies between the project and the Connecticut Coastal Area Management policies.

Attorney Robert Maslan represented the YMCA and said that they had previously concluded their presentation at the previous meeting, but they would attempt to address questions and points raised by other people. He said that the Fire Marshal has informed him that the maximum Fire Code Occupancy has never been calculated because of the Planning & Zoning Commission's limitation of 350 people. If it was calculated, it would likely be greater than the P&Z limitation. Mr. Maslan distributed a hand-out indicating that there were two or three traffic accidents at this site in the past few years.

Pat Morrissey said that the typical attendance at a gymnastics meet is a total of about 50 to 60 people. This would include approximately 24 competitors, 4 to 6 coaches and approximately 25 spectators. He said that it is critical that the YMCA have this new facility because he believes that the OCR investigation is ongoing and there may still be violations of those requirements.

David Genovese said that he has recently been informed that the charges by the OCR have not been dismissed (contrary to the claim of one of the neighbors). Attorney Maslan explained, when asked, if there were other Title IX problems that may need to be resolved, and if it is possible that this may push other activities to the YMCA site, the answer is no.

Mr. Maslan said that the YMCA was directed in 2008 to better communicate with the Board of Education regarding common needs. He said that this has been done.

The accuracy of the parking studies was discussed and hand-outs were distributed. He said that the neighbors seem to feel that the YMCA had somehow manipulated the counts or numbers because the YMCA employees had done the counts under the guidance of a professional Traffic Consultant. He

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said that the counting was done in accordance with the guidance given to the YMCA employees by their professional Traffic Consultant, Mr. Galante. Mr. Maslan said that Mr. Galante has worked for the Town and, as far as he knows, there is no problem with his expertise or background. He said that the YMCA is not a typical or generic use that is easy to compare based on textbook information--that is why the specific counts have been conducted. He also noted that the illegal or improperly parked cars have been included in the counts. He said that the 8 handicap parking spaces have been re-stripped to be wide enough to accommodate vans and so they have been converted to 7 handicap van parking spaces. He also noted that there are times when there are legal parking spaces available and yet some people have parked improperly. Most of the illegally parked cars were counted at some time when the counts were conducted every half hour, but some illegally parked cars were just there for a few minutes as someone was being dropped off.

Mr. Maslan said that one of the issues raised was that they somehow designed the parking so that people would not be able to park within the drainage swale areas. He said this could be accomplished with the installation of wheel stops or some other measure. Mr. Maslan said that an issue was raised regarding how to more accurately count the people on site by having people swipe in and also swipe out. They would swipe their identification as they enter the building and also as they leave the building. He said that the system was not designed for this, and that the swipes and parking are two different things and do not always coincide. He said that at all times, however, the YMCA has abided by the maximum of 350 occupants on the site.

With respect to the membership cap at 7,500 persons, it was noted that the membership has declined or is flat and that each individual in the family is counted as a member toward that maximum 7,500. Mr. Morrissey explained that the membership does take into account each person not each family. He said that most activities are about 90% members of the YMCA and 10% non-members. In 1996 the number of members was about 7,000 people. At present the number of membership is approximately 5,600 people. Mr. Morrissey said that meetings of community organizations have a maximum of 50 people. Meetings of YMCA groups may have more than that, but always within the allowable limitations. He said that the swim meets are frequently conducted on Thursdays or Fridays after school, and that the swim meets can accommodate more spectators than the gymnastics facility because of the way the facilities have been constructed. He said that most high school gymnastic meets are conducted on the weekends. Mr. Maslan said that most of the teams coming to the YMCA arrive by bus, and the YMCA has built into the schedule the use of the other facilities while the meets take place.

The schedule that the YMCA has developed would be to construct the new gymnastics shell and temporarily use it as the nursery school while the existing nursery school facility is demolished and reconstructed. After the nursery school operations move into the reconstructed nursery school building, then the gymnastics shell would be converted to accommodate gymnastic programs. Mr. Maslan said that the YMCA has purchased the property at 2390 Boston Post Road. It is currently being used as a single family house for an employee. The YMCA has not decided what the eventual use of that site would be, but if it is part of the Special Permit activities it would be subject to the Planning and Zoning Commission review and action. He said that in 2004 an extension of the parking lot was undertaken to eliminate parking that was occurring on the Boston Post Road. He said that this has been implemented very well. In 2008 a further expansion of the parking lot facility was proposed

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to accommodate the parking demand for all the uses including the gymnastics program. That expanded parking lot is part of the current application along with the gymnastics facility and the nursery school construction.

Mr. Maslan said that the finances of the YMCA are not the issue, and that there is no substantiation for the alleged promises that there would be no further applications by the YMCA.

Mr. Maslan said that the average stay at the YMCA is an hour, not two hours as alleged by some of the opponents. He also said that the traffic study and traffic calculations have been based on real data. Other points that Mr. Maslan made included: the fact that eliminating the building setback non-conformity is an improvement of the site conditions and lessening the impact to the neighbors; a gymnastics facility would be centered on the site so that it will be as far away from the neighbors as possible and will have no visual impact on the new neighbors to the east; that the supposed noise in the parking lot would be no different than what occurs at the present time; and relocating the trash dumpster to the site recently acquired by the YMCA would move it farther away from other neighbors. He said that the transformer can be located anywhere on the property, and that if the Commission wants to stipulate that it be relocated, the YMCA will accommodate it. He said that they felt that the YMCA has met its burden to obtain a Special Permit and asked that the Commission approve the project. The hearing on this application then was closed; and there being no other business, the meeting was then adjourned by the Planning and Zoning Commission at 11:07 P.M.

Respectfully submitted,

David Keating

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