

**PLANNING AND ZONING COMMISSION  
MINUTES  
GENERAL MEETING  
January 5, 2010**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:  
Conze, Spain, Hutchison, Riccardo, Voigt

STAFF ATTENDING: Ginsberg, Keating  
RECORDER: Syat  
FILMED: Channel 79

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**GENERAL MEETING**

Chairman Conze read the following agenda item:

*Discussion, deliberation and possible decisions on the following four items:*

**Proposed Amendment to Zoning Regulations #5-2009, Affordable Housing Application under CGS 8-30g, Special Permit Application #256, Garden Homes, 397 Post Road apartments, 397 Boston Post Road.** Proposing to modify the zoning regulations to allow conversion of certain buildings within the DB-2 zone as a Special Permit use; and application for a Special Permit to convert an existing office building at 397 Boston Post Road to 35 multi-family rental units; and perform related site development activities. *DECISION DEADLINE: JANUARY 28, 2010.*

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

Director of Planning & Zoning, Jeremy Ginsberg, summarized the draft Resolution. The affordable housing project under Section 8-30g of the Connecticut General Statutes would be approved. The proposed Amendment of the Darien Zoning Regulations to allow for conversion of office buildings to housing units would be denied. The proposed Special Permit for the project would be denied, but the project would be approved in accordance with the State Statutes. He noted that important findings for the Commission include the fact that the existing office building and parking lot had been constructed many years ago and have been used until very recently. This is more an adaptive re-use of the existing facilities rather than a new development. The experience of the applicant includes ownership and management of similar apartment complexes and facilities in adjacent communities and elsewhere.

Mr. Spain read aloud portions of the draft Resolution stipulations regarding parking. There was much discussion about potential parking problems due to the large number of units and the relatively small number of parking spaces available on-site. After further discussion, the following motion was made: That the Planning & Zoning Commission adopt the draft Resolution with respect to the approval of the project under Section 8-30g of the Connecticut General Statutes. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved.

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The following motion was then made: That the Commission adopt the portion of the Resolution regarding the denial of the change of the Zoning Regulations. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

The following motion was made: That the Commission adopt the portion of the Resolution regarding denial of the Special Permit application. That motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved. The entire Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
January 5, 2010**

Application Number: Proposed Amendment to Zoning Regulations #5-2009  
Affordable Housing Application under CGS 8-30g  
Special Permit Application #256

Street Address: 397 Boston Post Road  
Assessor's Map #14 as Lot #47

Name and Address of Applicant: Richard Freedman  
Garden Homes Management Corp.  
29 Knapp Street  
Stamford, CT 06907

Name and Address of Property Owner: Garden Homes Darien LP  
29 Knapp Street  
Stamford, CT 06907

Name and Address of  
Applicant's Representative Tim Hollister, Esq.  
At the Public Hearings: Shipman & Goodwin, LLP  
One Constitution Plaza  
Hartford, CT 06103-1919

Activity Being Applied For: To convert an existing office building to 35 multi-family units pursuant to CGS 8-30g; proposing to modify the zoning regulations to allow conversion of certain buildings within the DB-2 zone as a Special Permit use; and an application for a Special Permit to convert an existing office building at 397 Boston Post Road to 35 multi-family rental units; and perform related site development activities.

Property Location: The subject property is located on the northeast side of Boston Post Road approximately 475 feet southwest of its intersection with Birch Road.

Zone: DB-2

Date of Public Hearing: September 22, 2009 continued to October 13, 2009, October 27, 2009 and November 24, 2009  
Deliberations Held: December 1, 2009

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Time and Place of Public Hearings:

8:00 P.M. Auditorium (9/22) Room 206 (10/13, 10/27, 11/24) Town Hall

Publication of Hearing Notices

Dates: September 10 & 17, 2009

Newspaper: Darien News-Review

Date of Actions: January 5, 2010

Actions:

**Affordable Housing Application under CGS 8-30g**---application to convert an existing office building at 397 Boston Post Road to 35 multi-family rental units; and perform related site development activities. **GRANTED WITH STIPULATIONS AND MODIFICATIONS.**

**Proposed Amendment to the DB-2 Zoning Regulations #5-2009**--- to modify the DB-2 zoning regulations to allow conversion of certain buildings within the DB-2 zone as a Special Permit use. **DENIED.**

**Special Permit Application #256**---application for a Special Permit to convert an existing office building at 397 Boston Post Road to 35 multi-family rental units; and perform related site development activities. **DENIED.**

Scheduled Date of Publication of Action:  
January 14, 2010

Newspaper: Darien News-Review

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

- the proposed amendments of the Regulations and the request for the Special Permit and the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted redevelopment plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

I. **FACTUAL FINDINGS WITH REGARD TO Affordable Housing Application under CGS 8-30g, Proposed amendment to the Zoning Regulations and Special Permit Application #256, THE PLANNING AND ZONING COMMISSION MAKES THE FOLLOWING FINDINGS:**

1. **THE SITE:** The site is located at 397 Boston Post Road, and was originally developed into a 17,000+/- square foot office building in 1978. The entire property is within the DB-2 Zone.

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2. **THE PROPOSED PROJECT:** The applicant proposes to convert the existing office building into 35 rental apartments. The existing 17,000+/- square foot office building will be converted into an 18,500+/- square foot apartment building, entirely via changes to the interior of the building. Most of the increase in square footage is from 1,500 square feet of space which is now slightly below grade and used for storage to be converted for dwelling units. Overall, the subject property is 1.058 acres (46,080-46,101 square feet).
3. Of those 35 apartments, the applicant proposes 16 studio apartments; 18 one-bedroom apartments; and one two-bedroom apartment. Because of the size and nature of the units—the units will average 426 square feet for studio apartments; 458 square feet for one-bedrooms; and the two bedroom unit will have 637 square feet-- the property owner did not expect many children to reside on the premises. The average size of all the apartment units is 448 square feet.
4. This is an affordable rental housing project as defined by the State Statutes. Thirty percent of the units (11 units) will be deed restricted for 40 years, as required by CGS 8-30g. A draft Affordability Compliance Plan was submitted by the applicant and revised in a letter with associated Compliance Plan dated September 16, 2009.
5. The existing building is connected to public water and sewer. The availability of such for this proposed new use has been noted by the Aquarion Water Company and the Darien Sewer Authority. The existing sanitary sewer service will require an upgrade to a 6" sanitary line. (This information is included in Tab 5 in the original August 12, 2009 submittal).
6. The applicant did not go before the Architectural Review Board (ARB). In an October 6, 2009 letter on behalf of applicant it is noted that modifications will be made to the exterior of the existing building. Exterior elevations were submitted for the record, and the Planning and Zoning Commission has reviewed those elevations.

## II. ANALYSIS OF 8-30g APPLICATION

1. Since the office building and associated driveway and parking area currently exist, this is an "adaptive reuse or redevelopment" proposal rather than a new development proposal. Five important factors are essential to the Commission's findings and understandings within this Resolution. First and foremost is that the existing building, associated parking area, lighting, driveway curb cuts, and landscaping now exist on the subject property, and have existed there and been in use for over 30 years. Second, the existing building is not being increased in size. Third, during the public hearing process, the Commission was able to see first-hand the site conditions including the traffic flow and parking on and around the subject property. The applicant's traffic consultant as well as the Town's traffic consultant were both able to see first-hand the precise location of the existing driveway, parking spaces, access drives and parking aisle widths to determine their effect on safety. Fourth, the multi-family use is being proposed in the DB-2 Zone, which for more than twenty years has permitted multi-family uses in accordance with the existing DBR regulations. Fifth, the application is in close proximity to Villager Pond and Darien Close, two other multi-family projects.

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2. **EXISTING ZONING:** While the proposed 35 units are more than the allowed density under the DBR regulation, the amount of square feet of development is similar. The existing DBR regulations for the DB-2 Zone allow 11 units per acre so long as two are moderate income units (Sec. 506.2 of the Darien Zoning Regulations). These units have an average floor area of 1,200 square feet for a total of 13,200 square feet per acre. In comparison, the proposed 35 apartments will have an average size of 448 square feet, which would allow a total of approximately 15,697 square feet and provide 11 affordable units rather than only 2 affordable units. (The 15,697 square feet is the sum of all of the floor areas of the specific units. This excludes common areas such as laundry room and exercise room, hallways, and storage areas). The proposed density is very high, such that it could impact the residents of the apartment building and the surrounding neighbors if not modified and operated in compliance with this resolution. In the context of an 8-30g application, the proposed density for this particular site will not adversely impact adjoining commercial and residential properties to a level that outweighs the need for affordable housing. Moreover, the site is entirely within a DB-2 zone that permits multi-family housing, is in a commercial area on Route 1, is on a public bus route and across the street from a commercial shopping center, which includes a grocery store—Trader Joe’s. There is very little recreational space on the site and no public space in close proximity.
3. The interior of the existing building will be renovated to accommodate the residential use and the exterior of the existing building will be renovated to become more attractive, more energy efficient, and more suitable and functional for the change to residential use. Façade changes to the existing building are proposed. The amount of construction to the exterior of the building is limited to the construction of new patios in the rear. Other work proposed for the property includes: some tree trimming along the eastern side of the building; and installation of new landscaping; new lighting; connection to utilities; repaving the parking lot; a new transformer to replace the existing transformer; the relocation of the dumpster area; new fences; and possibly drainage installation. The amount of exterior building construction is quite limited. This is of major significance in the consideration of this application. A new building proposed on a vacant lot, or even a new building proposed to replace an existing building would have required significant analysis by the Commission on issues such as impact on adjacent properties, and other possible impacts on public safety, construction access, phasing, environmental impacts, sediment and erosion control, stockpile areas, and other construction methodology. In this case, the four walls and roof of the existing building are to remain, with most building construction occurring within the interior of the building (except for the aforementioned new patios in the rear).
4. Another factor which is essential in the Commission’s deliberations, findings and understandings, is that the property owner, Garden Homes Management, owns and manages similar residential rental facilities in nearby Stamford. Two projects were specifically referred to in the submitted June 29, 2009 letter from Traffic Engineering Solutions (Tab 8 in original August 12, 2009 submittal). These are at 397 Courtland Avenue in Stamford, and at 85 Cove Road in Stamford. The applicant also referred to 111 Prospect Street in Stamford as another project owned and managed by Garden Homes Management and one at 25 Third Street in Stamford under construction by the same corporation. These similar projects involving relatively small, moderately priced rental apartments, gave the

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Commission an understanding and a comfort level regarding the proper management exercised by the applicant and accuracy of the submitted parking data, and are based upon similar projects by a similar owner in an adjacent community. This track record provided the Commission with an understanding of how this rental property may be managed in the future, with a particular emphasis on the effective management of the limited parking areas.

III. TRAFFIC AND SIGHT LINES

1. Traffic and Parking Consultant Mr. Bruce Hillson of Traffic Engineering Solutions submitted a June 29, 2009 five-page letter (Tab 8 of the applicant's August 12, 2009 submittal). The Commission hired Michael Galante of F.P. Clarke to review the submitted information from Mr. Hillson. Mr. Galante submitted a seven page response dated September 15, 2009. Mr. Hillson responded with a September 21, 2009 four-page letter (Tab 2 of the applicant's September 22, 2009 submittal). In that September 21, 2009 letter, Mr. Hillson notes that sight lines can be improved by the trimming or removal of vegetation and removal of the existing "Executive House" sign which now stands between the two site driveways, and by resetting the "one way" signs outside the sight line triangle.
2. On 11-23-2009, Mr. Galante submitted an e-mail which read as follows:  
*"I have reviewed the site plan and do not have any new comments to offer the Town. The plan shows the parking layout and aisles and parking space sizes have been identified. It notes the existing sign located between the two access drives will be replaced to improve sight distance, proposed directional signing at the exit drive and vegetation will be trimmed to improve sight distance. It includes the handicap spaces."*
3. Lieutenant Don Anderson of the Darien Police Department noted in an October 5, 2009 email that he had reviewed the Boston Post Road collision data in the area of the proposed project, which confirmed the accuracy of that data submitted by the applicant.

IV. PARKING:

1. NUMBER OF PARKING SPACES: The applicant has proposed 53 parking spaces for the 35 apartment units. As shown on the Site Plan last revised 11-23-09, of these 53 parking spaces, 3 are set aside for handicap parking (one of which is "van accessible"), and are located directly in front of the building. On one of the regular parking spaces, the easternmost parking space on the property, the parking aisle behind it will be impacted by the applicant's proposed dumpster relocation. Given the modifications contained in this Resolution, this parking space will function sufficiently to be acceptable and will actually have more backing space than under current conditions.
2. The Commission acknowledges that in this specific circumstance, the project consists mainly of studio apartments, which will average 425 square feet in size, and one-bedroom apartments which will average 460 square feet in size (Tab 3 of applicant's August 12, 2009 submittal). The applicant also described his first-hand knowledge of other similar projects in Stamford, for which he was able to provide reliable comparative data. This information presented by the applicant was essential in understanding the parking demand for this project. The Commission notes that if the apartments were larger in size and/or if there were

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more two or three bedroom apartments, the required parking would need to be increased. Larger units generally have more occupants who own one or more than one vehicle. The fact that the applicant was able to provide recent, accurate information on other projects which he owns and operates of similar nature in an adjacent community is extremely important to the Commission's findings herein on this important issue.

3. During the public hearing process, adjacent neighbors to the subject property voiced their concerns regarding the proposal. There is no public parking near the site and no parking is allowed on any nearby street. Most of the concerns focused on the fact that the amount of parking proposed is less than currently required by the Darien Zoning Regulations, and their concern that, as a result, tenants and/or their guests and visitors would park on adjacent properties
4. **SIZE OF PARKING SPACES:** The Commission notes that the existing parking dimension layouts of parking spaces and aisle widths have existed on-site for over 30 years, and are not designed in compliance with the Darien Zoning Regulations now in effect. Sections 226, 908e, and 908f of the Darien Zoning Regulations currently require perpendicular parking spaces to be 9 feet wide and 20 feet deep, with a 24 foot backup aisle. The perpendicular parking spaces on the submitted Site Plan show 53 spaces of varied dimensions, some as small as 8.9' x 18.1'. Parking backup aisles vary from 21.5 feet to 22.4 feet to 22.9 feet. Commission members were able to see those parking spaces and aisle widths first-hand, however. The Commission has concluded that based a) on the primarily one-way circular flow of traffic within the parking areas; b) on the favorable existing topography of the existing parking area; c) on the very small size of these rental units; d) on the direct proximity of the site upon a public transit (bus) line; e) on the experience of the applicant in the efficient management of similar rental apartment building parking facilities; and f) on all of the existing experience data concerning the operations of the subject parking lot for some decades, the nonconforming layout of the parking area will meet the traffic and safety needs of the building occupants and of the surrounding neighbors when modified as called for in this Resolution.
5. It was noted during the public hearing that if the Commission wanted the parking spaces and aisles modified, that it could require that the interior landscaped island (which now contains six mature trees, each at least 15-20 feet in height, and four light bollards) be reduced in size. In this very specific instance, the Commission finds that the existing parking layout and dimensions with those mature trees is preferable. If, in the future, the property owner finds that a modified parking lot with increased capacity is preferable, then he can return to the Commission to request an amendment of this approval.
6. The current Building Code requires one handicap parking space for every 25 parking spaces or portion thereof, and in this case there are 53 parking spaces proposed—thus, 3 handicap parking spaces are required. Four handicapped-accessible apartments are being proposed, as required by the Building Code.
7. The Commission notes that there is no margin for error on the number of parking spaces based upon the number of units. There is no on-street parking in front of the building along Boston Post Road, nor are there any municipal parking lots nearby. The applicant has not

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proposed sharing parking with any adjacent property, and thus, all vehicles must have sufficient room on-site for parking. There is no overflow parking available, and none is allowed or approved in this resolution.

8. Experts both for the applicant and specifically hired by the Commission gave their opinions on the parking. Monitoring is important. If the parking is inadequate, the property owner is responsible for complying with the terms of this resolution. At the public hearing, a combination of approaches was discussed for ensuring sufficient, safe, onsite parking, and ensuring that the residents do not park elsewhere. These approaches include: 1) establishing a “resident sticker program” for tenant vehicles 2) new signage on the property; and 3) provisions concerning parking within the leases signed by the tenants.
9. The applicant proposed a “resident sticker program” for tenants of the subject apartments. This “sticker program” would require all tenants to place a sticker on their vehicles. This will identify each vehicle as being properly allowed to park on the subject property. It will also allow neighboring property owners to ascertain whether a building resident is illegally parking on their property.
10. The applicant proposed a small sign to be posted on the subject property concerning parking, informing tenants and guests that parking offsite is prohibited. Also proposed by the applicant was a specification in the residential complex’s Rules and Regulations regarding onsite parking of tenant’s vehicles (Item 8g in the October 26, 2009 submittal).
11. The applicant also told the Commission that, within the lease signed by each tenant, that there will be a provision that authorizes the landlord to include in the Rules and Regulations the limitation that tenants only will have a maximum of one vehicle on-site for each apartment.

V. STORM DRAINAGE:

1. In the List of Concerns/Issues and Proposed Stipulations submitted on 11-24-2009 by the neighbors, one of those is a proposal to require the applicant to install an oil separator and particle remover on the storm water drainage system.

VI. FIRE MARSHAL:

1. Fire Marshal Robert Buch sent a memo dated 09/09/2009 with his concerns as well as a follow-up two-page memo dated November 17, 2009. The memos noted eight issues—sprinklers; tree removal on east side of property; need for a fire hydrant; turning radius for fire equipment; rescue windows; paved walkway with adequate lighting; fire lane; and a Fire Department connection (standpipe) for the building’s fire sprinkler system. A Response was an 18 November 2009 letter from architect Andrew J. Hennessey. Mr. Hennessey noted that: the building will be fully sprinklered with a fire department connection; the trees will be cut back on the eastern side of the property; a fire hydrant will be located in the landscaped island; and normal egress lighting and emergency lighting will be provided.

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2. The Commission notes that most of the eight issues were addressed by the applicant. The ones that were outstanding were rescue windows and the need for a standpipe. The Commission believes that the project is safer with the proposed standpipe(s) as recommended in the Fire Marshal's memo.

VII. DUMPSTER AND TRANSFORMER:

1. During the public hearing process, the proposed dumpster area was modified. The Commission finds that the modified size and location of the dumpster area is appropriate. This is shown on the Site Plan as 14' x 6' with a six foot high chain link fence around it. It is essential that the dumpster area be large enough to accommodate recycling for the tenants.
2. Relative to the issue of CL&P and transformers, there was some confusion on how this would be addressed. The Site Plan shows a new transformer in the same location as the existing transformer. The Commission finds that the proposed location for that new transformer is satisfactory.

NOW THEREFORE BE IT RESOLVED that the Affordable Housing Application under CGS 8-30g is hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- I. Redevelopment of the site shall be in accordance with the plans submitted to and reviewed by the Commission as required to be modified herein. These include:
  1. "Site Plan property of Garden Homes Darien Limited Partnership", 397 Boston Post Road, by Godfrey-Hoffman Associates, LLC, last revised 11-23-09.
  2. Garden Homes Management Office to Apartment Conversion, First Floor Plan, dated 9.22.09, Sheet No. A.2 (in Tab 4 of the October 6, 2009 submission).
- A. DENSITY: Due to the relatively small size of the proposed units; that eleven or 30 percent of all the units will be affordable deed restricted rental units; and that it would not be realistic to convert less than all of the existing building, the Commission hereby finds the proposed density at this site to be acceptable under all of these circumstances, given the finding herein that this is an appropriate site for multi-family housing, the FAR (floor area ratio) density is similar to the amount permitted under existing DB-2 zoning regulations, and that the deficiencies noted in the approved development do not outweigh the need for affordable housing as contemplated by State Statute 8-30g. The applicant has proposed to convert an existing office building into one multi-family building containing 35 apartment units. Of those apartment units, 16 are studio apartments; 18 are one-bedroom, and there is one two-bedroom unit. Any changes to this number of units or the mix of the number of bedrooms within the building shall be subject to review and action by the Planning and Zoning Commission as a necessary amendment to this approval.
- B. TRAFFIC AND SIGHT LINES

In his September 21, 2009 letter, Mr. Hillson notes that sight lines can be improved by the trimming or removal of vegetation and removal of the existing "Executive House" sign which

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now stands between the two site driveways, and by resetting the “one way” signs outside the sight line triangle. All of these items shall be properly implemented, including trimming of the vegetation, the sign shall be removed, and the one-way signs reset prior to the issuance of a Certificate of Occupancy. The vegetation shall be properly maintained in the future to continue to allow adequate sight line visibility.

C. PARKING

The applicant has proposed 53 parking spaces for the 35 apartment units. The Commission notes that, in this redevelopment circumstance, where the building and parking has been in this location for over 30 years, it is appropriate to leave the parking layout subject to the modifications required herein. The Commission believes that 53 parking spaces may be acceptable at this site (see Section IV, *supra*). The applicant was able to demonstrate that due to the size of the units proposed, and the nature of those units, that the number of parking spaces is appropriate. The Commission agrees, with certain modifications and conditions. Some of those conditions were proposed by the applicant as #8g in its October 26, 2009 letter:

- i. The Commission does not require assigning of spaces to apartments. Rather, a “Parking Sticker Program” shall be implemented by the property owner. Stickers for tenant vehicles also have positives to identify any people who may be improperly parking off site.
- ii. The landlord/owner shall institute a parking management program to insure that there will be no off-site overflow, and to identify tenants who may be parking off site. The landlord shall submit a report and return to the Planning and Zoning Commission in July 2012 to explain how this management program is working, and to address any other parking issues that may arise during the period beginning with the first tenant’s occupancy and through the date of the report. If there are any parking problems at any point in the future, it is incumbent upon the landlord to resolve them.
- iii. Unauthorized parking off-site by residents and/or by their guests shall be enforced by: 1) a directional sign that conforms to Section 928.12 of the Darien Zoning Regulations posted at the southwest corner of the property, the exact location and text to be reviewed and approved by the Planning & Zoning Director. That sign shall prohibit tenants and guests from using adjacent private parking areas (#8g in the October 26, 2009 letter submitted by the applicant). 2) a specification in the residential complex’s Rules and Regulations (#8g in the October 26, 2009 letter submitted by the applicant) and 3) as a term of each unit’s lease, authorizing the landlord to require, if needed, that only one Parking Sticker shall be issued for each unit within the building (#8g in the October 26, 2009 letter submitted by the applicant; paragraph C(i), above). All on-site parking shall be in designated areas.
- iv. Because of the limited on-site parking, and the fact that the parking aisles are smaller than the Regulations currently require, the Commission requires that in large snowstorms (those of six inches or more within 24 hours), snow be taken off-site and/or removed to the rear of the property behind or to the side of the building, leaving the full availability of all space for parking of vehicles on-site. Having all of the parking spaces and their associated parking aisles available for safe parking and maneuvering of vehicles is essential at all times for safety purposes. There shall be no snow blocking any parking space, the walkways,

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and/or access to the dumpster. The plantings, hedges and trees shall not be damaged by snow removal or storage. Nor should snow be piled higher than three feet in any areas where sight lines could be impaired.

v. In the November 24, 2009 List of Concerns/Issues presented by the neighbors, they note that the proposed handicap parking spaces are only 18 feet deep, and need to be 20 feet deep per Code. The applicant shall modify the area in front of the handicap parking spaces to allow them to be extended by two feet. The exception to this is the handicap parking space in front of the existing tree, which, can remain as-is, in order that the tree can remain, and does not have to be removed.

vi. One handicapped parking space per 25 parking spaces is being provided as called for in the Building Code, with one of those being a van space. The applicant is providing a total of three handicapped spaces. The Commission believes that optimally, there should be at least one handicap parking space available at all times during the day and early evening hours for use by both tenants and visitors.

vii. If the building operates for six months and the handicapped parking spaces are always filled, and there are no handicapped parking spaces for visitors, the landlord shall work with the Planning and Zoning Director on resolving this problem. One solution to this situation may include the creation of an additional on-site handicap parking space.

viii. The applicant proposes that access on and off the property shall be via the existing driveway pattern. Any change in the driveway location(s) or traffic flow on the site requires an amendment of this approval from the Planning and Zoning Commission.

ix The leases for the units in the subject building shall include a provision stating that the landlord shall at any time have the authority to amend the Rules and Regulations for the complex to include a provision which limits the number of vehicles that the tenants may have on-site to a maximum of one for each apartment. If unauthorized off-site parking becomes a persistent problem that cannot otherwise be controlled, the landlord shall be required to utilize this lease provision and impose the single vehicle limitation.

**D. STORM DRAINAGE:**

i. The Commission hereby requires that the applicant's engineer incorporate an oil separator and particle remover into the Site Plan and designate the proper and most effective location for such a facility. One shall be installed, or if the applicant's engineer determines that one is either insufficient or not appropriate, he can review the matter with the Planning and Zoning Director who may modify or waive such an oil separator and particle remover on the drainage system requirement if it proves on a substantial basis to be inappropriate.

ii. The on-grade patios behind the building shall be constructed per the October 19, 2009 two-page letter from Steven D. Trinkaus of Trinkaus Engineering. The letter specifically outlines the construction methods used to minimize potential drainage impacts.

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iii. The subject building is currently connected to the stormwater system in Boston Post Road. That connection may continue.

E. FIRE SAFETY:

i. As part of the application, the applicant has noted that all of the apartment units are to be sprinklered. Other than the standpipe, which is addressed in the Condition below, the other fire safety improvements mentioned in the Fire Marshal's memos of 9/9/2009 and 11/17/2009 shall be resolved per Andrew Hennessey's 18 November 2009 letter (i.e. hydrant to be installed; fully addressable fire alarm system to be installed; trees cut back on eastern side of building; a fire sprinkler system installed throughout building; normal egress lighting and emergency lighting to be installed).

ii. To improve public safety, the Commission hereby requires a standpipe system within the building per the Fire Marshal's recommendation in his November 20, 2009 memo/e-mail. The plans shall be revised to show an 8" water main connecting from the 8" main (the largest main) in Boston Post Road to both the proposed on-site fire hydrant and to the building. The standpipe system in the building shall be installed prior to the issuance of a Certificate of Occupancy.

F. FENCING, LANDSCAPING AND LIGHTING:

i. In response to the neighbors' request to have the buffer area clearly demarcated and fences near the west and rear property lines to discourage parking on adjacent properties, the applicant shall install a five-foot high dark green, open-sided aluminum fence along the western property line. This fence may be placed on the Grant/Montlick property if they consent to such placement. This is as proposed by the applicant in an October 26, 2009 letter (#8a), and confirmed in the 11-24-09 List of Concerns by the neighbors.

ii. At the northeast corner of the site, at or as close to the property line as preservation of mature vegetation will permit, the applicant will install an opaque six-foot fence, proceeding west, past the rock outcrop at the rear of the property, to provide a visual barrier and security to the Grant property (#8b in the October 26, 2009 letter submitted by the applicant).

iii. Both above fences shall be installed in a manner that preserves existing vegetation/landscaping/hedges to the maximum extent possible (#8c in the October 26, 2009 letter submitted by the applicant). The applicant or any successor shall maintain each fence's stability and paint/finish (#8d in the October 26, 2009 letter submitted by the applicant). The exact location of the fence was subject to an agreement with the adjacent property owner. The final selection of fence type shall be at the applicant's discretion, but subject to review and approval by the Planning and Zoning Director. If there is not an agreement, the fence must go on the applicant's property.

iv. Any required landscaping listed in this approval, as well as all existing landscaping, must be protected during construction and then maintained on a continuing basis, and should not interfere with the sight lines. Therefore, the prescribed height of these landscaping features must be enforced along the Boston Post Road frontage of the property.

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v. A front landscape buffer is required per Sections 626b and 943 the Darien Zoning Regulations. In this case, there is a need to balance the landscaping along the road with the need to maintain safe sight lines as noted herein. The Commission finds that a hedge along the front yard would improve the front landscaping, and would soften and screen the view of the parking lot from the public street. The hedge shall be located in the front landscape island as far from the street as possible and shall be maintained no greater than two to three feet in height to avoid sight line impairments. These hedge(s) along Boston Post Road shall be included on both sides of the existing driveways within existing landscaped islands parallel to Boston Post Road.

vi. Lawn/grass at the rear of the site shall be restricted to the area below and south of the stone retaining wall as shown on the submitted Site Plan. A minimum 25 foot wide buffer strip adjacent to the single family residential zone to the rear of the sight shall be maintained and demarcated. The existing landscaped buffer, containing mature vegetation, shall not be converted to lawn or otherwise used for passive recreation; and the existing, mature vegetation shall be preserved and maintained so as to provide a buffer from abutting and neighboring structures (except as required to be modified herein) (#8f in the October 26, 2009 letter submitted by the applicant).

vii. As noted on the submitted Site Plan, all lighting shall comply fully with Section 232 of the Darien Zoning Regulations. Exterior lighting in the rear shall be as required by the Darien Fire Marshal for safety purposes and by the Building Code. The lighting fixtures at the rear of the building above the walkway shall be installed at a height not to exceed ten (10) feet. They shall be outfitted with shields or cutoffs to prevent glare toward the Grant residence and the rear of the subject property; and shall conform to the "cut sheet" as Tab 4 to Garden Homes' October 26, 2009 submission. Patio lights shall conform to the cut sheet submitted to the Commission on October 13, 2009. Existing spotlight fixtures on the rear of the building will be removed and no other fixtures installed except as authorized within this resolution (#8e in the October 26, 2009 letter submitted by the applicant). In addition, site lighting shall be directed downward, and/or properly shielded, in order to avoid light glare problems toward neighboring properties and/or safety problems for motorists.

viii. All landscaping shall be installed per the submitted Site Plan referenced in Condition A, above, as required to be amended herein. Any changes or substitutions must be approved in writing by the Planning and Zoning Director.

ix. The Commission hereby requires a performance bond in the amount of \$10,000 covering the cost of the fence(s) and proposed landscaping. This Performance Bond will be authorized to be returned to the applicant by the Planning & Zoning Commission once the fences have been installed and the landscaping (including hedges) properly completed.

**G. AFFORDABILITY REQUIREMENTS:**

i. The applicant shall file on the Darien Land Records a restrictive covenant in a form acceptable to Town Counsel and enforceable by the Town, maintaining the property as a residential rental building including and designating the affordable housing units, rather than

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residential condominiums or any other residential, retail or commercial use, for a period of not less than forty (40) years (#8i in the October 26, 2009 letter submitted by the applicant). Such covenant may be amended only by formal action of the Planning & Zoning Commission or by its duly empowered successor.

ii. Garden Homes Management Corporation (“Garden Homes”) or its successor or assigns, will be the Property Manager and Administrator of the Compliance and Affordability Plan.

iii. An updated and revised “Compliance Plan” shall be submitted by the applicant to the Darien Planning and Zoning Director for approval, and referred by the Director to Darien Town Counsel, and reviewed by Counsel, prior to final plans being signed by the Chairman. This Compliance Plan shall ensure continued conformity with Section 8-30g of the Connecticut General Statutes and shall be deemed incorporated as part of the conditions of this Resolution.

iv. Construction of the affordable apartment units shall be built on a prorated basis as construction proceeds. The affordable apartment units shall be of a construction quality and size that is comparable to market-rate apartment units, and shall be dispersed throughout the development.

v. Six of the one bedroom units and five of the studio units shall be affordable, and at least 50% of the larger than average apartments of each size group shall be in the affordable group to achieve “parity”, because the Commission is allowing the two bedroom unit to be a market-rate unit. There shall also be parity in the distribution of affordable units amongst the various floors of the building.

H. OTHER ISSUES:

i. DUMPSTER: The dumpster has been realigned, and will be screened with a six foot high fence as shown on the submitted plans. It shall be emptied as often as necessary to avoid any protrusion of garbage above the rim/lid or blowing across the property or adjacent properties (#8h in the October 26, 2009 letter submitted by the applicant). The dumpster enclosure area shall be neatly maintained, and the doors shall remain shut at all times that someone is not loading or unloading garbage. The property owner is responsible for maintaining this shared trash area, including ensuring that it is emptied frequently enough to minimize odors; and that all its latches and mechanical parts operate smoothly and remain fully aligned. It is imperative that the doors remain shut when not in use, because an open door will obstruct access to parking spaces on the subject property. If in the future, it is determined that the existing size of the dumpster area and/or pickup frequency is not satisfactory, the property owner shall adjust the pickup frequency. If the property owner needs to enlarge the dumpster area, that requires an amendment of this approval from the Planning and Zoning Commission.

ii. RECREATION FACILITIES: Any exterior recreation facilities which may be constructed in the future shall require an amendment of this approval by the Planning and Zoning Commission.

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- iii. PHASING: Applicant has represented that the project will not require phasing. If a construction phasing plan is required, the applicant shall submit such a plan to the Planning and Zoning Department for review and action by the Planning and Zoning Director. This will ensure the safety of residents who move into a portion of the project during the construction process (before all of the units have been completed).
- iv. Final street addresses for each of the apartment units shall be coordinated with the Darien Assessor, who may receive input from the Fire Marshal, Police Department, Postmaster and the applicant when determining final street addresses.
- v. Because the building is already constructed and has existed for over 30 years, the Commission hereby waives the requirement for a sediment and erosion control plan.
- vi. 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 approval as it deems appropriate.
- vii. The granting of this approval does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. This would include, but not be limited to approval from the State of Connecticut Department of Transportation, and the Darien Sewer Commission.
- viii. This approval shall be subject to the provisions of Section 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved application within one year of this action (January 5, 2011). This may be extended as per Section 1028.
- ix. All provisions and details of the application, as required herein to be amended, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. All completed requirements and materials shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void.
- x. All public utilities shall be underground. Any new transformer shall be as located on the Site Plan, in Item A, above.
- xi. OPEN SPACE: As shown on the submitted Site Plan, there is an area of open space on the property to the north of the proposed patios of approximately 5,732+/- square feet, which is current grass/lawn space (including rear buffer area of 30' x 124' +/-). This includes the grass/lawn area to the south of the existing landscaped area (labeled on the Site Plan as Wooded Area or Landscaped Area), which serves as a rear landscaped buffer. The grass/lawn area is about 20' x 72' +/- (1440+/- square feet) on the west part of the site, and 26' x 22' +/- (572+/- square feet) on the east part of the site. This 2,012+/- square feet of grass/lawn area (open space) is not a required landscaped buffer, and is in a safe area outside and away from the parking lot. The amount of open space now on-site is not being reduced, and the site presents no opportunities for increasing the amount of open space.

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xii. The Rules and Regulations for the complex and unit leases shall prohibit any use of the patios that is noisy or disruptive for other residents or any abutting or neighboring residence (#8j in the October 26, 2009 letter submitted by the applicant).

II. WITH REGARD TO THE PROPOSED AMENDMENT OF THE DARIEN ZONING REGULATIONS #5-2009, THE COMMISSION MAKES THE FOLLOWING FINDINGS:

1. The applicant proposed zoning regulation amendments to the DB-2 Zone. These text amendments are contained in Tab 1 of the Supporting Materials from September 22, 2009. The submitted application is to create a new Section 624i, modify existing Section 625d, and create a new Section 626e. This would allow the conversion of existing buildings within the DB-2 Zone to multi-family residential use. The modification of Section 625d would establish parking requirements for such converted buildings and would eliminate the maximum number of dwelling units and also eliminates the maximum floor area for such conversions. Section 626e would create additional provisions and restrictions for such building conversions.
2. The Commission believes that the proposed regulation amendments may have significant unintended consequences for other properties within the DB-2 Zone that would harm the public interest. This Commission has concluded that the proposed regulations have not been analyzed enough for general application within this zone, and that their potential impacts to other commercial properties within the DB-2 Zone have not been adequately considered to protect these substantial public interests.
3. A zone change application is not required because multi-family housing is provided for in the DB-2 Zone pursuant to the existing DBR regulations.
4. Under the State Statutes and Connecticut law, a zoning regulation amendment, although sometimes useful, is not necessary for a Commission to approve a proposed project under Section 8-30g of the Connecticut General Statutes.
5. The proposed amendments of the existing DB-2 regulations are not necessary because the Commission has sufficient experience over more than twenty years with approving multi-family housing within the DB-2 zone pursuant to existing DBR regulations. The Commission may consider in the future adopting more comprehensive regulations than those proposed that would allow under certain circumstances the conversion of other existing office buildings to multi-family housing.
6. Under Section 8-3a(a) of the Connecticut General Statutes, "...the commission shall state on the record its findings on consistency of a proposed zoning regulation or boundaries or changes thereof with the plan of development of the municipality." In this specific case, the Commission does note that for any zoning regulation to be approved, it must be consistent with the Town Plan of Conservation & Development (the "Town Plan").

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7. On page A9-5 of the 2006 Town Plan of Conservation & Development (the "Town Plan"), it reads: "The Commission should be hesitant to rezone existing commercial properties for other uses." The proposed zoning regulation amendment basically would allow the conversion of numerous commercial office buildings to multi-family residential apartment buildings.
8. Therefore, the Commission believes that this proposed amendment of the DB-2 regulations is not consistent with the 2006 Town Plan of Conservation & Development, as amended. Accordingly for all the stated reasons, the application to amend the Zoning Regulations must be denied.

NOW THEREFORE BE IT RESOLVED that the application to amend the zoning regulations is hereby DENIED BASED ON THE ABOVE FINDINGS.

III. WITH REGARD TO SPECIAL PERMIT APPLICATION #256, THE COMMISSION MAKES THE FOLLOWING FINDINGS:

1. The Affordable Housing Application, under Section 8-30g of the Connecticut General Statutes, was approved.
2. The applicant applied for a Special Permit under the assumption that the aforementioned zoning regulation amendment would be approved. Such an amendment would allow the conversion of certain buildings within the DB-2 Zone as a Special Permit use. The proposed amendment of the DB-2 zoning regulations was denied, and not adopted. Because the amendment of the DB-2 zoning regulations was denied, the Special Permit application is not required by the town's zoning regulations, nor is any such Special Permit provided for in those regulations.
3. Because this project does not comply with a number of the existing zoning regulations within the DB-2 Zone (such as minimum lot size, number of units, amount of parking, parking space dimensions, required open space and other zoning requirements), the Commission must deny the requested Special Permit application.
4. Instead, the Commission is approving a project which revises the 1977 Site Plan by incorporating the applicant's proposed revisions to the Site Plan and the special conditions imposed by the Commission's resolution herein.

NOW THEREFORE BE IT RESOLVED that the Special Permit application is hereby DENIED BASED ON THE ABOVE FINDINGS.

IV. IN CONCLUSION,

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NOW THEREFORE BE IT RESOLVED that the Affordable Housing Application under CGS 8-30g is GRANTED WITH STIPULATIONS;

The Application to Amend the DB-2 Zoning Regulations #5-2009 is hereby DENIED.

Special Permit Application #256 is hereby DENIED.

The project as required to be modified herein is granted, and although the zoning regulation amendment and Special Permit application are denied, the project is granted with stipulations and modifications. It is now eligible for Zoning and Building Permits with the conditions herein, when the Planning & Zoning Chairman signs the approved plans.

Chairman Conze read the following agenda item:

**Amendment of Business Site Plan #265, Baywater 17 OKHS, LLC, 17 Old King's Highway South.** Proposal to raze the existing office building, and construct a new two story building, reconfigure parking lot; and perform related site development activities. The subject property is located on the east side of Old King's Highway South, directly across from its intersection with Center Street, and is shown on Assessor's Map #38 as Lots #12 & #13 in the OB Zone. *DECISION DEADLINE: JANUARY 14, 2010.*

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

Mr. Ginsberg summarized the draft Resolution and the stipulations of approval. The following motion was made: That the Commission adopt the Resolution. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
January 5, 2010**

Application Number: Amendment of Business Site Plan #265

Street Address: 17 Old King's Highway South  
Assessor's Map #38 Lots #12 & #13

Name and Address of Property Owner: Baywater 17 OKHS, LLC  
78 Harvard Street, Suite 300  
Stamford, CT 06902

Name and Address of Applicant &  
Applicant's Representative: Robert F. Maslan, Jr., Esq.  
Maslan Associates, PC  
3 Parklands Drive  
Suite 207  
Darien, CT 06820

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Activity Being Applied For: Proposal to raze the existing office building, and construct a new two story building, reconfigure parking lot; and perform related site development activities.

Property Location: The subject property is located on the east side of Old King's Highway South, directly across from its intersection with Center Street.

Zone: OB

Date of Meetings: November 10, 2009 and December 1, 2009

Time and Place: 8:00 P.M. Rooms 206 and Room 119 Town Hall

Publication of Hearing Notices

Dates: no public hearing held

Newspaper: Darien News-Review

Date of Action: January 5, 2010

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:  
January 14, 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 660 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted 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 proposal is to raze the existing office building, and construct a new two story building, reconfigure parking lot; and perform related site development activities. The Commission notes that this application is an amendment of a previously approved site plan for a replacement two-story office building on the subject property approved on November 25, 2008. The subject amendment application also is for a two-story replacement office building, however, this proposed building contains 17,856 square feet, and the previously approved building was 18,813 square feet. The proposal is for a more rectangular-shaped building, measuring approximately 122' +/- x 77' +/- . The amount of parking has also been reduced as part of this amendment application.

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2. The Architectural Review Board (ARB) reviewed this application as part of amendment of ARB #21-2008 and approved the design of the new building at its November 17, 2009 meeting.
3. The subject application amendment has less parking than the previously approved office building. The Commission notes that the subject property is part of a shared parking agreement with the neighboring properties at 9 Old King's Highway South (an office building) and 65 Tokeneke Road (now a church).
4. The applicant proposes to utilize the existing Joint Parking arrangement as expressly permitted by Section 905 of the Darien Zoning Regulations. Section 905 reads as follows:  
*905. Joint Parking*  
Where two or more different uses occur on a single lot, the total amount of parking facilities to be provided shall be the sum of the requirements for each individual use on the lot, except that the Commission may approve the joint use of parking space by two or more establishments on the same or on contiguous lots, the total capacity of which space shall be less than the sum of the spaces required for each, provided:
  - a. *The Commission finds that the proposed capacity shall meet the intent of the requirements;*
  - b. *Approval of such joint use shall be automatically terminated upon the termination of the operation of any of such establishments;*
  - c. *Legal documentation shall be furnished establishing such rights for the duration of such joint use.*Such shared parking arrangements shall be limited to use and shall not include shared parking by time.
5. Under Section 905, the Commission may approve less parking than required by the Zoning Regulations. The Commission notes that there is nearby on-street parking and the municipally-owned Center Street North parking lot across the street.
6. During the public hearing, the applicant agreed to relocate the proposed handicap parking space in front of the building. This will result in the loss of two parking spaces on-site, bringing the total to 44 parking spaces in the front of the property, and 87 in all on the subject property. A November 6, 2009 letter was submitted by Joseph Balskus of Tighe & Bond, noting that 54 parking spaces for the proposed building would be sufficient.
7. The Commission finds that in this case, based on the existing and proposed uses of the three sites (9 Old King's Highway South, 65 Tokeneke Road, and the subject 17 Old King's Highway South), and the proposed development plans, that the joint parking arrangement is appropriate and acceptable. This finding and associated Joint Parking Agreement will mean that all future uses of all of these sites are subject to prior review and action of the Commission.
8. The applicant has designed the proposed office building so that in the future, if the Zoning Regulations are changed, that this building has the potential to have retail use(s) on its first

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floor. Any such Regulation change, associated changes to the building, and/or new retail tenant(s) shall require review and formal action by the Planning & Zoning Commission.

9. The Commission notes the need for the applicant to file a Notice of Drainage Maintenance Plan regarding 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 impacts to adjacent properties.
10. The elements of the Site Plan, submitted as part of the Special Permit application accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.
11. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.

NOW THEREFORE BE IT RESOLVED that Amendment of Business Site Plan #265 is hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The Commission hereby approves the following plans received in the Planning and Zoning Department, entitled:
  - Zoning Location Survey #17 Old Kings Highway South prepared for Baywater 17 OKHS, LLC, by William W. Seymour & Associates, last revised November 18, 2009.
  - Layout & Materials Plan, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale 1"=20', last revised 11/23/2009, Sheet S1.1.
  - Grading Plan, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale 1"=20', last revised 11/23/2009, Sheet S2.1.
  - Planting & Lighting Plan, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale 1"=20', last revised 11/23/2009, Sheet S3.1.
  - Site Details, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale 1"=20', last revised 11/23/2009, Sheet S4.1.
  - Site Details, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale 1"=20', last revised 11/23/2009, Sheet S4.2.
  - Drainage and Utility Plan, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale 1"=20', last revised 11/24/2009, Sheet C1.1.
  - Sedimentation and Erosion Control Plan, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale 1"=20', last revised 11/24/2009, Sheet C2.1.
  - Sedimentation and Erosion Control Details, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale as shown, last revised 11/24/2009, Sheet C2.2.
  - Drainage Detail, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, scale as shown, last revised 11/24/2009, Sheets C3.1 and C3.2.

These plans shall be revised to no longer show any parking in front of the building, and the handicap van space that was previously shown in that location shall be placed elsewhere on the property.

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- B. The Commission requires that prior to the issuance of a Zoning and Building Permit for the proposed building, that a revised letter from Tighe & Bond be submitted regarding the adequacy of the parking as revised above, with 44 parking spaces in the front area of the subject property.
- C. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. Before the issuance of a Zoning or Building Permit, 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. The actual Drainage Maintenance Plan, upon approval, shall be filed in the Planning & Zoning Department and/or in the Land Records. The drainage maintenance plan shall require the property owner and all subsequent property owners of 17 Old King's Highway South 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. It is incumbent upon the property owner and applicant to maintain the installed drainage system, including, but not limited to, maintenance of the underground structures, (such as inspection and clean out once every 18 months or more frequently as needed).
- E. The applicant shall install the drainage system as shown on the submitted Grading & Drainage Plan referenced in Condition A, above. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- F. The owner will need to make arrangements for the staging and construction process so as not to encumber any of the adjacent right-of-way or parking areas, or any on-street parking in the vicinity.
- G. Per the Fire Marshal's comments, a fire hydrant shall be located on the sidewalk area adjacent to Boston Post Road. This shall be specifically sited to minimize any impacts or loss of existing on-street parking. The Fire Marshal shall be consulted prior to the siting of the hydrant. This will provide necessary service and shall be installed prior to the Certificate of Occupancy for the building. Alterations to the interior floor plans may be required by the Fire Marshal as part of his Zoning and Building Permit review.
- H. Per Section 909 of the Darien Zoning Regulations, the Commission officially waives the loading zone requirement, as it would not be applicable to the proposed office use.

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- I. The Dumpster enclosure area shall be neatly maintained, and the doors shall remain shut at all times that someone is not loading or unloading garbage. The property owner is responsible for maintaining this shared trash area, including ensuring that it is emptied frequently enough to minimize odors. It is imperative that the doors remain shut when not in use, as if the doors opened, it will obstruct parking spaces on the subject property. The Commission specifically notes that it is highly unusual to approve a Dumpster enclosure area which opens out onto parking spaces. However, in this specific circumstance, it is appropriate as the fact that this is a two-story office building and the existing building does not have any Dumpster area at all, according to the June 16, 2008 Zoning Location Survey. If in the future, the applicant proposes retail uses in this building, the Commission will likely require modifications to the size and location of any Dumpster enclosure area on-site.
- J. All landscaping shall be installed per the submitted Landscape and Planting Plan referenced in Condition A, above. Any changes or substitutions must be approved in writing by the Planning and Zoning Commission.
- K. As noted on the submitted Site Plan, all lighting shall comply fully with Section 232 of the Darien Zoning Regulations.
- L. All site work, including but not limited to sidewalks, access drive, curbing, paved and striped parking spaces, drainage systems, safety signage, transformer, dumpster enclosure, grading, landscaping and other site improvements as shown on the approved plans listed in Condition A, above, shall be properly installed and completed prior to the use of any portion of the either building and/or the issuance of a Certificate of Zoning Compliance or a Certificate of Occupancy for that building.
- M. 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 Zoning Compliance or a Certificate of Occupancy for the project, and/or use of the proposed building.
- N. A final “as-built” survey is hereby required to certify that the site improvements (including drainage and landscaping) are all in compliance with the approved plans. In addition, a Professional Engineer shall certify in writing that the required drainage work has been properly completed in accordance with the approved plans. A certification shall be submitted regarding the final building height of the building as constructed.
- O. As a condition of approval of this shared parking agreement, no parking spaces on the subject property of this Resolution can be reserved for any use or user on any of the three properties which are part of the shared parking agreement.
- P. This is not a stand-alone project. It is dependent upon a joint parking area to serve the parking needs of this site. The entire joint parking area and related access must be completed and accessible prior to the use of the building. If, due to ongoing construction on the project, the entire

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joint parking area will not be available for use in conjunction with this building, then the applicant must submit a detailed plan to the Commission illustrating how the parking, unloading, waste management and pedestrian access will function on an interim basis. The Commission shall consider the request to temporarily modify this condition about the completion of the entire joint parking area. Depending upon the specific circumstances, the Commission may or may not allow use or occupancy of the building, or parts of it, prior to the completion of all parking.

- Q. 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.
- R. The granting of this Site Plan approval does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies. This includes, but is not limited to, final approval from the Darien Fire Marshal; a Demolition Permit from the Building Official; a street opening permit from DPW for work within the Town right-of-way on Old King's Highway South, and a Sewer Connection Permit from Sewer Services.
- S. This permit shall be subject to the provisions of Section 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (January 4, 2011). This may be extended as per Section 1028.

All provisions and details of the 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, the signing of the final approved plans by the Chairman. All completed requirements and materials, including, but not limited to the revised plans, the Drainage Maintenance Plan, and the Notice of Drainage Maintenance Plan, shall be submitted to the Planning and Zoning Department within 60 days of this action.

Chairman Conze read the following agenda item:

**Land Filling & Regrading Application #231, VR Associates, LLC, 305-309 Middlesex Road.**  
Proposing to raze the existing structures and construct a new single-family residence with associated filling, regrading, stormwater management and wetlands mitigation and perform related site development activities. *DECISION DEADLINE: JANUARY 14, 2010.*

The following motion was made: That the Commission waive the process of reading the draft Resolution aloud because all the members have had an opportunity to review the draft prior to the meeting. The motion was made by Mr. Spain, seconded by Mr. Hutchison.

After a brief discussion, the following motion was made: That the Commission adopt the following Resolution to adopt the project with conditions and stipulations. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved. The Adopted Resolution reads as follows:



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- 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. For purposes of the conditions contained within this resolution, the terms “applicant” and “property owner” are used interchangeably, and are as listed on page 1 of this document. Unless specifically stated herein or apparent from the context, the obligations set forth for the current parties will carry forward to their respective successors or assigns.
2. The subject application is to raze the existing structures and construct a new single-family residence with associated filling, regrading, stormwater management and wetlands mitigation and perform related site development activities. The proposed residence will be served by public water and sewer. The subject property consists of Lots #71 and #72 on Assessor’s Map #9, which for purposes of this application will be combined into one 1.476+/- acre lot.
3. The subject land filling and regrading application is needed relative to two specific areas on the subject property. The first is in the area of the “Proposed wetland mitigation area” along the northeast property line. The other is the fill required to install the 20 units of cultec underground drainage structures with associated retaining wall between the proposed residence and Middlesex Road.
4. The EPC reviewed this application, and approved it as part of EPC #60-2008 on May 6, 2009. That decision is hereby incorporated by reference.
5. It was noted by the applicant during the public hearing on November 24<sup>th</sup>, that the rear portion of the property will be protected with a Conservation Easement.
6. The Commission notes with respect to the drainage system around the house, the need for the applicant or property owner 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.
7. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
8. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

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NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #231 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Land filling, excavation, and regrading work shall be in accordance with the following plans submitted to and reviewed by the Commission, as required to be revised herein to show the Conservation Easement area:
  - “Alternate Site Plan #2”, Sheet 6A dated 26 March 2009 by Stearns & Wheler, LLC, Environmental and Wetland Evaluation, VR Associates, LLC, last revised 14 Aug 2009 (for P&Z approval).
  - S&E Control Plan – Alt. #2, Sheet 10A, dated 26 March 2009 by Stearns & Wheler, LLC, Environmental and Wetland Evaluation, VR Associates, LLC, last revised 14 Aug 2009 (for P&Z approval). {plan located in Tab 1 of submitted application materials}
  - Site Details, Sheet 8, dated 22 Oct 2008 by Stearns & Wheler, LLC, Environmental and Wetland Evaluation, VR Associates, LLC. {plan located in Tab 1 of submitted application materials}
- B. Due to the fact that the EPC required a performance bond for the wetland mitigation plantings in Condition 6 of its approval, the Planning and Zoning Commission will not require a Performance Bond. Upon completion of all of the work shown on the plans, the applicant shall provide written verification and photographs documenting the completion of the project, including the grading and the drainage work, in compliance with the approved plans. Only then will the new house be eligible for the Certificate of Zoning Compliance and Certificate of Occupancy.
- C. By March 5, 2010 (within the next 60 days) and prior to the issuance of a Zoning or Building Permit for the proposed new replacement residence and prior to the start of any filling or regrading work around the house, 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, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 305-309 Middlesex 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.
- D. During the regrading and site work, the developer/builder shall utilize the sediment and erosion controls illustrated on the S&E Control 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.

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- E. 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.
- F. As required by the Condition 10 of the EPC approval, and as noted by the applicant at the public hearing, a Conservation Easement will be placed upon a portion of the property. The area to be protected shall be the area north and west of the proposed wall in the back yard of the property. Town Counsel shall review and approve the document prior to its filing in the Darien Land Records concurrently with a mylar showing the location of said Conservation Easement area, and combining both lots into one 1.476+/- acre lot. The conservation easement and map shall be filed in the Darien Land Records prior to the issuance of the Zoning Permit for construction of the replacement house.
- G. Condition 5 of the EPC approval requires that the developer/builder hire a licensed professional engineer be hired as a compliance inspector at the developer/builder's expense during the construction of the project. The frequency of the inspector's visits shall be as he/she determines in consultation with the Planning & Zoning Director. Any site visits and site inspections by the engineer shall be at random days and times. Copies of the engineer's reports shall be submitted to the staff of the Planning and Zoning Commission.
- H. 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.
- I. The granting of this approval does not relieve the developer/builder 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 a street opening permit from the Public Works Department.
- J. 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 (January 4, 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, Notice of Drainage Maintenance Plan, Conservation Easement, and filing of a mylar combining Lots #71 and #72 and showing the Conservation Easement area 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, or this approval shall become null and void.

Chairman Conze read the following agenda item:

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**Coastal Site Plan Review #245, Flood Damage Prevention Application #278, Baywatch Partners, LLC, 4 Plymouth Road.** Proposing to raze the existing residence and construct a new single-family residence and perform related site development activities within regulated areas.

The following motion was made: That the Planning & Zoning Commission waive the process of reading the entire draft Resolution aloud because each member has had an opportunity to review the draft prior to the meeting. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved. After a brief discussion about the project and the draft Resolution, the following motion was made: That the Commission adopt the following Resolution to approve the project with conditions and stipulations. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
January 5, 2010**

Application Number: Coastal Site Plan Review #245  
Flood Damage Prevention Application #278

Street Address: 4 Plymouth Road  
Assessor's Map #55 Lot # 64

Name and Address of Property Owner: Baywatch Partners, LLC  
4 Plymouth Road  
Darien, CT 06820

Name and Address of Applicant  
and Applicant's Representative: Chad Nehring, AIA  
Nehring + Assoc. Architects, LLC  
152 Deer Hill Ave, #304  
Danbury, CT 06810

Activity Being Applied For: Proposing to raze the existing residence and construct a new single-family residence and perform related site development activities within regulated areas.

Property Location: The subject property is located on the west side of Plymouth Road approximately 150 feet north of its intersection with Baywater Drive.

Zone: R-NBD

Date of Public Hearing: November 24, 2009  
Deliberations held on: December 1, 2009 (in room 119)

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

Publication of Hearing Notices  
Dates: November 12 & 19, 2009

Newspaper: Darien News-Review

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Date of Action: January 5, 2010

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:  
January 14, 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 410, 810 and 820 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant 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 proposal is to raze the existing residence and construct a new single-family residence and perform related site development activities within regulated areas. The proposed residence will be connected to public water and sewer.
2. As required by the Zoning Regulations, the applicant has proposed a Drainage Plan showing stormwater management for the subject property. An associated Drainage Analysis by Artel Engineering Group was submitted for the record in this matter.
3. The proposed residence with associated front porch and patio on grade in the rear results in 19.9% building coverage including eaves. It is imperative that the applicant and property owner carefully manage the project to ensure that the building coverage maximum of 20% is not exceeded.
4. One of the issues noted during the public hearing was the proposed use of a grass pervious driveway system and associated parking space in the rear of the property, behind the proposed garage. The Commission notes that per the Zoning Regulations, two parking spaces are required which meet both the front and side yard setbacks on the property. In this case, a one-car garage is proposed, along with the grass pervious drive with associated parking space in the rear. A "hammerhead" parking area in front of the house is also shown on the plans, although that cannot count towards the required parking per the Regulations. The Commission finds that in this very specific circumstance, the grass pervious driveway system, in conjunction with the "hammerhead" in the front yard, is acceptable per the Darien Zoning Regulations, and is appropriate for this property.
5. The Commission notes the need for the applicant to file a Notice of Drainage Maintenance Plan regarding maintenance of the proposed and installed drainage system in the Darien Land Records.

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This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential impacts to adjacent properties.

6. The potential adverse impacts of the proposed activity upon coastal resources, as designed are minimal and are therefore acceptable.
7. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
8. The Commission finds that the proposed development, if properly implemented and protected, is not contrary to the goals, objectives and policies of the Coastal Area Management Program.
9. The proposed activity, as modified within this resolution, is consistent with the goals and policies in Section 22a-92 (the Connecticut Coastal Area Management Act) of the Connecticut General Statutes. The conditions as outlined herein include all reasonable measures which would mitigate any adverse impacts by the proposed activity on coastal resources.
10. The proposed activities, to be implemented with the conditions and modifications listed below, will have no adverse impact on flooding, and therefore, this proposal is consistent with the need to minimize flood damage.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #245 and Flood Damage Prevention Application #278 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction, installation of drainage facilities, and related activity shall be in accordance with the following plans:
  - Plot Plan of property prepared for Baywatch Partners, LLC, #4 Plymouth Road, scale 1"=10', by Arcamone Land Surveyors, LLC, dated Oct. 13, 2009.
  - New Residence Prepared for the Baywatch Partners, LLC, 4 Plymouth Road, by Nehring + Associates Architecture, LLC, dated 10/15/09, Rev 10.29.09, Sheets L1, A1-A6.
  - Grading and Drainage Plan, Baywatch Partners, LLC, 4 Plymouth Road, by Artel Engineering Group, LLC, dated 10/14/09, Sheet 1.
  - Details, Baywatch Partners, LLC, 4 Plymouth Road, by Artel Engineering Group, LLC, dated 10/14/09, Sheet 2.

The Commission hereby requires that the Plot Plan and Grading and Drainage Plan be modified as follows:

Show screening of the proposed "hammerhead" parking area in front of the garage with at least four arborvitae plantings (or similar) at least four feet tall both in front of that parking area and if possible, to the north of it. Said revised plan shall be reviewed and acted upon by the Planning & Zoning Director. These plantings will minimize the visual impact of any vehicles parked in this front yard area. If feasible, the applicant shall also move that "hammerhead" area further back towards the garage. All plantings shall be installed prior to the issuance of a Certificate of Occupancy. These plantings shall be maintained by the property owner.

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- B. In conjunction with the Zoning and Building Permit applications, all drawings shall illustrate the flood damage prevention measures to be utilized in the construction of the new residence. The plans shall be accompanied by a certification letter from a licensed architect and/or engineer that verifies that the final design complies with the applicable requirements to minimize flood damage.
- C. Before the issuance of a Zoning or Building Permit, 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. The actual plan shall be filed in the Planning & Zoning Department and/or in the Land Records. The drainage maintenance plan shall require the property owner and all subsequent property owners of 4 Plymouth 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.
- D. During construction, the applicant shall utilize sediment and erosion controls as shown on the Grading and Drainage Plan and as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. After the foundation for the new residence has been installed, an "as-built" survey must be submitted to verify compliance with the setback and floor elevation requirements.
- F. Once the construction work is complete and prior to the issuance of a Certificate of Occupancy, the applicant shall submit verification from the project engineer or architect that all aspects of the building construction have been completed in compliance with the approved plans and the flood damage prevention regulations. A final "as-built" survey is hereby required to verify that the final work is in compliance with the approved plans (especially relative to Building Coverage) and the Flood Damage Prevention Regulations. A Professional Engineer shall certify in writing that the drainage system, site grading and installation of the proposed drainage facilities have been properly completed in accordance with the approved plans.
- G. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- H. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, a Demolition Permit from the Darien Building Department and a Sewer Connection Permit from the Sewer Services Department.

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- I. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (January 4, 2011). This may be extended as per Sections 815 and 829f.

All provisions and details of the application, as required to be revised herein, shall be binding conditions of this action and such approval shall become final upon the signing of the approved plan by the Chairman. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records, and revised plans shall be submitted for review and action by the Planning and Zoning Director within 60 days of this action and prior to the proposed issuance of Zoning and Building Permits, or this approval shall become null and void.

Mr. Conze then read the following agenda item:

**Special Permit #66-I, Darien YMCA, 2420 Boston Post Road.**

Review of 2010 Special Events Schedule.

Mr. Ginsberg summarized that the special events at the Darien YMCA are virtually the same as they have been in previous years, except for the addition of one or two other events and the modification of the dates of several others. The Commission members reviewed the draft schedule. The following motion was made: That the Commission approve the Schedule of Special Events at the YMCA for the year 2010. The motion was made by Mr. Hutchison, seconded by Ms. Riccardo and unanimously approved.

Mr. Conze then read the following agenda item:

**Brief Discussion of December 14, 2009 letter from State Department of Environmental Protection (DEP), regarding need to update local flood regulations.**

Mr. Ginsberg noted that the federal government has revised the flood regulations, and therefore the State of Connecticut, as the coordinator of the program, is requiring each community to update their regulations. He said that the staff will review the regulations to see if any other modifications and clarifications need to be incorporated. The Public Hearing would probably be in late February or in March.

Chairman Conze then read the following agenda item:

**Land Filling & Regrading Application #221, Rob Lavin, 480 Middlesex Road.**

Request for return of \$10,000 Performance Bond, covering the regrading work, tree planting, drainage work and soil stabilization and the required as-built map and drainage certification

Commission members reviewed the request from Mr. Lavin to release the \$10,000 Performance Bond. Mr. Ginsberg noted that it would be appropriate to withhold \$1,500 to make sure that the grass and vegetation starts to grow well in the spring of 2010. Mr. Spain said that he believed that due to the steepness of the slope, and the difficulty of establishing the vegetation, it would be appropriate to hold a portion of the money for two additional growing seasons. The Commission members all agreed that it would be appropriate to release \$8,500 dollars at this time, and to retain

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\$1,500. The consensus was that the Commission will hold the \$1,500 for at least one full year from this date. The balance of the \$1,500 can be released in or subsequent to January 2011.

Chairman Conze then read the following agenda item:

**Coastal Site Plan Review #53-C, Flood Damage Prevention Application #43-C, Ann Lunn, 8 Contentment Island Road.** Request for Return of Bond required for Sediment and Erosion Controls during the project construction.

Mr. Reese Hutchison chose to abstain from participation in this matter in order to avoid any potential perception of a conflict of interest. The Commission members discussed the release of the bond. Mr. Ginsberg noted that all of the required work had been completed and the property is no longer owned by Mrs. Lunn. Mr. Spain, Mr. Conze, Mr. Voigt and Ms. Riccardo all agreed to authorize the Director of Planning & Zoning to release the performance bond. Mr. Hutchison did not participate in the matter.

Chairman Conze then read the following agenda item:

**Amendment of Special Permit #166-A/Site Plan, Tom Anastasaglou, 93 Boston Post Road and Amendment of Business Site Plan #256/Special Permit, Athos Real Estate, 71 Boston Post Road.** Proposed amendment of the approved Site Plan for the two properties to show location of transformer at 71 Boston Post Road, and added landscaping at 93 Boston Post Road.

The Commission members discussed the revised plans illustrating the new location for the transformer and the landscaping to be added to the site. After a brief discussion, the following motion was made: That the Commission authorize the amendments regarding the location of the transformer at 71 Boston Post Road to be located close to West Norwalk Road and the additional landscaping to be located adjacent to the Boston Post Road at 93 Boston Post Road. The motion was made by Mr. Spain, seconded by Mr. Hutchison. All voted in favor except Mr. Voigt who abstained.

Chairman Conze then read the following agenda item:

**Amendment of Special Permit 80-C, St. Johns Church, Boston Post Road.** Request to amend Special Permit to allow up to 51 children at a time. They hope to get that approval in January so they can have their sign up and pre-enrollment in February of 2010.

Commission members discussed the request to increase the number of children that could be in the day care center at any given time. There are various State Health Code and nursery school requirements that limit the number of children at the site. The applicant had discussed with the staff possibly increasing the number of children to 51, but the letter formally requests 48 children at a time. The Commission members agreed that amending the Special Permit to allow up to 51 students would be acceptable. The following motion was made: That the Commission authorize the amendment of the Special Permit to allow up to 51 children in the nursery school/day care. The motion was made by Mr. Spain, seconded by Mr. Hutchison and unanimously approved.

Mr. Conze then read the following agenda items:

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**Approval of Minutes**

*November 24, 2009 Public Hearing*

Several revisions were discussed and agreed upon. The following motion was made: That the Commission adopt the minutes as revised. The motion was made by Mr. Voigt, seconded by Mr. Hutchison. All voted in favor, except Mr. Conze who had not been present on November 24<sup>th</sup>.

*December 1, 2009 Special Meeting/General Meeting*

The minutes were discussed. The following motion was made: That the Commission adopt the minutes as presented. The motion was made by Mr. Conze, seconded by Mr. Voigt and unanimously approved.

*December 14, 2009 General Meeting--Whole Foods Market Site Visit*

The following motion was made: That the Commission adopt the minutes as presented. The motion was made by Ms. Riccardo, seconded by Mr. Spain. All voted in favor except Mr. Voigt, who had not attended the December 14<sup>th</sup> meeting.

There being no further business, the meeting was adjourned at 9:00 p.m.

Respectfully submitted,

David J. Keating  
Assistant Director of Planning

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