

**PLANNING AND ZONING COMMISSION**  
**ADOPTED RESOLUTION**  
**May 2, 2017**

Application Numbers: Business Site Plan Application #295, Special Permit Application #294  
Land Filling and Regrading Application #401  
Noroton Heights Shopping Center, Inc.

Street Addresses: 346, 310 and 264 Heights Road  
Assessor' Map #75 Lot #22, 23, & 24 with associated improvements to Lots #25 & 26 and #27

Names and Address of: Noroton Heights Shopping Center, Inc.  
Applicant(s) and 264 Heights Road  
Property Owner(s): Darien, CT 06820

Name and Address of Robert F. Maslan, Jr., Esq.  
Applicant's Representative: Maslan Associates PC  
30 Old King's Highway South  
Darien, CT 06820

Activity Being Applied For: The applicant proposes to demolish the existing buildings on the 346 Heights Road property and construct two new mixed-use buildings on that property; reconfigure the parking and internal traffic circulation; create new internal public plaza spaces; and perform related site development activities.

Property Locations: The 346 Heights Road property is located on the north side of Heights Road, and extends from the intersection of Hollow Tree Ridge Road eastward for approximately 520 feet, and is shown on Assessor's Map #75 as Lots #22, 23, & 24, in the DC Zone and NHR overlay zone. The 346 Heights Road property is 3.9564+/- acres. Associated changes to the shared parking lot areas and related improvements are proposed to the 310 Heights Road property (Wells Fargo Bank) shown on Assessor's Map #75 as Lot #25&26; and the 264 Heights Road property (Palmer's Market) shown on Assessor's Map #75 as Lot #27.

Dates of Public Hearing: January 24, 2017 continued to February 14, 2017 (no quorum at that meeting), February 21, 2017 and March 7, 2017  
Deliberations held on: March 21, 2017, April 5, 2017 and May 2, 2017

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices  
Dates: January 13 & 20, 2017

Newspaper: Darien News

Date of Action: May 2, 2017

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Actions:

ZONING REGULATION AMENDMENT: ADOPTED WITH MODIFICATIONS  
(that is a separate, yet related decision) WITH AN EFFECTIVE DATE OF  
SUNDAY, JUNE 11, 2017 AT 12:01 P.M.

**Business Site Plan Application #295, APPROVED WITH CONDTIONS**  
**Special Permit Application #294, WITH AN EFFECTIVE DATE OF**  
**Land Filling and Regrading Application #401 SUNDAY, JUNE 11, 2017 AT 12:05 P.M.**

Scheduled Date of Publication of Action: Newspaper: Darien Times  
May 11, 2017

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

- the proposed use and activities must comply with all provisions of Sections 580, 680, 850, 905, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted redevelopment plans, and the statements of the applicant's representatives 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 review of the submitted application materials and related analyses, the Commission finds:

1. The submitted subject application consists of proposals to:
  - a. amend the Darien Zoning Regulations (Section 685) relating to minimum lot width and depth to allow buildings to be located in portions of lots that are at least 135 feet in width and depth.
  - b. and to:
    - i. demolish the two existing buildings on the 346 Heights Road property;
    - ii. construct two new mixed-use buildings on that property;
    - iii. reconfigure the parking and internal traffic circulation;
    - iv. create new internal public plaza space; and perform related site development activities.
2. Both new mixed-use buildings will have residential dwelling units on upper (the second and third) floors. In Building 1, there will be 27 new units. Building 2 is proposed to have 32 new units. Thus, there are 59 new residential units proposed as part of this redevelopment. Because there are more than five new residential units proposed, in accordance with Section 580 of the Zoning Regulations, there is a requirement for inclusionary units as part of this application. The

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applicant has stated that there are now two residential units on the property and those will be removed as part of this redevelopment.

3. The Commission notes that most of the work on the application involves 346 Heights Road (Lots 22, 23, 24). There is a shared parking agreement with 264 Heights Road (shown on Lot 27). While the applicant does not own 264 Heights Road, which is owned by TTJ Realty LLC, they have been a long-time tenant on that property (Palmer’s Market). The submitted site plan shows a number of modifications on that property as well as on the adjacent 310 Heights Road property, shown as Lot #25-26 (the Wells Fargo property).

**ZONING REGULATION AMENDMENT**

4. Part of this application is a proposal to amend the Darien Zoning Regulations (Section 685) relating to minimum lot width and depth to allow buildings to be located within portions of lots that are at least 135 feet in width and depth. The Commission has made a separate decision on that matter. (COZR #1-2017)

**PROPOSED COMMERCIAL SPACE**

5. As noted on page A-2 of the submitted application, the amount of proposed commercial space on the property is as follows:
  - 8,646 square feet of restaurant space; No bar space within restaurants has yet been proposed.
  - 24,481 square feet of retail space.

	<b>RETAIL</b>	<b>RESTAURANT</b>	<b>RESID.</b>	<b>TOTAL</b>
BUILDING 1	<b>8,415</b>	<b>5,208</b>	<b>40,520</b>	<b>54,143</b>
BUILDING 2	<b>16,066</b>	<b>3,438</b>	<b>47,935</b>	<b>67,439</b>
<b>TOTAL</b>	<b>24,481</b>	<b>8,646</b>	<b>88,455</b>	<b>121,582</b>

*NOTE: Total includes other space which is not retail and/or restaurant, such as lobbies and stairs.  
Source: Sheet A0.00, prepared by Newman Architects, last dated 11/30/2016 and revised March 1, 2017.*

Details are also included on Table A of the January 31, 2017 Tighe & Bond letter. This table notes that there are no proposed changes to the size of the Palmer’s Market building or the Wells Fargo buildings. The Table notes that the “west” Noroton Heights Shopping Center building is now 11,144 square feet, and the “east” shopping center building is 19,483 square feet.

At the February 7, 2017 public hearing, Craig Yannes of Tighe & Bond stated that the proposed redevelopment of the site will include a net increase of:

- 1,541 square feet of retail space;
- 2,576 square feet of restaurant space; and
- 57 new residential units (there are now two residential units on-site).

This data is from page 7-1 of the Traffic Impact & Parking Study.

6. The Commission acknowledges that no details have yet been submitted regarding the proposed restaurant spaces other than that shown on Sheet A0.00, prepared by Newman Architects, dated 11/30/2016. This Sheet shows the locations of the proposed restaurant spaces within the buildings. The restaurant spaces shown (which may or may not be three separate restaurants)

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total 8,646 square feet. These plans do not show any outdoor dining areas, bar areas associated with the restaurants or any specific venting systems. It is acknowledged that the applicant(s) will need to return to the Commission for detailed special permit reviews related to all aspects of the restaurants, including their venting systems and any associated outdoor dining. An application to the Architectural Review Board (ARB) will also be needed for any desired outdoor dining. The Commission encourages such outdoor dining, but notes that seating for up to 16 patrons per restaurant is permitted without requiring additional parking.

**PROPOSED RESIDENTIAL SPACE**

7. As noted above, each of the two proposed buildings will include residential units on the second and third floors. The details on each are in the following chart, which is taken from Sheet T0.00, prepared by Newman Architects, last dated 11/30/2016:

<b>UNIT COUNT BUILDING 1</b>	<b>1 BEDROOM</b>	<b>2 BEDROOM</b>	<b>TOTAL</b>
BLDG 1. 2 <sup>ND</sup> FLOOR	<b>5</b>	<b>9</b>	
BLDG. 1. 3 <sup>RD</sup> FLOOR	<b>4</b>	<b>9</b>	
<b>TOTAL BLDG. 1</b>	<b>9</b>	<b>18</b>	<b>27</b>

<b>UNIT COUNT BUILDING 2</b>	<b>1 BEDROOM</b>	<b>2 BEDROOM</b>	<b>TOTAL</b>
BLDG 2. 2 <sup>ND</sup> FLOOR	<b>5</b>	<b>11</b>	
BLDG. 2. 3 <sup>RD</sup> FLOOR	<b>5</b>	<b>11</b>	
<b>TOTAL BLDG. 2</b>	<b>10</b>	<b>22</b>	<b>32</b>

<b>GRAND TOTAL</b>	<b>1 BEDROOM</b>	<b>2 BEDROOM</b>	<b>TOTAL</b>
BUILDING 1	<b>9</b>	<b>18</b>	<b>27</b>
BUILDING 2	<b>10</b>	<b>22</b>	<b>32</b>
<b>TOTAL</b>	<b>19</b>	<b>40</b>	<b>59</b>

*Source: Sheet A0.00, prepared by Newman Architects, last dated 11/30/2016.*

8. Section 685 of the Darien Zoning Regulations allows a maximum dwelling size of 1,200 square feet, or 1,500 square feet by Special Permit. Within this Resolution, the Commission makes the requisite findings under Section 1005(a)-(g) to allow one 1,500 square foot dwelling unit. Section 686 of the Regulations requires that at least 30% of the units be one bedroom units. In this case, 19 of the proposed 59 units are one bedroom units (32.2%). The Regulations do not allow units with more than two bedrooms. The submitted plans show the size of the proposed units are as follows:

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	<b>Less than 1,200 s.f.</b>	<b>1,200 to 1,499 s.f.</b>	<b>Equal to 1,500 s.f.</b>	<b>TOTAL</b>
BUILDING 1	19	7	1	27
BUILDING 2	12	20	0	32
<b>TOTAL</b>	<b>31</b>	<b>27</b>	<b>1</b>	<b>59</b>

*Source: Sheets A1.02 through A1.13B prepared by Newman Architects, dated 11/30/2016, and last revised 2017 Feb 9.*

**INCLUSIONARY ZONING**

9. Section 580 of the Zoning Regulations requires that a minimum of 12% of units be designated as affordable. The calculation of the requirements is shown in Exhibit 1 on page 19 of this Resolution. The Commission requires that at least 8 of the 59 proposed units be affordable, and will allow that a fee-in-lieu payment be made for the remaining fractional number of units (0.58 units) to the Darien Affordable Housing Trust Fund. If the applicant would like to provide an additional unit to meet the fractional requirement, that would also be permitted.
  
10. The Commission hereby requires that all inclusionary affordable units be established on-site, within the development. The eight affordable units shall be proportionally split between the two buildings--four shall be in Building 2 and four shall be in Building 1. Four shall be two bedroom units and four shall be one bedroom units, and shall be equally located among buildings. The Commission requires that the inclusionary affordable units be generally the same size and quality, and be interspersed within the market-rate units proportionally. Such affordable units must be constructed and issued Certificates of Occupancy (COs) such that the first on-site unit, and no less than every sixth unit, be an affordable unit.
  
11. While the Zoning Regulations allow 12 units per gross acre, an increase to up to 18 units per gross acre is allowed under Section 580, if approved by the Commission. The Commission hereby approves a total of 59 on-site units (*including* the required affordable units). That amounts to 14.9 units per gross acre.

**REVIEWS**

12. There are no inland wetlands on the subject property and thus, Environmental Protection Commission (EPC) review or action is not required. The Architectural Review Board (ARB) reviewed the plans on December 14, 2016, and sent a letter for the record dated December 28, 2016, issuing a favorable report for the proposal.
  
13. As part of this application, the Planning & Zoning Commission hired two peer-reviewers. Michael Galante of Frederick P. Clark Associates was hired to review traffic and parking; and Holt McChord of McChord Engineering was hired to review the engineering and stormwater management/drainage aspects of the proposal.

**LAND FILLING AND REGRADING**

14. The applicant proposes to modify the grade along the northern side of the property. This area is adjacent to nine residential properties with frontage on West Avenue. This area on the north

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side of the property now has a retaining wall. The application proposes to cut into the slope and construct a new wall, part of which will be up to eleven feet high at its tallest point. The Commission traditionally has shown concern regarding the construction and resulting visual impact of such large retaining walls. At the public hearing, there was discussion of how to best minimize the size and visual impact of the wall. The applicant addressed this with proposed planting of ivy towards the bottom of the wall along with new trees, plantings, and fencing along the top of the wall as noted on the Landscape Plan. It was noted that there will be a number of trees and plantings which are now within that slope which will be removed.

### **SITE PLAN/SPECIAL PERMIT**

#### **LOADING/DELIVERIES/DROP-OFF AREAS**

15. As part of the application, the applicant proposed two separate loading areas. The first is on Heights Road in front of proposed building 1; and the second behind Building 2. During the public hearing process, the applicant modified the plans to show a new loading/delivery space directly to the west of Building 2. This would allow for FedEx, UPS, and other similar delivery vehicles to pull alongside that building, and then walk parcels and packages to the lobbies/package rooms of buildings #1 and #2, and many of the first floor commercial businesses, particularly within the central portion of the site.
16. The Commission continues to have concerns regarding the proposed loading space on the north side of Heights Road, since that space is not entirely on private property. It is the long-time policy of the Commission to not permit on-street parking for deliveries, nor to allow credit for a loading space which is not entirely on the subject property.

#### **TRASH COLLECTION/DUMPSTER AND GARBAGE/RECYCLING AREAS**

17. The applicant has proposed three new dumpster/trash/recycling areas on-site. The first of these areas is in the northwest corner of the property to the north and west of Building #2. The second area is on the northern part of the site, to the north and east of Building #2 and below the proposed retaining wall. The third dumpster area is to the west of Building 2, directly behind 166 Hollow Tree Ridge Road. These are all shown on Sheet C3.0 Site Plan, by Tighe & Bond. At the public hearing, there was concern by the Commission about whether these areas are of a sufficient size to accommodate trash and recycling, now and into the future. The Commission has concerns regarding the trash area being so close to the residential neighbors on Hollow Tree Ridge Road, as that dumpster area is shown within the 25 foot buffer area.

#### **TRAFFIC, BICYCLE AND PEDESTRIAN-RELATED IMPROVEMENTS**

18. As part of this application, and as noted at the March 7 public hearing, the applicant has proposed a number of traffic, bicycle, and pedestrian-related improvements. These include:
- a) Eliminating the backout parking now on Heights Road along the western most building on the site (Post Office, Darien Doughnut);
  - b) Eliminating the driveway on Hollow Tree Ridge Road;
  - c) The “widening” of Heights Road near its intersection with Hollow Tree Ridge Road;

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- d) Optimizing the timing of the existing three traffic lights on Hollow Tree Ridge Road in the vicinity (at West Avenue; at Heights Road; and at the Avalon driveway);
  - e) Moving the existing stop bar back (to the north) on Hollow Tree Ridge Road, which will allow buses and large trucks to turn north with greater ease from Heights Road;
  - f) The repaving and restriping of Heights Road along the project frontage;
  - g) The placement of a bike storage room within both proposed buildings.
  - h) The placement of a bike rack on the property on the northwestern portion of the property;
  - i) Improvements to the existing walkway from West Avenue to the site;
  - j) The installation of several new crosswalks—two crossing Heights Road and two parallel to Heights Road (final crosswalk locations/details/style to be determined by Planning and Zoning Department staff and the Darien Traffic Authority). The Commission recommends the use of stamped concrete crosswalk as shown in Exhibit 2.
  - k) The installation of concrete sidewalks along the entire project frontage and along portions of the west side of Edgerton Street in areas where gaps now exist; and
  - l) The placement of a new bus shelter on Heights Road. The exact size, design, and location are to be reviewed and approved by the Planning & Zoning Director.
19. During the public hearing, the Commission heard from a number of Patton Drive residents regarding ongoing concerns about vehicles using Patton Drive as a cut-through road, and the amount of traffic congestion in the area. While sympathetic to those concerns, the Commission believes that the issue represents a pre-existing condition and is not directly related to the proposed project. The Board of Selectmen is likely to pursue a separate traffic study of Patton Drive in the near future.

#### SIDEWALKS

20. Plan Sheets C2.0, C9.0 and C9.1, prepared by Tighe & Bond show sidewalk locations and sidewalk details. New concrete sidewalks are proposed for gaps now along the western side of Edgerton Street. The applicant proposed concrete (not Model Block) sidewalks for Heights Road, along the project frontage. New concrete sidewalks are also proposed along the east side of Hollow Tree Ridge Road along the project's frontage. The Commission expects that the final design of all sidewalks and associated pedestrian amenities (street lighting, benches, etc.) will be consistent throughout the Noroton Heights business district. The sidewalks shall be "Model Block" style, with the final details to be coordinated with the Planning & Zoning Director.
21. Pedestrian access and other sidewalks and walkways and other circulation within the site are shown on Sheets C2.0 and 3.0, prepared by Tighe & Bond (Overall Site Plan and Site Plan).

#### PARKING—BOTH AT-GRADE AND UNDERGROUND

22. For many years, a number of nearby property owners have shared the existing parking lot areas on the adjacent properties (Wells Fargo, Palmer's Market, and Noroton Heights Shopping Center), a formal shared parking agreement was noted. No separate or additional shared parking agreement will be required. The application shows changes to shared parking areas on the adjacent Wells Fargo property. Owner authorization will be required for the applicant to work

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on other properties not owned by them (the Wells Fargo property and the Palmer’s Market property).

- 23. All at-grade parking spaces are to be shared pursuant to the existing shared parking agreements filed in the Darien Land Records (Volume 449 Page 341 and Volume 449 Page 344). Except for the residential parking under the buildings, where there will be no shared parking—all underground parking shall be reserved for use by the residential units
- 24. The applicant has put forth a shared at-grade parking lot as well as reserved underground parking. Section 905.1 of the Darien Zoning Regulations notes that in this zone, the Commission may waive only up to a maximum of fifty percent (50%) of the parking required per Section 904. Page 6-1 of the applicant’s Study confirms that 699 parking spaces are required under the Regulations with no allowance for sharing.

	<b>RETAIL (1:150SF)</b>	<b>RESTAURANT (1:100SF)</b>	<b>RESIDENTIAL 2.5 per unit</b>	<b>REQUIRED PARKING</b>
PROPOSED BUILDING 1	<b>8,415 (56.1)</b>	<b>5,208 (52.08)</b>	<b>27 (67.5)</b>	<b>177</b>
PROPOSED BUILDING 2	<b>16,066 (107.1)</b>	<b>3,438 (34.38)</b>	<b>32 (80)</b>	<b>224</b>
PALMER’S MARKET BLDG.	<b>40,800</b>	<b>0</b>	<b>0</b>	<b>272</b>
WELLS FARGO	<b>4,100</b>	<b>0</b>	<b>0</b>	<b>27</b>
<b>TOTAL</b>	<b>69,381</b>	<b>8,646</b>	<b>59</b>	<b>699</b>

*NOTE: Total includes other space which is not retail and/or restaurant, such as lobbies and stairs.  
Source: Sheet A0.00, prepared by Newman Architects, last dated 11/30/2016 and revised March 1, 2017.  
Tighe & Bond Traffic Impact & Parking Study revised January 31, 2017 (p1.1, 2.1).  
Note: In the chart, the number of required parking spaces by type is rounded up by each category.*

- 25. The Tighe & Bond report notes that 401 on-site parking spaces are being proposed, 10 of which are handicap accessible spaces. As noted in Section 905.1 of the Zoning Regulations, the Commission may reduce the required on-site shared parking spaces from 699 by a maximum of 50%. The applicant proposes 74 underground parking spaces which will not be shared with other properties. The number of provided on-site spaces has changed as part of the plan modifications through the public hearing process, which have occurred after the submittal of the January 2017 Tighe & Bond Traffic Impact & Parking Study. It is acknowledged that other modifications to the on-site parking may need to be made as a result of the conditions in this approval, the possible provision of cart corrals, and other upcoming reviews by the Fire Marshal and Building Official.
- 26. Section 905 allows the construction and use of joint / shared parking spaces for more than one use on a site and/or on adjacent parcels. This is due to the efficiencies of scale and the appropriateness of having patrons park once and walk to various uses in close walking range. In this case the 74 parking spaces under the two buildings will be reserved and used exclusively by of the residential users in the buildings. Those 74 parking spaces will not be shared and will not



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be available to other workers or patrons of the various other uses on the site. Those 74 spaces must be deducted from the shared / joint use parking available on the site.

699 total required on-site parking  
- 74 reserved for residential users (underground parking)  
625 required shared parking spaces

625 x 50% (maximum allowed reduction under Section 905.1)  
= 312.5 absolute minimum number of shared parking spaces

401 proposed on site parking spaces  
- 74 reserved parking spaces  
327 actual proposed shared parking spaces

27. The Commission finds that the applicant has provided a sufficient number of on-site parking spaces provided for all uses (both shared and non-shared parking). It has been represented by the applicant that the underground parking will only be for use by the residential tenants. All non-residential customers and employees will use the at-grade parking on-site. It was noted that the Palmer's Market employees use an existing parking lot to the east of Palmer's Market (off of Edgerton Street), which is almost used exclusively by them, but is technically shared. The applicant is encouraged to have other employees of the non-residential uses park in the Palmer's Market employee lot, as there may be room, in order to free up more at-grade shared spaces for customers. The applicant is also highly encouraged to strictly monitor and enforce the permitted use of all at-grade parking areas by restricting Metro North commuters and other unauthorized vehicle parking.
28. The applicant has proposed the creation of 12 parallel parking spaces on Heights Road. While the Commission encourages the establishment of short-term, on-street parking in this vicinity, it is ultimately up to the discretion of the Local Traffic Authority to formally establish such. The Commission notes that the elimination of the existing backout parking spaces along the existing westernmost building on the site (Post Office, Darien Doughnut) on Heights Road will relieve an existing safety hazard. Since the 12 newly created parking spaces on Heights Road are not on the subject property, the applicant cannot be given credit for them by the Commission as on-site parking to meet the minimum requirements.
29. There will be 37 parking spaces under proposed Building 1 and 37 parking spaces under proposed Building 2. These spaces will be below grade, and will be for the exclusive use of the residents living in the residential units.
30. The Darien Zoning Regulations currently require 9' x 20' parking stalls with 24' back out aisles for perpendicular parking. Recently, the Commission modified those dimensions for the Corbin Subarea by adding a new section 226a to the Zoning Regulations. There is now a pending application to allow 9' x 18' perpendicular parking spaces throughout Darien. If that Regulation is amended in the future, the applicant may return to the Commission to modify the plans being

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approved herein. Until such time, all perpendicular parking spaces shall be 9' x 20' with a 24' back up aisle.

#### STORMWATER MANAGEMENT

31. As part of the originally submitted application, the applicant showed a stormwater management system. During the public hearing process, the applicant amended the plans to show a number of Cultec units under the Palmer's Market employee lot (the eastern part of site adjacent to Edgerton Street). These are shown on the revised plans dated 3/1/2017 on Sheets C6.0A and C6.1, prepared by Tighe & Bond. This will allow the applicant to address stormwater which flows eastward down Heights Road, towards the area of concern.
32. The applicant has asked the Commission to waive the use of the "Fresh Meadow approach" for drainage calculations of the western part of site, which would allow the applicant to install the Cultec units under the Palmer's Market employee lot, instead of the originally proposed location in front of Palmer's Market. The Commission agrees with the applicant and finds that a waiver is appropriate in this specific case, which would allow for stormwater management to be installed on both parts of the site, as shown on the submitted Drainage Plans (C6.0, C6.0A, C6.1), last revised 3/1/2017 by Tighe & Bond.

#### LANDSCAPING AND LIGHTING

33. The applicant shows a number of improvements to the existing walkway from the subject property up to West Avenue along the northwestern portion of the site. This includes, but is not limited to the placement of bollards for lighting, a widening of the walkway, and placement of a new picnic table. This walkway is an essential pedestrian and bicycle access point for neighbors. While the applicant has not proposed a new crosswalk from the site to the north across West Avenue to the corner of Hilton Street, the Commission believes that the addition of such a crosswalk would improve pedestrian and bicycle access greatly.
34. The Commission notes the need for better screening of the Palmer's Market loading dock from the walkway and believes that the planting of additional evergreen trees at the southeastern portion of the walkway will help to accomplish this.
35. At the public hearing, there was concern regarding the look and feel of the 10+ foot high new retaining wall to be installed on the north side of the property. The Commission requires that plantings be placed atop of wall on north side of property to assist in minimizing visual impacts from the neighbors on West Avenue. Ivy shall be planted at base of wall on north side of property so as to allow it to run up the wall through the years to help give it an improved look.
36. The streetscape landscaping shown on the plans along Heights Road and Hollow Tree Ridge Road is an essential part of this approval, as are the landscaping features within public plaza area and throughout the site.

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**REQUIRED PUBLIC PLAZA**

37. Section 687 of the Darien Zoning Regulations requires public plaza space as part of the redevelopment. The Commission finds that the public plaza has been put forth by the applicant and shown on the Zoning Location Survey last dated December 6, 2017, prepared by William W. Seymour & Associates between Building 1 and Building 2. The plaza extends generally from the front of the buildings on Heights Road, at the center of the site, and extends north through the area between portions of building 2, and includes a small area behind Building 2. A portion of the plaza is covered by Building 2. It includes the entirety of the bluestone pavement border between Building 2, Retail C3 and retail D2. It is shown on the survey as 10,915+/- square feet. As shown on the Landscape Plan (Sheet LP.1) and the Landscape Detail Plan (Sheet LP.2), prepared by Environmental Land Solutions, the plaza area includes a water feature, bluestone pavement accent band as a focal point, and a sundial. The size, shape, and proposed features of the plaza comply with Section 687a-g of the Regulations. The Commission finds that the public plaza shown is in harmony with the convenient orderly and attractive development of the zone.
38. The Commission notes that a drive area runs through the public plaza. Section 687f of the Regulations notes that commonly used area such as sidewalks and parking areas and the like shall not be included in the calculation of the total area of on-site public plaza features. Thus, the Survey properly shows that the drive that runs through the middle of the proposed plaza does not count towards the total size of the plaza. The Commission envisions that in certain circumstances, the applicant may close off this area for public events; however, traffic on-site would still be able to flow through the site.

**OTHER SITE PLAN FINDINGS**

39. The Commission believes that it would be appropriate to place a new bus shelter on Heights Road near an existing bus stop. The exact size, style, and location are to be reviewed and approved by the Planning & Zoning Director. It shall be installed as noted within the Conditions of Approval, below.
40. The submitted plans show a bike rack for the public in the northwest corner of the property. This location shall be modified, since that location is inconvenient and out of the way and does not give easy access for the public to then walk through the site. The Commission believes that in order to encourage bicycle access, an additional on-site bike rack is necessary, and the one rack shown on the plans shall be placed closer to Heights Road. The exact size, style and location of the required bicycle racks are to be reviewed and approved by the Planning & Zoning Director.
41. Size and location of mail/package rooms within the buildings was discussed during the public hearings. The Commission strongly believes that these areas need to be larger to accommodate the residents who live there.

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**FIRE MARSHAL AND BULDING OFFICIAL COMMENTS**

42. Two new fire hydrants are shown on the plans. The Fire Marshal notes that two more additional hydrants are required--one more along Heights Road and one more within the site.
43. The Building Official prepared a preliminary review on 6/9/2016, recommending numerous additional modifications to the plans. A more thorough review of the plans will be completed by the Building Official following a decision on the application by the Planning & Zoning Commission, and the submission of formal Zoning and Building Permit applications.

**REQUIRED BUFFER**

44. The applicant has proposed a reduction of the depth of the required buffer to adjacent residential uses to the site. This is specifically authorized pursuant to Section 945(c) and 941.1 of the Zoning Regulations. Because of the specifics in this situation, and the specific planting plan proposed, the Commission agrees to reduce the buffer from 25 feet down to six feet for parking spaces only in the northwest area of the site. The submitted Landscape Plan shows the installation of new plantings to minimize the potential impacts of the parking lot. All parking spaces along the northern part of the site shall be at least 25 feet away from the property line.

**UTILITIES**

45. Details regarding the proposed sanitary sewer, water, and gas, electric and tel-data are included on page 3-1 of the Tighe & Bond Engineering Report dated November 18, 2016.
46. The existing buildings are connected to public water and sewer. Both of the proposed buildings will be connected to public water and sewer with a new sewer connection to the proposed sanitary sewer extension on Heights Road. The existing sewer connection via pump mechanism to Hollow Tree Ridge Road/West Avenue will be abandoned and removed.
47. The Commission issued a report under CGS 8-24 regarding the associated sanitary sewer extension on Heights Road. That positive report (MR #2-2017) was issued on April 5, 2017.

**SPECIAL PERMIT FINDINGS**

48. The location and size of the use, as modified and conditioned herein, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, shall be such that it shall be in harmony with the appropriate and orderly development of the district in which it is located.
49. The location, nature, size, and height of buildings, walls and fences, and the nature and extent of landscaping, screening, lighting and signs, as modified and conditioned herein, shall be such that the use shall not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
50. The design, location and specific details of the proposed use, as modified and conditioned herein, shall not adversely affect safety in the streets nor increase traffic congestion in the area, nor

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interfere with the pattern of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.

51. Streets and other rights-of-way are of such size, condition and capacity to adequately accommodate the traffic to be generated by the particular proposed use.
52. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.
53. The elements of the Site Plan submitted as part of the Special Permit application accomplish the objectives for Site Plan Approval as specified in Subsection 1024. The site plan has been reviewed by the Commission and is in general compliance with the intent, purposes and objectives of Section 1020.

NOW THEREFORE BE IT RESOLVED that Business Site Plan Application #295/Special Permit Application #294, and Land Filling & Regrading #401 are hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction and other site development activity shall be in accordance with the following plans as required to be modified herein:

**SURVEY**

- Zoning Location Depicting Proposed Conditions 346 Heights Road prepared for Noroton Heights Shopping Center, scale 1"=40', by William W. Seymour & Associates, dated November 30, 2016 and last revised December 6, 2017.  
(The survey shows the public plaza area of 10,915+/- sf.).

**SITE PLANS, STORMWATER, UTILITY AND OTHER PLANS**

- Noroton Heights Shopping Center, by Tighe & Bond, dated November 30, 2016 and last revised 2/9/2017, Sheets C1.0, C7.1 through C10.0.
- Noroton Heights Shopping Center, by Tighe & Bond, dated November 30, 2016 and last revised **3/1/2017**, Sheets C2.0 through C7.0.

**ARCHITECTURAL PLANS**

- Noroton Heights Shopping Center, by Newman Architects, dated 11/30/2016, last revised 2017 February 9, Sheets A1.02, A1.03, A1.12, A1.12A, A1.13, A1.13A, A2.10, A2.12.
- Noroton Heights Shopping Center, by Newman Architects, dated 11/30/2016, last revised **2017 March 1**, Sheets A0.00 through A1.01.

**LANDSCAPING PLANS**

- Landscape Plan, Noroton Heights Center, by Environmental Land Solutions, dated 10.28.16 and last revised 3.1.17, Drawing No. LP-1.
- Landscape Details, Noroton Heights Center, by Environmental Land Solutions, dated 10.28.16 and last revised 2.9.17, Drawing No. LP-2.

**Revised plans will be needed as follows:**

- 1. Correct the underground parking to have 9' x 20' spaces with a 24' parking aisle.**

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- 2. As recommended by the Darien Fire Marshal, the applicant shall add two more fire hydrants. The final location of those new fire hydrants shall be coordinated with the Fire Marshal and Planning & Zoning Director and shown on the revised plans.**
  - 3. Show the location of a bus shelter along the Heights Road frontage. Exact size, location and style to be reviewed and acted upon by the Planning & Zoning Director.**
  - 4. Relocate proposed bike rack to a place closer to the buildings, and add a second bike rack. Exact size, location and styles to be reviewed and acted upon by the Planning & Zoning Director.**
  - 5. Modification to Dumpster areas—the Commission hereby requires the elimination of the dumpster area within the required 25 foot buffer adjacent to 166 Hollow Tree Ridge Road. The Dumpster area on the northwest corner shall be enlarged by 20-25% and fully enclosed with a minimum six foot high stockade fence. Exact size, location and style to be reviewed and acted upon by the Planning & Zoning Director.**
  - 6. Removal of the word “Loading” on the on-street area in front of Building 1, since the Commission is not approving it as a Loading or unloading space.**
  - 7. Modify the Landscape Plan to include landscaping which will minimize the visual impact of the Palmer’s Market loading dock from the walkway from West Avenue.**
  - 8. Show on the architectural plans the location of the required affordable units.**
  - 9. Show on architectural plan A1.03 the size of unit A309.**
  - 10. The Commission recommends, but does not require, a larger mail/package room in the lobby of each building.**
  - 11. Sidewalk details to reflect “Model Block” standards.**
- All plans will need to be coordinated.

#### BONDING

- B. The Planning and Zoning Commission is not requiring a bond for the proposed public improvements (sidewalk, lampposts, landscaping, and fire hydrants), since a Certificate of Occupancy cannot be obtained until all of these are properly constructed pursuant to the plans in Condition A, above. New concrete sidewalks shall be provided along the entire frontage of the property with Heights Road and Hollow Tree Ridge Road, and along portions of the west side of Edgerton Street in areas where gaps now exist. The Commission expects that the final design of all sidewalks and associated pedestrian amenities (street lighting, benches, trash cans, etc.) will be consistent throughout the Noroton Heights commercial area and be “Model Block” style. The design of the sidewalks along the streets shall be continuous raised concrete sidewalk through the driveway, rather than dropping down to the asphalt driveway.

#### PHASING PLAN

- C. Prior to the issuance of a Demolition Permit for either of the two existing Noroton Heights Shopping Center buildings, the Applicant shall submit a Phasing Plan for review and action by Fire Marshal, Building Official, and Planning & Zoning Department staff. This Phasing Plan shall show and specifically note the implementation of the following:  
construction access; safety fencing; temporary pedestrian walkways through and/or around the site; sediment and erosion controls; the proposed walkway work; public plaza improvements;

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traffic, bicycle and pedestrian improvements; crosswalks off-site; and the new concrete sidewalks on Edgerton Street; as well as the required on-street and off-street parking.

- D. The Commission hereby allows, subject to final review and action by the Building Official and Fire Marshal, the use of the first floor of any building while the upper floors are being constructed.
- E. A public plaza easement shall be filed in the Darien Land Records denoting specifically the details and location of the easement. As noted in the Regulations, while tables, chairs and other street furniture are allowed within the plaza, they are for public use. They cannot be used exclusively by a restaurant or other dining facility. The sequencing of the filing of the public plaza easement in the Land Records is noted in Exhibit 3.

#### UTILITIES

- F. All utilities serving this property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring. The Commission hereby authorizes two new telephone poles as shown on the submitted plans--one new telephone pole on Hollow Tree Ridge Road and the other to the north of Wells Fargo Bank on Lot #25 & #26.

#### DURING CONSTRUCTION

- G. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans in Condition A, above, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, 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 immediately 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.

#### LOADING

- H. The Commission finds that only some of the loading areas as shown on the Site Plan (Sheet C3.0 last revised 3/1/2017), prepared by Tighe & Bond are adequate. This includes the loading area behind Building 2, and a separate loading/delivery area for UPS/FedEx vehicles along the west side of Building 2. The area shown on the plan as Loading along Heights Road near the Hollow Tree Ridge Road intersection does not count, since it is not entirely on the subject property. Signage associated with that on-street loading area shall be regulated by the Local Traffic Authority.

#### TRAFFIC AND PARKING

- I. The applicant has proposed continuing to implement the shared parking agreements which have been filed in the Darien Land Records, and were submitted for the record in this matter.

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- J. The applicant has not shown any shopping cart corrals on the proposed plans. If any are desired in the future, since they will reduce the amount of on-site parking approved herein, the cart corrals require Planning & Zoning Commission review and action.
- K. The Commission hereby approves a reduction in the required parking as noted in the Parking section on pages 7-10 of this Resolution. The Commission finds that under Section 905.1 of the Regulations, a reduction to 312.5 spaces can be granted. A total of 327 at-grade shared spaces were shown on the submitted site plan. The Commission expects that there may be other modifications to the plans, such as additional handicap-accessible parking spaces, which could affect the amount of on-site parking provided on the final site plan. Therefore, a minimum of 320 on-site, at grade parking spaces are hereby required to be shown on the final site plan. A total of at least 74 underground reserved spaces for residential users shall be installed.
- L. The Commission recommends, but does not require, that the two underground parking lots be connected.
- M. All crosswalks proposed by the applicant located off-site as shown on sheet C3.0, prepared by Tighe & Bond, include:
- Heights Road at the Hollow Tree Ridge Road intersection;
  - leading from Building 2E across Heights Road;
  - parallel to Building 1 across the proposed westernmost driveway;
  - parallel to Heights Road, across the driveway between Building 2 and Wells Fargo Bank;
  - a new crosswalk from the walkway across West Avenue.
- The Commission recommends to the Local Traffic Authority that all of these crosswalks shall be stamped concrete, as shown in Exhibit 2 on page 20 of this Resolution.
- N. The applicant has proposed the relocation of the stop bar now on Hollow Tree Ridge Road, just north of the Heights Road intersection. It shall be completed pursuant to the Sequencing Plan in Exhibit 3 on page 21.
- O. The applicant has shown on the first floor plans both restaurant and retail spaces. Other uses may be considered by the Commission as allowed by Section 684 of the Zoning Regulations, but require prior review and action by the Commission. The Commission can then make a determination whether the use is appropriate under the Noroton Heights Redevelopment District and the Special Permit standards. The Commission discourages the applicant from eliminating the restaurant spaces, as they add vibrancy to the area.

**STORMWATER MANAGEMENT**

- P. A Drainage Maintenance and Inspection Plan was prepared by the applicant's engineer, and is included in the Tighe & Bond Engineering Report dated November 18, 2016. This Drainage Maintenance and Inspection Plan requires the property owner and all subsequent property owners of 346 Heights 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



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in the Darien Land Records prior to the issuance of a Zoning or Building Permit for the first new building foundation and within 60 days of this approval.

- Q. Rough site work for the project may commence once the sediment and erosion controls and other environmental protection measures are in place. Around the work area, the storm water runoff must be addressed on a temporary, during construction, basis. This includes limiting the potential for erosion, capturing sediment that does get created, and providing for the flow of storm water in a manner that will not create any problems for adjacent or downstream properties.
- R. The applicant shall install the drainage system as shown on the submitted plans. 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 for remedying the situation at their expense and as quickly as possible.

INCLUSIONARY ZONING

- S. The Commission hereby requires that the inclusionary, affordable units be provided on-site, within the development, to be disbursed generally equally in the two proposed mixed-use buildings. In order to comply with the Zoning Regulations, an equal amount of one and two bedroom units shall be deed restricted.
- T. Affordable units shall be constructed and issued certificates of occupancy such that the first on-site unit, and no less than every sixth unit be an affordable unit.
- U. The Commission is NOT making the determination on whether these new residential units will be “for sale” or “for rent” units. That decision is up to the property owner.
- V. The applicant shall comply with subsection 586 of the regulations by submitting an affirmative fair housing marketing plan for the affordable inclusionary dwelling units. All dwelling units shall be offered for sale or rent in compliance with all applicable Federal and State Fair Housing Laws.
- W. The applicant shall also comply with the provisions of subsection 587 of the Zoning Regulations, entitled, “Program Administration”. Annually in January, certification of these units shall be given to the Planning & Zoning Department certifying that the person(s) living in that affordable unit comply with the inclusionary zoning regulation requirements.
- X. Final documentation as required by Section 580 *et. seq.* shall be submitted, reviewed acted upon and filed in the Darien Land Records as noted in Exhibit 3 on page 19. The applicant shall consult with and work with Planning and Zoning Department staff on the documents, which will ensure compliance with Section 580. All documentation regarding the restrictions on the affordable units shall be filed in the Darien Land Records in compliance with Exhibit 3.

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**OTHER PERMITS AND APPROVALS REQUIRED.**

Y. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. This includes, but is not limited to following:

- Possibly OSTA (DOT) approval;
- Demolition Permits from the Building Department;
- a Sewer Connection Permit from Darien Sewer Services for the proposed new buildings;
- Crosswalk locations and on-street parking details from the Local Traffic Authority;
- Blasting Permit from the Darien Fire Marshal if any blasting is required;
- ARB review and action will be required for any on-site signage.
- For any future desired restaurants, review will be needed by the Architectural Review Board (ARB); and the Planning and Zoning Commission will also need to review any outdoor dining, venting and odor control system, and any proposed bar area, which increases the required on-site parking requirement;
- On-street parking locations and dimensions from the Local Traffic Authority;
- the requirement for Zoning and Building Permit applications (one for each of the building foundations, and separate permits for work above the foundation);
- Planning & Zoning Commission review and approval for any new, additional restaurants, food service establishments, or Special Permit use.

**AS-BUILTS AND CERTIFICATIONS REQUIRED**

Z. Prior to issuance of any Certificate of Occupancy (CO) for this project, the following shall be submitted to the Planning & Zoning Department:

- 1) applicant's engineer shall provide a certification that the stormwater management system is installed in full compliance with the approved plans.
- 2) verification from the project engineer that all aspects of the site grading, building construction and the storm water management (drainage) system have been completed in compliance with the approved plans.
- 3) an as-built topographic survey showing the final grades on the property, and details regarding the grades around the two new proposed buildings, and a certification from a licensed land surveyor of the final building height of the two buildings.
- 4) an as-built photometric plan (including, but not limited to, showing the location of the on-site lighting), is required to ensure that the property is developed according to plan and the light source (bulb) shall not be visible from off-site locations, and the lighting fixtures do not create impacts from lighting to surrounding neighboring properties. Adjustments of the light fixture orientation and shielding shall be made as needed to protect the residential neighbors from light spillage and/or glare.

AA. All aspects of the construction, including, but not limited to: stormwater management, site improvements (the installation of concrete sidewalks, associated lampposts, fire hydrants, buffering, fencing and landscaping) must be completed prior to any use or occupancy.

BB. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive,

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

- CC. This permit shall be subject to the provisions of Sections 858, 1009, and 1025 of the Darien Zoning Regulations, including but not limited to, start of the construction work within one year of this action (May 2, 2018). This approval may be extended as per Sections 858, 1009, and 1025.

All provisions and details of the plans, as required 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. A Notice of Drainage Maintenance Plan and Special Permit form must be filed prior to the issuance of the first Demolition Permit.

**EXHIBIT 1**  
**INCLUSIONARY ZONING REQUIREMENT**

The formulas are found in Section 580 et. seq. of the Regulations and as shown in Appendix E of the Zoning Regulations.

The zoning chart on the zoning location survey says the following:

<i>ZONING ELEMENT</i>	<i>MIN/MAX</i>	<i>EXISTING</i>	<i>PROPOSED</i>
<i>MAXIMUM DENSITY DWELLING UNITS/GROSS ACRE</i>	<i>12 UNITS (18 UNITS PER INCLUSIONARY ZONING SEC. 583)</i>		<i>59 UNITS PROPOSED UNDER INCLUSIONARY ZONING SEC. 583</i>

The gross area is 3.9564± acres.

Basic density allowed is:  $3.9564 \times 12 = 47.48$  units.

Maximum density allowed by incentive:  $3.9564 \times 18 = 71.22$  units.

59 units is 1.24 times the non-incentive maximum density (the basic density).

The affordable unit requirement is calculated as follows:

The basic density calculation is  $3.9564 \times 12 = 47.48$  units

The affordable requirement for basic density is  $47.48 \times 12\% = 5.70$  units

The incentive units calculation is  $59 - 47.48 = 11.52$  units (24% over 12 units per acre)

At least 25% of the incentive units shall be affordable units.

The affordable requirement for incentive units is  $11.52 \times 25\% = 2.88$  units

Total affordable requirement (basic + incentive) is  $5.70 + 2.88 = 8.58$  units.

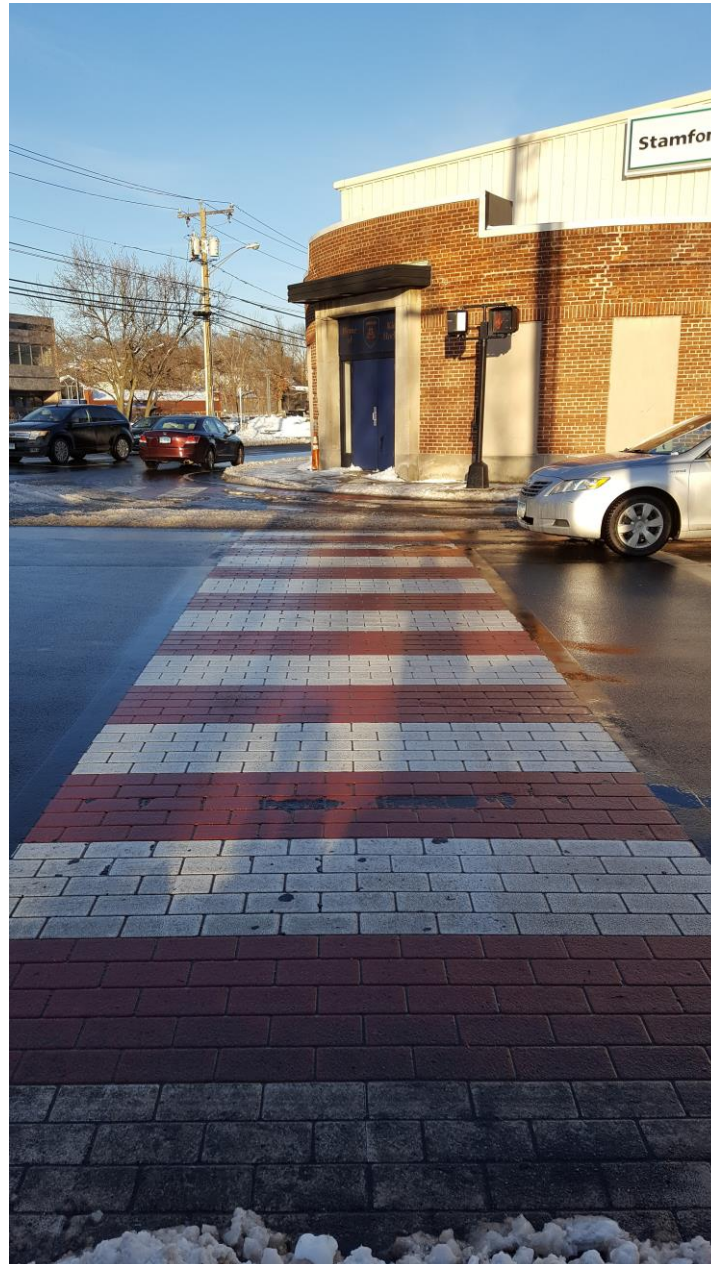
Thus, at least eight (8) affordable units are required, and in this specific instance the Commission is requiring one of the following:

- a) the remaining 0.58 shall be calculated as a fee-in-lieu payment to the Town's Affordable Housing Trust Fund, OR
- b) The applicant shall construct a ninth affordable on-site unit.

The applicant shall use the calculation in Appendix E in the Darien Zoning Regulations using the most recent available State Median Income data.

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**EXHIBIT 2**  
**CROSSWALK EXAMPLE**



**EXHIBIT 3**  
**SEQUENCING PLAN**

In order to better guide the applicant through the various on and off-site improvements through what is likely to be a multi-year construction process, the Commission hereby requires that the applicant implement the following sequencing plan. It is noted that the applicant can implement any of these improvements earlier than what is shown in this exhibit, if they wish, but not later.

**PRIOR TO THE ISSUANCE OF THE FIRST DEMOLITION PERMIT**

- all plans shall be revised (Condition A)
- a phasing plan shall be submitted to staff (Condition C)
- OSTA review and action is needed (Condition Y)

**PRIOR TO THE ISSUANCE OF THE FIRST ZONING AND BUILDING PERMIT FOR WORK ABOVE THE FIRST BUILDING FOUNDATION**

- improvements to the walkway to West Avenue
- construction of the Edgerton Street sidewalks
- relocation of the stop bar on Hollow Tree Ridge Road
- installation of storm water management in Palmer's Market employee lot

**PRIOR TO THE ISSUANCE OF THE FIRST RESIDENTIAL CERTIFICATES OF OCCUPANCY (CO) FOR THE FIRST NEW BUILDING**

- inclusionary zoning requirements filed in the Darien Land Records—both the affordability plan including the designation of the affordable units, as well as the deed restrictions.
- installation of bike racks

**PRIOR TO THE ISSUANCE OF THE FIRST ZONING AND BUILDING PERMIT FOR THE SECOND BUILDING FOUNDATION**

- installation of crosswalks

**PRIOR TO THE ISSUANCE OF THE FIRST ZONING AND BUILDING PERMIT FOR WORK ABOVE THE SECOND BUILDING FOUNDATION**

- shared parking lot changes
- all Heights Road improvements
- timing of traffic lights on Hollow Tree Ridge Road
- inclusionary zoning requirements filed in the Darien Land Records (if not already done for this building).

**PRIOR TO THE ISSUANCE OF ANY CERTIFICATES OF OCCUPANCY OF THE SECOND BUILDING**

- Filing of Public Plaza easement in the Darien Land Records (Condition F)