

**PLANNING AND ZONING COMMISSION  
MINUTES  
GENERAL MEETING/PUBLIC HEARING  
NOVEMBER 22, 2011**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Cameron, Spain, Hutchison, Voigt, Cunningham

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

---

Chairman Conze called the meeting to order at 8:00 P.M. and read the first agenda item:

**GENERAL MEETING**

**Amendment of Special Permit #221, AT&T aka New Cingular Wireless PCS, LLC, 4 Tower Drive.**

Request to install three additional antennae and two cabinets, and upgrade and maintain existing equipment within the concrete tank enclosure.

Doug Talmadge of Transcend Wireless explained that AT&T, also known as New Cingular Wireless PCS, LLC, is proposing to change out some of the equipment and install some additional equipment. The new equipment will be located in the fenced in equipment area and three new antennae will be added within the existing tower. He said that the installation will take approximately ten working days once they have obtained all the necessary permits and approvals.

Mr. Spain noted that after the additional antennae have been installed and the old antennae have been replaced they will need to submit verification to the Planning & Zoning Commission that they have tested all the equipment at full power and made sure that the total amount of radio frequency waves does not exceed the allowable limit. He also noted that they will have to be conscious that this tower is located in a residential zone and they cannot perform the installation in a manner which might disturb the neighborhood (too many trucks or unusual operating hours, etc). Mr. Conze asked if there was a total schematic of all of the antennae facilities within the tower.

Mr. Talmadge indicated that they have calculated the total amount of radio frequency (RF) waves at the base of the structure and even if all of the new equipment is operated at full capacity the facility is well under the allowable specifications. Mr. Spain asked what would happen if other carriers also upgraded their equipment. Mr. Ginsberg said that Verizon and Cellco also recently swapped out their old antennae rather than installing additional antennas. When AT&T has completed its installations, the required output radiation tests called for by our regulations will measure the new cumulative signals of all three carriers at the tower.

There were no comments or questions from the public. The following motion was made: That the Commission approve the requested modifications to the existing Special Permit, with the requirement that additional after-installation testing be performed and the results be submitted to the

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 2 OF 29

Commission in a manner comparable to the original Special Permit requirements. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved.

Chairman Conze read the following agenda item:

**Business Site Plan #269-A/Special Permit, 1292 Boston Post Road, SB Zone.**

Request for change of tenants--2<sup>nd</sup> floor bridal shop tenant in lieu of architect's office previously approved. Condition F of June 28, 2011 Resolution requires Commission review and action.

Mr. Ginsberg reviewed the request submitted by Ashley Krauss, who proposed to occupy the second floor of this new building with a bridal boutique to be known as "A Little Something White Bridal Couture, LLC". He said that Commercial Sales & Service (retail) uses are allowed by Special Permit only, in accordance with Section 667.1e. He noted that the Planning & Zoning Commission had previously approved the second floor of this building to be an architectural office. The previously approved first floor use was an antique store.

Mr. Conze said that the bridal store seems to be a low traffic generator. Mr. Spain and Mrs. Cameron noted that the use might result in a lot of vehicles for single appointments as bride, mother of the bride, bridesmaids and others might come to the site for a single appointment. Mr. Conze mentioned that on-site parking is very limited and that the Commission has specially approved a specific retail use on the first floor. Any change of that prospective use would require prior approval by the Commission. Mrs. Cameron noted that the traffic study for the original application was very detailed and very specific. The Commission is now being asked to approve a use that does not include traffic or parking requirement details; nor is any information submitted regarding the new potential use of the first floor. Mr. Spain said that the changing of the second floor from an office use to a bridal shop could constrict the opportunity for types and intensity of retail use allowed on the first floor. Mr. Conze said that the parking limitations are still applicable to this very unusual site. Mr. Conze noted that this type of bridal shop is not likely to have a lot of repeat business.

With further discussion, the following motion was made: That the Commission approve the proposed second floor use as described in the November 16, 2011 letter, with the condition that the first floor use, that is eventually proposed will be subject to a detailed study of the cumulative parking conditions prior to any further action by the Commission. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

Chairman Conze read the following agenda item:

**Business Site Plan #205-D/Special Permit, 205 Boston Post Road.**

Request for extension of time to implement approved plan.

Mr. Ginsberg reviewed the November 15, 2011 letter from Paul Clayton requesting an extension of time to complete the requirements of the Planning & Zoning Commission's approval. Mr. Ginsberg noted that the proposed use is a drive – thru only food service, and the applicant has obtained the necessary extension from the Zoning Board of Appeals. They are requesting an extension until June 2012. After a brief discussion, the following motion was made: That the Commission

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 3 OF 29

approve the requested extension until June 2012. The motion was made by Mr. Spain and seconded by Mrs. Cameron and unanimously approved.

Chairman Conze read the following agenda item:

**Amendment of Business Site Plan #164-B, Normandy Darien Holdings, Darien Green, 320-330 Boston Post Road, OB Zone.**

Request to allow a professional use in Darien Green--an optometrist who specializes in developmental therapy for vision issues.

Commission members reviewed the letter from Mike Cottle requesting approval of the office use of 2 optometrists that specialize in therapy practice. Mr. Cottle's letter explains that the buildings are relatively vacant and that on-site parking is more than adequate to accommodate the new office tenant. The following motion was made: That the Planning & Zoning Commission approve the requested office use as specified in the letter of November 11, 2011. The motion was made by Mr. Spain and seconded by Mr. Voigt and unanimously approved.

Chairman Conze read the following agenda item:

*Deliberations and possible decision on the following items:*

**Deliberation and possible decision/resolution regarding Remand for Phase II study--Stefanoni, 77 Leroy Avenue.**

By Order dated October 6, 2011 in the matter of Christopher Stefanoni, et. al. v. The Darien Planning and Zoning Commission – Docket No.: HHB-CV-08-4019546 S (the "Appeal"), Judge Henry Cohn remanded the Appeal so that the Darien Planning & Zoning Commission can obtain the plaintiffs' completed phase II environmental report for 77 Leroy Avenue (the "Subject Property") for its action thereon. The legal notice for the original application read as follows:

**Proposed Amendment to the Darien Zoning Map and Zoning Regulations, Affordable Housing Application, Site Plan Application #261, Land Filling & Regrading Application #208, Christopher & Margaret Stefanoni, 77 Leroy Avenue.**

Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. The subject property is located on the west side of Leroy Avenue at the southwest corner formed by the intersection of West Avenue and Leroy Avenue, and is shown on Assessor's Map #39 as Lots #74-1 and #74-2, R-1/5 Zone.

The Public Hearing regarding this matter had been concluded on November 15, 2011. Commission members noted that they had previously received a copy of the Commission's 2008 decision along with a draft resolution. 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 review the draft prior to the meeting. The motion was made by Mr. Hutchison and seconded by Mr. Voigt and unanimously approved.

Mrs. Cameron said that the Planning & Zoning Commission should not approve the report from the applicants' experts, Leggette, Brashears & Graham (LBG), as being adequate for a number of reasons. In short, she believes that the testing for chemical contamination has not been adequate or sufficient in that the location and depth and types of chemical testing were not adequate,

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 4 OF 29

specifically with respect to the southwest corner of the site where the transformer facilities had been located many years ago. She read the following into the record:

“I do not believe the Phase II report of Leggette, Brashears & Graham (LBG) dated 10/21/09 and 8/20/10 is a complete Phase II for the subject property as it fails to test in the location of the first transformer yard in the southwest corner of the property.

As I did not sit on the Planning & Zoning Commission (P&Z) at the time of the original hearings in 2008, I have reviewed not only the materials presented to P&Z by Margaret Stefanoni on 11/15/11, including the above referenced Phase II report, but also the minutes and transcripts of the meetings held in 2008.

In the course of those hearings, the Phase I Environmental Site Assessment done by Jeffrey O. Borne, Sr. Scientist, Northeast Utilities Service Company, dated 5/31/02, was submitted to P&Z by the applicants. In paragraph 2.5 of this report, Historical Land Use, Mr. Borne states that “The first reference to a substation on the site is found on the 1946 Sanborn map, which identifies a transformer yard in the southwest corner of the property. The 1976 Sanborn map shows the most recent substation location, in the southeast quadrant of the site.”

Within the report are several Sanborn maps. On both the map of 1946 and the map of 1950, a structure is shown in the southwest corner, almost on the property line.

During the course of the hearings in 2008, the subject of soil testing comes up on many occasions. In the southwest corner of the property, ponding of water had been observed and the Stefanonis employed the services of Otto Theall, a soil scientist, to perform a wetlands evaluation of the property prior to purchase. Three of his test holes (N, R and Q) were in the location of the original transformer yard noted above. Christopher Stefanoni provided the following information during the hearing on 7/8/08:

“Otto did 50-60 borings. It looked like wetlands soils, but he was confused by the mottling – he said ‘I just don’t know what this is.’ And then he determined it was filled because there was regular dirt, then mottled dirt, very small traces of porcelain, red brick, and maybe small pieces of asphalt.” In his report, Otto Theall notes at point Q, which corresponds best to the location of the original transformer yard, “pieces of brick & asphalt.”

The question of environmental testing of soils is also discussed during the course of the hearings. Barry Hammons, the applicants’ engineering expert, on several occasions references 17 tests done throughout the site for PCBs. He states the results were less than 1 part per million. At some point a copy of these test results must have been available to the commission. In the proceedings on 9/4/08, there is reference to borings and samples that were taken on 10/12/00, however, no copy of these results exists in the files I reviewed. Nevertheless, the location of these test holes is never forthcoming, just the results.

LBG references this in the first page of their Phase II report. They state, “Seventeen (17) soil samples were collected by CL&P and analyzed for PCBs. PCBs were not detected in any of the soil samples. However, the figures included in the copy of the Phase I provided to LBG did not indicate the locations from which the soil samples were collected.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 5 OF 29

Therefore, because we were unable to identify the locations of the soil samples collected in 2002 and collect duplicate samples at these locations, LBG developed an alternative sampling strategy. The strategy utilized by LBG was based on identifying the approximate location of the concrete pad on which the electrical equipment had been positioned, and then collecting soil samples from around the perimeter of the pad and within the footprint of (what would have been below) the pad. These sampling locations were considered to be in appropriate locations to detect any release of PCB-containing oil from the equipment on the pad.”

LBG provided a site map showing the location of their soil sample locations. The issue I have with this “alternative sampling strategy” is that it fails to do any testing in the location of the original transformer yard in the southwest corner.

I have no doubt that some building will eventually be placed on this site. I am in full agreement with the 2008 P&Z finding that 77 Leroy is a good site for multi-family affordable housing. However, without some stipulation that the southwest corner of the site will be tested at a future date, when the appeals process is final and a site plan determined, or, the acquisition from CL&P of the location of the 17 tests they performed showing one of these in the southwest corner, I cannot in good conscience accept this Phase II report.

Respectfully submitted,  
Susan Cameron”

Mr. Voigt noted that the Judge’s remand is specifically to receive the report that was not prepared until after the Planning & Zoning Commission had acted on the application. The draft motion would withdraw Reason F of the denial as a basis for the Commission’s denial action and that the others reasons for the Commission’s action would still remain in effect. Mrs. Cameron said that there should have been a more complete report at the time that the original application was submitted so that the Commission could have considered it in its original deliberations. Mr. Spain said that the Commission should include Item E of the 2008 resolution in the new resolution for consideration. The following motion was made: That the Commission adopt the draft resolution as modified by Mr. Spain. The motion was made by Mr. Spain and seconded by Mr. Hutchinson. Voting in favor of the motion were Mr. Conze, Mr. Spain, Mr. Hutchison and Mr. Voigt. Opposed was Mrs. Cameron and abstaining was Mr. Cunningham. The motion passed by a vote of 4-1-1. The following is the revised, adopted resolution:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
November 22, 2011**

By Order dated October 6, 2011 in the matter of Christopher Stefanoni, et. al. v. The Darien Planning and Zoning Commission – Docket No.: HHB-CV-08-4019546 S (the “Appeal”), Judge Henry Cohn remanded the Appeal so that the Darien Planning & Zoning Commission can obtain the plaintiffs’ completed phase II environmental report for 77 Leroy Avenue (the “Subject Property”) for its action thereon.

The legal notice for the original application read as follows:

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 6 OF 29

**Proposed Amendment to the Darien Zoning Map and Zoning Regulations, Affordable Housing Application, Site Plan Application #261, Land Filling & Regrading Application #208, Christopher & Margaret Stefanoni, 77 Leroy Avenue.** Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. The subject property is located on the west side of Leroy Avenue at the southwest corner formed by the intersection of West Avenue and Leroy Avenue, and is shown on Assessor's Map #39 as Lots #74-1 and #74-2, R-1/5 Zone.

Site Location Street Address: 77 Leroy Avenue  
Assessor's Map #39 as Lots #74-1 and #74-2

Name and Address of Property Owners: Christopher & Margaret Stefanoni  
And Applicant: 149 Nearwater Lane  
Darien, CT 06820

Date of Public Hearing on the Remand: November 15, 2011

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

Date of Action: November 22, 2011

Scheduled Date of Publication of Action: Newspaper: Darien News  
December 2, 2011

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

**FINDINGS FROM NOVEMBER 15, 2011 PUBLIC HEARING:**

1. At the public hearing on this remand held on November 15, 2011, the applicant, Mrs. Stefanoni, explained the Phase 1 report which was submitted as part of the original public hearing process. She also submitted the Leggette Breshears and Graham Inc (LBG) Phase II report dated October 21, 2009 with a follow-up report dated August 20, 2010. Those were formally received for the record in this remand matter.
2. During the public hearing, the Commission heard from one member of the public, Dot Kelly, who voiced concerns about the Phase 1 and Phase II reports submitted.
3. The Commission closed the public hearing on this remand on November 15, 2011.

**THE COMMISSION'S OCTOBER 28, 2008 ADOPTED RESOLUTION:**

As part of the Commission's original Resolution on this matter on October 28, 2008, Finding #31 on page 9 of that decision read as follows:

31. **PHASE 2 REPORT.** *The Commission has concerns regarding that lab report and the testing process. The first is that it would appear that the report may have been prepared by an employee of Northeast Utilities Service Company, an affiliate of the utility, CL&P. The second is that the Commission believes that in this case, a proper, reliable and complete Phase 2 report*

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 7 OF 29

*is appropriate, and much needed to determine if the site is safe for residential development. The record shows that the site has been extensively disturbed since the equipment was removed, so this must be taken into account in resolving this deficiency in health and safety.*

One of the reasons for the Commission's original denial without prejudice was Reason F on page 9 of the aforementioned October 28, 2008 Resolution, which read:

*F. The application was incomplete due to failing to submit testing as reflected in a formal and complete Phase 2 Environmental Report.*

The Commission also included in its Resolution recommendation E, which read as follows:

*E. The applicant submitted a Phase 1 Environmental Site Assessment. The Commission notes that the CL&P electrical transformers were on-site for many years. The applicant submitted what appeared to be a lab report. There is a need to know where that document came from, and get authentication for it. Proper testing as reflected in a formal and complete Phase 2 report is hereby required by this Commission prior to any re-submittal. This will allow the Commission to determine and understand any potential contaminants on-site, and ensure if there was a spill or leakage, that it was properly remediated, and the site is safe and available to be developed for residential use.*

**THE COMMISSION'S DECISION ON THIS REMAND:**

The Commission hereby acknowledges receipt of the Leggette Brashears and Graham Inc (LBG) report dated October 21, 2009, with a follow-up report dated August 20, 2010. The Commission has now received and reviewed those reports.

As a result, the Commission hereby deletes Reason F on page 9 of the October 28, 2008 Adopted Resolution as a basis of denial without prejudice. In all other respects, the Commission's October 28, 2008 Resolution stands and is ratified.

Chairman Conze read the next agenda item:

**Proposed: Amendments to the Darien Zoning Regulations (COZR #6-2011); Amendment of the Darien Zoning Map (COZM #1-2011); Site Plan Application #280; Special Permit Application #268; Land Filling & Regrading Application #265, Baywater 745 BPR, LLC, 745 Boston Post Road.** Proposing to replace the existing building at 745 Boston Post Road with a new mixed use building and perform related site development activities. Zoning Regulation amendments are proposed to Sections 585, 614, 615 and 616 to permit the development as proposed. Proposed amendment of the Zoning Map would make the entire property in the DB-1 Zone. *HEARING CLOSED ON 10/18/2011. DECISION DEADLINE: DECEMBER 22, 2011.*

The Commission members noted that they had received a draft resolution. The motion was made: That the 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. Spain, seconded by Mrs. Cameron and unanimously approved.

Mr. Spain said that one question is whether the Planning & Zoning Commission should amend the Zoning Map with respect to this site. He said that in order to amend the Zoning Map, the

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 8 OF 29

Commission must find that the action is consistent with the Town Plan of Conservation and Development. He said that the existing and proposed uses of the site are consistent with the Design Business 1 Zoning, which does allow business uses and residential uses on the upper floors. He said that the process of amending the Zoning Map requires a careful examination of the site specific conditions and circumstances. He said that the amendment of the Zoning Map does seem appropriate to him.

Mr. Conze said that one of the requested modifications of the Zoning Regulations was to allow the building to be 35 feet tall. The proposed building is only 32.5 feet tall. Mr. Spain said modifying the regulations to allow for a 32.5 foot tall building would seem better to him and it would not have any impact on this proposed project. He said reducing the proposed amendment from 35 feet to 32.5 would not change the angles of the roof or the elevations of the design. Commission members discussed the proposed amendments to the regulations and it was noted that a new Paragraph K should be added to require that snow removal be one of the requirements of the regulations.

With respect to the affordable housing units, Mrs. Cameron said that she felt that accepting or receiving cash in lieu of the actual installation of the affordable housing units was not the appropriate thing to do in this case. Mr. Voigt said that at first he was in favor of having one unit on the site, but upon further reflection, he now believes that receiving payment of approximately \$362,000 in lieu of the calculated 1.09 dwelling units at the site would be an appropriate start to an affordable housing trust fund that the town could then use to encourage or create additional affordable housing units. He noted that even if one unit of affordable housing was included in this project, the town would still receive payment of approximately \$23,000 for the additional .09 unit -- a sum he did not feel would give the town much to work with toward adding to the town's affordable housing stock.

Mr. Ginsberg said that the Board of Finance has indicated their willingness to set up a separate affordable housing fund but they have not done so because there has not yet been any money to put into that fund. He said that if a fund is established, it would be up to the Town to decide how the money is used to accomplish affordable housing. The specifics of the expenditures of the money would not be up to the Planning & Zoning Commission. Mr. Spain said that he would vote to have one unit constructed on the site. Mrs. Cameron said that she's concerned that the money set aside for affordable housing would be wasted on soft costs and would not necessarily result in any additional affordable housing. Mr. Conze said that he shares that concern but is confident that money put in the affordable housing fund could be used effectively to create actual affordable housing. He said that the flexibility and productivity of the large cash payment in lieu -- well over \$300,000 -- would be more beneficial than creating the unit on the site. He said that whatever money is put into the housing fund would need to be used as intended.

Mr. Ginsberg then reviewed several of the typographical and clarification changes that Mr. Spain had suggested and which had been incorporated into a revised draft and distributed to the Commission members.

The following motion was made: That the Commission adopt the following revised resolution to approve the requested Zone Map change, Zoning Regulation change, Special Permit and Site Plan. The motion was made by Mr. Voigt and seconded by Mr. Hutchison and approved by a vote of 4-0-

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 9 OF 29

2, Mrs. Cameron and Mr. Cunningham abstained from voting. Voting in favor were Mr. Spain, Mr. Conze, Mr. Voigt and Mr. Hutchison. The following is the revised, adopted resolution:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
November 22, 2011**

Application: Amendment of the Darien Zoning Map (COZM #1-2011);  
Amendments to the Darien Zoning Regulations (COZR #6-2011);  
Site Plan Application #280; Special Permit Application #268;  
Land Filling & Regrading Application #265  
Baywater 745 BPR, LLC, 745 Boston Post Road

Street Address: 745 Boston Post Road  
Assessors Map #16 Lots #15 & #16

Name and Address of Property Owner(s): Baywater 745BPR, LLC  
c/o 1019 Boston Post Road  
Darien, CT 06820

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

Activity Being Applied For: Proposing to replace the existing building at 745 Boston Post Road with a new mixed use building and perform related site development activities. Zoning Regulation amendments are proposed to Sections 585, 614, 615 and 616 to permit the development as proposed. Proposed amendment of the Zoning Map would make the entire property in the DB-1 Zone.

Subject property: The subject property is on the northwest corner formed by the intersection of Academy Street and Boston Post Road.

Zones: DB-1, and R-1/3 Zones; and DBR overlay Zone

Dates of Public Hearing: September 27, 2011 continued to October 18, 2011

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

Publication of Hearing Notices  
Dates: September 17 & 24, 2011

Newspaper: Darien News

Date of Actions: November 22, 2011

**Amendments to the Darien Zoning Map (COZM #1-2011): ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011 AT TWELVE NOON.**

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 10 OF 29

**Amendments to the Darien Zoning Regulations (COZR #6-2011):** ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011 AT TWELVE NOON.

**Site Plan Application #280; Special Permit Application #268; Land Filling & Regrading Application #265, Baywater 745 BPR, LLC, 745 Boston Post Road.** Proposing to replace the existing building at 745 Boston Post Road with a new mixed use building with associated parking and landscaping, and perform related site development activities. GRANTED WITH STIPULATIONS AND MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011, 2011 AT 12:01 PM.

Scheduled Date of Publication of Action:  
December 2, 2011

Newspaper: Darien News

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

The subject applications consist of three parts:

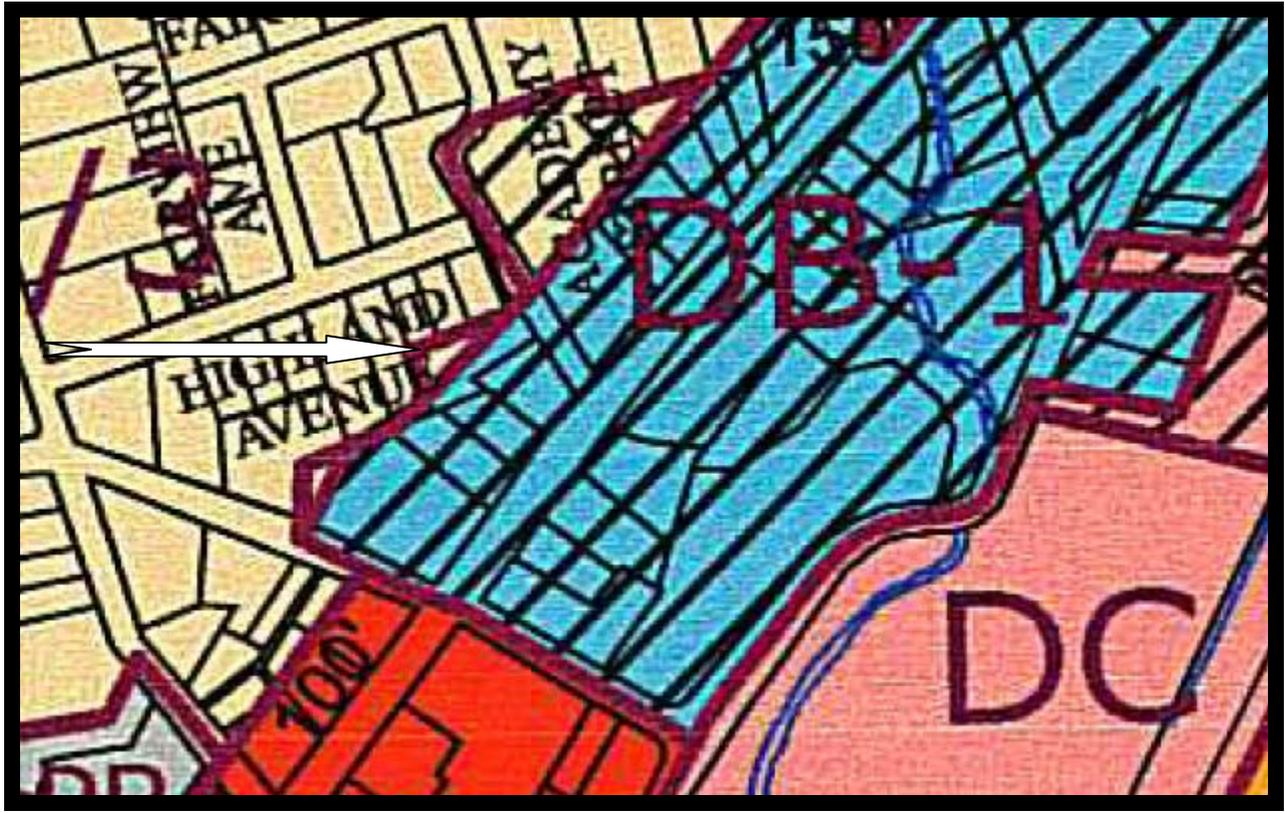
- I. Zoning Map amendment
- II. Zoning Regulation amendments to Subsections 585, 614, 615 and 616 to permit the development as proposed.
- III. Proposing to raze the existing building at 745 Boston Post Road and to construct a new three-story mixed use building with associated landscaping and shared parking; and to regrade and construct a new retaining wall and perform related site development activities. There is a related fourth part to the application:
- IV. How to address the issue of Inclusionary Zoning, including, but not limited to, the issue of whether any inclusionary unit should be constructed on-site, off-site, or a fee-in-lieu payment required.

The first part of this Adopted Resolution addresses part I of the application.

One needs to note that the intent of the Zoning Map amendments and Zoning Regulation amendments is to allow the site plan submitted with the application.

**I. ZONING MAP AMENDMENT**

The Applicant proposes that the boundary between the Designed Business 1 (DB-1) Zone, which bisects the property located at 745 Boston Post Road (Assessor's Map #16, Lot #15 and #16), be relocated to the northerly and westerly boundaries of the property. The attached excerpt of the Darien Zoning Map shows the area of the proposed amendment.



The Commission finds that the proposed map amendment is consistent with the Town Plan of Conservation & Development, and hereby extends the DB-1 Zone to be coincident with the current property line.

NOW THEREFORE BE IT RESOLVED that based upon the review of all of the materials and information, the Commission, acting in its legislative capacity, hereby **ADOPTS** the *Proposed Amendment to the Darien Zoning Map* WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011 AT TWELVE NOON:

## II. ZONING REGULATION AMENDMENTS

As noted in Tab 1 and Tab 5 of the applicant's submitted application booklet, there are a total of seven (7) zoning regulation amendments, and they are lettered a-g within the application. Some of the proposed regulation amendments deal with building setbacks, building height, and building coverage. Proposals are to amend subsections 585, 614, 615, and 616 of the Darien Zoning Regulations, and are addressed here in the order presented in the application materials.

*a. Amend subsection f of Section 614 to read, "Dwelling units located on upper floors."*

The Commission agrees that if in the future, the DB-1 Zone can allow residential units on a 2<sup>nd</sup> and 3<sup>rd</sup> floor, that the wording in the regulations should be changed to clarify that.

Existing wording, subsection 614f:

- f. Dwelling units located on second floor of existing building.

Deletions in strikeout, new wording in bold:

Approved wording subsection 614f:

- f. Dwelling units located on **upper floors.** ~~second floor of existing building.~~

*b. Amend Section 615 by adding "(See Note e)" to the Minimum Front Yard, and adding new Note e: "See section 615a for corner lots in the DB-1 Zone."*

*c. Add new Section 615a: "On sites having frontage on Boston Post Road and on another street, the minimum yard from the other street shall be the minimum side yard."*

Regulation amendment proposals b and c are related, and are relative to the treatment of setbacks for corner lots in the DB-1 Zone. The Commission believes that the proposed wording is awkward, and converts one front yard to a side yard on corner lots in the DB-1 Zone. From an administrative standpoint, it would be more logical to continue to treat corner lots in the DB-1 Zone as having two front yards, but allow modifications of those front yards by Special Permit (and/or Inclusionary Zoning incentive) subject to review and action by the Planning & Zoning Commission. Thus, while the Commission disagrees with the specific wording proposed, the wording hereby adopted by the Commission would essentially have the same effect—reducing the front yard setback along Academy Street. The Commission believes that having a reduction in front yard setback via Special Permit, allows the Commission to review any possible impacts on a case-by-case basis. In this case, the unique topography present, the elimination of the current parking spaces in the yard adjacent to Academy Street, the design of the building, along with the plaza area shown on the plans are justification for less building setback along Academy Street than would normally be required.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 13 OF 29

Wording proposed by applicant:

- b. Amend Section 615 by adding “(See Note e)” to the Minimum Front Yard, and adding new Note e: “See section 615a for corner lots in the DB-1 Zone.”*
- c. Add new Section 615a: “On sites having frontage on Boston Post Road and on another street, the minimum yard from the other street shall be the minimum side yard.”*

Add an additional sentence at end of current Note b, this approved new wording in bold:

615 Note b:

**Where the lot is a corner lot, the front yard setback on a street which is not Boston Post Road may be reduced from twenty (20) feet to ten (10) feet by Special Permit.**

- d. Add new subsection f to Section 616 Special Controls: “Accessory structures shall be allowed, subject to the area and bulk requirements set forth in section 406 for the residential zone that abuts the site, provided that the Commission finds that the accessory structures do not unreasonably impact abutting residential properties. The minimum yard adjacent to parking garages shall be a minimum of three feet, provided that the Commission finds that the turning area will not unreasonably impact adjacent residential properties.”*

The proposed amendment is to be modified to assure that the parking garage is only one level high and is properly screened from the adjacent property. The Commission modifies and approves this proposed amendment.

Approved wording in bold to be added at the end of Section 616 Special Controls:

**f. Accessory structures shall be allowed, subject to the area and bulk requirements set forth in section 406 for the residential zone that abuts the site, provided that the Commission finds that the accessory structures do not unreasonably impact abutting residential properties. The minimum yard adjacent to one level high parking garages shall be a minimum of three feet, provided that the Commission finds that the parking garage and turning area will be appropriately screened from, and not unreasonably impact, adjacent residential properties.**

- e. Amend subsection e of Section 585 to read, “Height may be increased to allow three stories, and a maximum building height of 35 feet.”*

The Commission believes that to allow an increase of Building Height should be by Special Permit or incentive only, and not as-of-right. The Regulations currently allow 2 stories in the DB-1 Zone, with a 3<sup>rd</sup> story allowed by incentive. It is clear that the Commission must, to be consistent, specifically allow an increase in height above the 28 feet now permitted in the DB-1 Zone. When the Inclusionary Zoning Regulations were adopted, no associated height in feet standard was included. This amendment would specifically include the provision for a 25% increase. Thus, in the DB-1 Zone, one could build a 35 foot high building by making the relevant findings required in Section 585. The Commission is allowing only a maximum of 32.5 feet.

*“...the Commission determines that such incentives do not adversely affect the health, safety and welfare of the public in general, and the immediate neighborhood. In such cases, the Commission may, at the absolute discretion of the Commission, allow any or all of the following waivers,*

DARIEN PLANNING & ZONING COMMISSION  
 GENERAL MEETING AND PUBLIC HEARING  
 MINUTES  
 NOVEMBER 22, 2011  
 PAGE 14 OF 29

*provided the Commission finds that such waiver encourages the development of below market rate housing and is consistent with the surrounding neighborhood.”*

*As noted in Section 585, the decision on whether to grant the incentives is the “...absolute discretion of the Commission...”*

Deletions in strikeout, new wording in bold:  
 Approved wording at the end of Section 585 Incentives. Add a new f.  
**f. Height may be increased to allow up a maximum building height of 32.5 feet by Special Permit.**

- e. Amend Section 615, Area and Bulk Requirements by deleting item 14, Maximum Floor Area Ratios, and replacing it with a Maximum Building Coverage of 25 percent.

The Commission notes that most zoning districts in Darien regulate the building size based upon Maximum Building Coverage, rather than through Floor Area Ratio (FAR). In the DB-1 and DB-2 Zones, FAR is used because a concerted effort has been made to preserve and reuse existing residential style buildings on their existing modest size parcels. The Commission also has included wording which will reduce the incentive for accumulation or assemblage of properties and construction on larger lots, which is in keeping with the purposes of this zoning district. It continues to use FAR for larger lots, while allowing a Building Coverage standard to be used only on smaller lots (lots of .6 acres or less in size) within the DB-1 zone.

This change will possibly increase development potential on lots of .6 acres or less in size in the DB-1 zone, but not affect the larger lots, which will still use the FAR standard.

Deletions in strikeout, new wording in bold: Existing wording Section 615:	
14.Maximum Floor Area Ratios	0.40 of the first 10,000 s.f. of lot area plus 0.20 of next 20,000 s.f. of lot area 0.10 plus of all lot area over 30,000 s.f.
Approved wording in Section 615:	
14a.Maximum Floor Area Ratios <b>(for lots of 0.6 acres in size or more)</b>	0.40 of the first 10,000 s.f. of lot area plus 0.20 of next 20,000 s.f. of lot area <del>0.10</del> plus <b>0.10</b> of all lot area over 30,000 s.f.
<b>14b.Maximum Building Coverage (for lots of less than 0.6 acres in size--For mixed-use and commercial projects on contiguous lots, coordinated development shall be treated as a single parcel for these properties).</b>	<b>25%</b>

NOTE: THIS WILL NOT BE ENOUGH FOR THE GARAGES PROPOSED BY THE APPLICANT

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 15 OF 29

*g. Amend the last sentence of Note d of Section 615 to read, “The total number of dwelling units shall not exceed 6 dwelling units on any site for the first 10,000 square feet of land area or part thereof, and one additional dwelling unit for each additional 10,000 square feet.”*

While the Commission agrees that an increase from 6 dwelling units is appropriate, it does not wish to “reward” assemblage by allowing additional dwelling units based upon the size of the lot. The modified wording adopted by the Commission ties the number of units to the size of the lot, while at the same time, discouraging assemblage. The proposed amendment, as modified herein, is consistent with the more recent trend toward mixed use development in business zones.

Thus, the Commission hereby adopts alternate wording as follows:

Existing wording Section 615d:

- d. If more than 2 dwelling units, then at least 30 percent of the total number of units shall be limited to one bedroom. One additional off-street parking space per bedroom shall be required. The total number of dwelling units shall not exceed 6 dwelling units on any site.

Add new approved wording in bold to amend Section 615d:

- d. If more than 2 dwelling units, then at least 30 percent of the total number of units shall be limited to one bedroom. One additional off-street parking space per bedroom shall be required. The total number of dwelling units shall not exceed 6 dwelling units on any site **of 20,000 square feet or less, and seven (7) dwelling units on any site greater than 20,000 square feet.**

1. In Tab 3 of the bound binder of the applicant’s submitted materials, portions of the 2006 Town Plan of Conservation & Development (the “Town Plan”) were submitted. The applicant notes that the proposed amendments and related development are consistent with the Town Plan.
2. The Commission finds that the proposed zoning regulation amendments, as modified and adopted herein, are consistent with the 2006 Town Plan of Conservation & Development, as amended.

NOW THEREFORE BE IT RESOLVED that based upon the review of all of the materials and information, the Commission, acting in its legislative capacity, hereby ADOPTS WITH MODIFICATIONS the *Proposed Amendments to the Darien Zoning Regulations* WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011 AT TWELVE NOON, as revised herein:

---

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 16 OF 29

**A) SITE PLAN/SPECIAL PERMIT/LAND FILLING & REGRADING**

The THIRD part of this Adopted Resolution addresses part “C” of the application—the Special Permit, Site Plan, and Land Filling and Regrading Applications for the proposed re-development of the subject property.

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 as amended, 610 as amended, 850, 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 and 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.

**THE SUBJECT APPLICATION & PROPERTY**

1. The subject application is to replace the existing building at 745 Boston Post Road with a new mixed use building and perform related site development activities. The subject property is served by public water and sewer. The Subject Property is located at the northwest corner of the intersection of the Boston Post Road and Academy Street, and is partially in the Design Business 1 (“DB-1”), currently partially in the R-1/3 Residence Zone, and entirely in the Design Business Residence (“DBR”) Overlay Zone. The parcel consists of 0.598 acres, and is served by public water and sewer.
2. The Commission notes that as explained in Section 611 of the Zoning Regulations, the DB-1 Zone is considered as a transition zone between the Central Business District (“CBD”) and the Design Business 2 (“DB-2”) Zone.
3. The existing primary structure on the property is a two and one-half story, mixed use building. The building footprint is 7,000± square feet. An outbuilding is located at the northwestern corner of the property. The applicant proposes to demolish the existing structures and to construct a new, three-story, mixed use building with approximately three stories of 6,455± square feet of gross floor area (including elevator and stair well), and two detached garages. The project includes updated drainage, landscaping and related site development features. The first floor will consist of 6,171± square feet of professional and/or medical office space. The second and third floors will consist of four apartments each, with a total bedroom count of twelve, and total residential area of 12,910± square feet. The project includes 14 surface parking spaces and 8 garage spaces on site, and 10 additional parking spaces located at 722 Boston Post Road, for a total of 32 off-street parking spaces.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 17 OF 29

4. The Commission notes that the subject property has a sloping topography from north to south. The highest part of the property is at elevation 77+/-, and the lowest part at elevation 59+/- . Thus, there is an 18 foot change in grade in the property.
5. The submitted plan shows a proposed retaining wall up to five and a half feet high in the rear, north side of the property. Proposed screening behind that wall and near the northern property line will improve the existing conditions, and will not have an unreasonable impact on the contiguous residential properties to the north. Two detached, four-car parking garages at the westerly portion of the project, are proposed.

PARKING/TRAFFIC

6. Currently, there are three curb cuts on the subject property, one on Boston Post Road, and two on Academy Street. As part of this application, one Academy Street curb cut and the Boston Post Road curb cut will be closed off. The existing Academy Street curb cut will be changed slightly in location, and changed to be a “right turn only” out. This is designed to preclude traffic from turning left into the residential areas to the north.
7. The property has an easement for ten existing parking spaces located at 722 Boston Post Road, which is across the Boston Post Road from, and within 500 feet of the subject property.
8. A total of 22 on-site parking spaces are proposed within the on-site parking area, with one of those ten being reserved for handicapped-accessible parking. Eight of those spaces are proposed to be garage spaces. This parking area would be shared among the various proposed (commercial and residential) uses within the building. Under the Darien Zoning Regulations, development proposed solely within the subject application would require 37 spaces as follows:
  - a. One Space per 250 sf for 1<sup>st</sup> floor office. 6,171 sf proposed (Section 904m): 24.7 spaces required.
  - b. One space per bedroom in the 2<sup>nd</sup> and 3<sup>rd</sup> floor residential units (Section 615d): Twelve (12) bedrooms, 12 parking spaces required.
9. The applicant submitted information within Tab 6 of the application booklet, and at the public hearing noting that the subject property owner has a perpetual easement together with the rights of ingress and egress for parking of ten (10 ) vehicles across the street at 722 Boston Post Road. It was agreed that the ten spaces across the street should be used for the first floor office employees, which would allow for most spaces on-site for visitors. While the Commission acknowledges that there is on-street parking allowed on Academy Street, which can serve as “overflow” parking, that on-street parking has not been taken into affect as part of this application.
10. Parking for the proposed uses are subject to approval by the Planning and Zoning Commission under the shared parking provisions of Section 905 of the Zoning Regulations (Joint Parking) and/or Section 580 of the Zoning Regulations (Inclusionary Zoning).
11. The applicant proposes to utilize a Joint Parking arrangement as expressly permitted by Section 905 of the Darien Zoning Regulations. Section 905 reads as follows:  
“905. Joint Parking

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 18 OF 29

*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. No parking spaces shall be reserved for any specific building tenant”*

12. A Traffic and Parking Assessment was submitted as part of this application. Pages 3-4 of that Traffic and Parking Assessment reviews parking. The Town hired Michael Galante of Frederick P. Clark Associates to peer review the application.

13. The Architectural Review Board (ARB) sent a letter dated September 21, 2011 with their comments on this project.

14. The Darien Fire Marshal sent comments dated September 1, 2011. These included five comments:

- 1) Provide a fire hydrant on Academy Street near the entry drive;
- 2) Verify that there is adequate turning radius for the driveway;
- 3) Provide proper access to rescue windows;
- 4) Site any plantings in the field with the Fire Marshal;
- 5) Provide normal and emergency lighting for the exterior egress.

#### BUILDING HEIGHT

15. Sheet A2.01 of the submitted architectural plans show that the proposed building will have a flat roof with a parapet wall surrounding it to screen all HVAC units. The top of the flat roof is 34.6 feet above the average finished grade around the building. The Commission believes that in conjunction with the front of the building being twenty feet from the Boston Post Road, and the waivers being granted herein to allow the building to be closer to Academy Street, that a building height of 32.5 feet would be more appropriate and more compatible with the neighborhood. The Commission is willing to grant this waiver in part because of the colonial style of the proposed building, the courtyard design adjacent to Academy Street, and the topography of this lot. This building height increase could be in the form of a building with a flat roof 32.5 feet above the average finished grade around the building, with a parapet wall surrounding any HVAC units on the roof.

16. The Commission hereby makes a finding under Section 616f of the Zoning Regulations that “the accessory structures do not unreasonably impact abutting residential properties, and that the parking garages and turning area will not unreasonably impact adjacent residential properties.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 19 OF 29

**STORMWATER MANAGEMENT**

17. The Commission notes the need for the applicant or property owner(s) to file a Notice of Drainage Maintenance Plan 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.

**INCLUSIONARY ZONING**

18. This Application is made under Section 580, Inclusionary Zoning. The required number of below market rate unit will be 1.09. If the requested map and regulation amendments are approved, the project will involve one incentive dwelling unit. The incentives under Section 585 are shown on the Zoning Chart that accompanies the site development plan.

19. Inclusionary Incentives granted as part of this application:

Under Section 585, the Commission has the discretion to grant waivers, provided the Commission finds that such waiver encourages the development of below market rate housing and is consistent with the surrounding neighborhood. The Commission hereby makes that finding, and grants the following incentives:

- a. Recreational or open space requirements may be reduced.  
No waiver requested or granted.
- b. Minimum yard requirements may be reduced.  
The Commission grants a front yard setback reduction on Academy Street. A Special Permit has been granted to reduce the Academy Street front yard setback from 20 feet to 10 feet. A further 25% reduction from 10 feet to 7.5 feet has been granted via inclusionary incentive.
- c. Maximum building coverage requirements may be increased.  
The Commission grants a 25% increase in building coverage from 25% to 31.25%.
- d. Parking requirements may be reduced.  
The Commission does not reduce or provide a waiver for any of the parking requirements in Section 580, but rather, has found that parking is adequate under a shared parking agreement as allowed in Section 905.
- e. Height may be increased to allow three stories.  
The Commission hereby approves a height of three stories as noted above.  
And as part of this approval, a new letter f was added:
- f. Height may be increased to allow up a maximum building height of 32.5 feet.  
The Commission hereby approves a maximum building height of **32.5** feet (this includes the inclusionary incentive).

20. This application has invoked Section 580—Inclusionary Zoning, as the applicant has proposed more than five dwelling units.

21. As noted within the application materials, the proposal has a below market rate requirement of 1.09, based upon the calculations in Section 583 of the Darien Zoning Regulations. Thus the Commission has several options, but prefers:

- A) Take a fee-in-lieu payment for the entire 1.09; or
- B) Create 1 unit and take a fee-in-lieu for the .09.
  - B1) create the 1 unit on-site; or
  - B2) create the 1 unit off-site

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 20 OF 29

22. It is up to the Commission to determine how this will be addressed. The Commission's decision on the inclusionary zoning unit is on the last page of this Resolution.

**REQUIRED SPECIAL PERMIT AND INCLUSIONARY ZONING FINDINGS**

23. The Special Permits approved herein include: a) the reduction of front yard setback from Academy Street from 20 feet down to 10 feet under Section 615b; b) dwelling units on upper floors under Section 614f; and c) the business and professional office use containing more than 3,000 square feet of gross office space under Section 614e. The Commission is NOT approving a medical office use under Section 614e as part of this application request. Any such request for a medical office must be made subsequently, when further details about the specific medical office is known.

24. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.

25. The proposal conforms to the standards for approval as specified in Section 850 and Section 1005 (a) through (g) of the Darien Zoning Regulations.

26. The design, location, and specific details of the proposed use and site development, as modified and approved herein, 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.

27. The elements of the Site Plan, submitted as part of the application, **AS GRANTED WITH STIPULATIONS AND MODIFICATIONS HEREIN**, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Site Plan Application #280, Special Permit Application #268, Land Filling & Regrading Application #265, to replace the existing building at 745 Boston Post Road with a new mixed use building with associated landscaping and shared parking and perform related site development activities are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

A. Construction and other site activity shall be in accordance with the following plans as submitted to and reviewed by the Commission, as required to be modified herein, entitled:

- Site Development Plan depicting 745 Boston Post Road prepared for Baywater 745 BPR, LLC, by Redniss & Mead, dated August 12, 2011 (received Oct 14 2011), Drawing No. SDP.
- Grading and Utility Plan depicting 745 Boston Post Road prepared for Baywater 745 BPR, LLC, by Redniss & Mead, dated October 14, 2011, Drawing No. SE-1.
- Sediment & Erosion Control Plan depicting 745 Boston Post Road prepared for Baywater 745 BPR, LLC, by Redniss & Mead, dated October 14, 2011, Drawing No. SE-2.
- Notes & Details depicting 745 Boston Post Road prepared for Baywater 745 BPR, LLC, by Redniss & Mead, dated October 14, 2011, Drawing No. SE-3.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 21 OF 29

- 745 Post Road by Beinfield Architecture PC (Layouts and Elevations), dated 08-15-11, Sheet A1.01 through A1.06 and Sheets A2.01 and A2.02.
  - Stormwater Quality Improvement Measures, 745 Boston Post Road, by Redniss & Mead, dated 10/14/2011.(showing details of permeable pavers and vegetated bio-swale).
  - Landscape Plan, 745 Boston Post Road, by Environmental Land Solutions, LLC, scale 1"=20', dated 8/15/11, Drawing No. LP.1.
- B. In order to address the comments and concerns of the Fire Marshal, the applicant shall:
- 1) Provide a fire hydrant on Academy Street near the entry drive;
  - 2) Verify that there is adequate turning radius for the driveway;
  - 3) Provide proper access to rescue windows;
  - 4) Site any plantings in the field with the Fire Marshal;
  - 5) Provide normal and emergency lighting for the exterior egress.
- C. All utilities serving the 745 Boston Post Road property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring.
- D. Since there is no new public or private road construction and no extension of public utility facilities, the Commission waives the requirement for submission of a Performance Bond.
- E. Because the majority of the regrading portion of this project must be implemented prior to work on the building above the foundation level, a performance bond for the filling and regrading is hereby waived. Another critical aspect of the work is the proper installation of the landscaping plants to provide screening between this commercial property and the nearby residences to the north. The screening landscaping shall be installed before or during the framing of the building and must be completed before the roof of the building is installed.

#### PARKING AND LOADING

- F. It is clear that the current proposed uses of business and professional office on the first floor and residential use of the upper floors will have parking needs satisfied in combination with the use of the parking across the street at 722 Boston Post Road. Those spaces across the street shall be used by employees of the 745 Boston Post Road office use(s). This will allow the on-site parking to be used by the office tenants for visitors/clients.
- G. Any change of use or change of tenants shall require review and action by the Planning and Zoning Commission. This would include a change from a business and professional office to a medical office.
- H. Prior to any occasions when the on-site parking might not be sufficient, the Commission strongly encourages the applicant to coordinate with nearby businesses and institutions to allow staff and/or visitors to park off-site. This will help to avoid on street parking and to ensure that sufficient on-site parking exists during those events.
- I. Due to limited parking, a provision shall be filed in the Darien Land Records or in the leases of each apartment/condominium, stating that any detached parking garage must be used for vehicle

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 22 OF 29

parking and cannot be used for other purposes. Any parking garages constructed shall be set aside for residential uses on the property.

- J. Because of the nature of the proposed use, the Commission hereby waives the requirement for a loading zone as authorized by Section 909 of the Darien Zoning Regulations. Any change in uses may require a loading zone in the future.
- K. A snow removal plan shall be prepared by the applicant and filed with the Planning and Zoning Department. That plan shall address how to handle snow during large snowstorms (those of six inches or more within 24 hours).

**DURING CONSTRUCTION:**

- L. 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.

**DRAINAGE/STORMWATER MANAGEMENT**

- M. 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 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 such owner's expense and as quickly as possible.
- N. By January 22, 2012 (within the next 60 days) and prior to the issuance of a Zoning or Building Permit for the proposed construction and prior to the start of any filling or regrading work, 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, such plan shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 745 Boston Post Road to maintain the on-site drainage facilities, and will alert future property owners of the on-site drainage facilities and the need to maintain said facilities to minimize impacts upon adjacent properties. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this approval.
- O. The Dumpster area shown on the plans shall be neatly maintained, and the lids shall remain shut at all times that someone is not loading or unloading garbage. The property owner is responsible for maintaining this area, including ensuring that it is emptied frequently enough to minimize odors and for scheduling collection times to be sensitive to the nearby residential area.
- P. All site work, including but not limited to curbing, paved and striped parking spaces, drainage systems, safety signage, transformer, dumpster enclosure, landscaping and other site improvements as shown on the approved plans shall be properly installed and completed prior to

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 23 OF 29

the use of any portion of the building and/or the issuance of a Certificate of Occupancy for that building.

- Q. All landscaping shall be installed per the submitted Landscape Plan referenced in Condition A, above. Any changes or substitutions must be approved in writing by the Planning and Zoning Commission.
- R. Prior to the issuance of a Certificate of Occupancy, a Professional Engineer shall certify in writing that the required drainage work has been properly completed in accordance with the approved plans. A final "as-built" survey is required to certify that the building, drainage, retaining walls, landscaping, regrading and all other site improvements are all in compliance with the approved plans.
- S. Prior to a Certificate of Occupancy for any portion of the building, the applicant shall complete all common improvements for the entire building. These improvements include, but are not limited to: the drainage work and landscaping.
- T. 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 would include, but not be limited to: possible Encroachment Permit from ConnDOT to eliminate the existing curb cut on Boston Post Road and to install new sidewalks and curbs (as noted in Mr. Galante's September 21, 2011 letter); a Demolition Permit for the existing building; and Street Opening Permit for the new driveway on Academy Street. Permits from the Fire Marshal will be needed to remove any existing underground oil tanks, to install any new oil tanks, and for removal of any above-ground or underground propane tanks.
- U. 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 this permit as it deems appropriate.
- V. This permit shall be subject to the provisions of Sections 858, 1009 and 1025 of the Darien Zoning Regulations, including but not limited to implementation (i.e., the start of construction) of the approved plan within one year of this action (November 22, 2012). This approval may be extended as per Sections 858, 1009 and 1025.

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 and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void. All completed requirements and materials including the drainage maintenance plan and Notice of Drainage Maintenance Plan; shall be completed and submitted to the Planning and Zoning Department within 90 days of this action; and Notice of Drainage Maintenance Plan filed in the Darien Land Records, or this approval shall become null and void.

IV. INCLUSIONARY ZONING ISSUES

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 24 OF 29

The Commission finds that in this specific instance, it is in the best interests to take the fee-in-lieu payment, rather than having one unit constructed on site. This is for the following reasons:

- a. Since the calculation per Section 583 and 585 requires a below market rate requirement of 1.09, even if a unit was built on-site or off-site, there would still be a payment of the .09 unit (or \$23,850+/-).
- b. As noted in the resolution above, the Commission's options are as follows:
  - A) Take a fee-in-lieu payment for the entire 1.09; or
  - B) Create 1 unit and take a fee-in-lieu for the .09.
    - B1) create the 1 unit on-site; or
    - B2) create the 1 unit off-site
- c. At the public hearing, the applicant represented that to take the entire 1.09 obligation as a fee-in-lieu would result in \$362,234.25, which would be in the form of a cash payment to the Town of Darien.
- d. The specific calculation of the 1.09 below market rate requirement is shown on the Site Development Plan, Drawing No. SDP.
- e. The Commission notes that this is the second inclusionary zoning project approved. The first was at 23-33 Tokeneke Road, where the inclusionary units were constructed on-site. In this case, because the amount of money involved \$362,234.25, the Commission believes that there should be a fee-in-lieu payment in this case, since this amount of money is more likely to be able to be used on affordable housing somewhere in Town much sooner than that much smaller amount of \$23,850+/-.

The applicant shall make payment per the requirements of the Darien Zoning Regulations, and the applicable provisions of the Connecticut General Statutes.

Chairman Conze read the following agenda item:

**Approval of Minutes**

November 1, 2011 General Meeting/Public Hearing

Mr. Ginsberg said that Mr. Spain had a number of minor modifications and clarifications. The following motion was made: That the Commission adopt the minutes as revised. The motion was made by Mrs. Cameron and seconded by Mr. Hutchison. All voted in favor except Mr. Cunningham and Mr. Voigt, who abstained because they had not attended that meeting.

Chairman Conze opened the Public Hearing and read the first public hearing agenda item:

**PUBLIC HEARING**

**Land Filling & Regrading Application #267, Scott Leahy, 117 Leeuwarden Road.** Proposing to fill, regrade, and construct associated retaining walls along the sides and rear of the property, and perform related site development activities. The subject property is located on the west side of Leeuwarden Road, approximately 800 feet south of its intersection with Old Oak Road, and is shown on Assessor's Map #29 as Lot #122, and is in the R-1/2 Zone. *POSTPONED.*

Mr. Conze said that this matter will be rescheduled for a later date.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 25 OF 29

Chariman Conze read the following agenda item:

**Continuation of Public Hearing regarding Proposed Amendments to the Darien Zoning Regulations put forth by Christopher & Margaret Stefanoni (COZR #5-2011).** Proposing to establish a new section of the Darien Zoning Regulations entitled, “Affordable Housing Floating Zone”. This new section would establish a floating zone which could be automatically applied to any lot in Darien at the option of the property owner. It would allow CGS 8-30g affordable housing developments on any lot in Town as a Principal Use as-of-right. It would establish specific Area and Bulk requirements regarding setbacks, and allow structures to be up to three stories and forty feet in height, with a maximum density of thirty-five (35) units per acre. The proposed new regulations would also allow for legalization of existing “in-law” unit(s). The full text of the proposed zoning regulation amendments is on file and available in the Town Clerk’s office and the Planning and Zoning Office for inspection. *HEARING OPENED ON 10/25/2011.*

Mr. Ginsberg noted that this is a continuation of a Public Hearing that was started on October 25, 2011. He read aloud the comments from the Connecticut Department of Energy & Environmental Protection dated November 18, 2011. Those comments included the fact that the proposed amendment was not inconsistent with the Connecticut Coastal Management Act but that individual development proposals that are within the Coastal Area Management boundaries would need to be reviewed separately to determine if they comply with the Coastal Management Act and especially if there are coastal parcels to determine if the proposed use is a coastal dependent use.

Margaret Stefanoni said that she had submitted two draft amendments to the Commission. One of these would specifically provide for review of the application by the Fire Marshal. She said that it is very difficult and time consuming and expensive and daunting for a property owner to go through the affordable housing application process without knowing if the project will be approved. She said that the proposed amendment would make the affordable housing allowed as of right unless there were some aspect of the project that did not comply with the specific regulations. She said that the efforts of the Town and the State might be good intentions, but they are not yet getting affordable housing units built. She said that one of the concerns is that allowing the higher density would turn Darien into a city. She said that that is not likely but it is more likely that some affordable housing projects would be built. Mrs. Stefanoni referred to her property, 149 Nearwater Lane, and indicated that even though the lot area times the possible 39 units per acre would allow for a maximum of 52 units, that particular site could not accommodate that many units because of the shape of the parcel, because it is near a marsh and also because there are rock outcrops. She said that every property is unique and thus the proposed development would be somewhat limited by the circumstances of the property.

Mrs. Stefanoni said that the Fire Marshal review of the application would be one aspect before a permit would be issued.

Mrs. Stefanoni said that she had an opportunity to review the staff memo that referenced the Town Plan of Conservation and Development. She said that the proposed developments would still be residential, they would just be affordable residential developments and that scattered site development of affordable housing units would be appropriate rather than having 100% of the affordable units located in a limited area.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 26 OF 29

Mr. Hutchison asked if the proposed amendment were in effect, would not this just be throwing away the moratorium that had been granted by the state. Mrs. Stefanoni said that the affordable housing language of Section 8-30g really just changes the appeals process and shifts the burden of proof from the applicant to the town. She said that the proposed modifications would not allow a "Trump Tower" type development because, while fire safety requirements could be met within the building, no aerial trucks in Darien would be able to reach a five or six story building. Mr. Hutchison said that originally Section 8-30g did not even require a site plan to be submitted, but that statute has been amended to require much more detail to be submitted for review and action by the town. He asked why a traffic study submission is not part of the proposed amendment. Mrs. Stefanoni said that the town's traffic consultant, Mr. Galante, has indicated that a 16 unit, elderly housing project would have a negligible impact on traffic and thus she has not included the need for traffic study in the proposed amendment. Mr. Hutchison asked if the proposed amendment would de-incentivise the town from creating affordable housing units and Mrs. Stefanoni said that she is not sure if it would discourage the town from creating affordable housing. She said that the town has indicated that it wants to work with private citizens to create affordable housing.

Mr. Spain asked about the application process and the appeal process. Mrs. Stefanoni said that if it is a Section 8-30g application, then the Statutes would govern the appeal process; but if it is only submitted under the town's regulations then it would be processed and appealed like any other application. She said that the goal is to provide affordable housing and if the goal would be to have at least 10% of the community dwelling units be affordable, then the Commission then could consider repealing the provision on the regulations.

Mrs. Cameron asked about enforcing the in-law apartment provisions that are included in the proposed amendments. Mrs. Stefanoni said that documents would need to be filed in the land records and a list of approved affordable housing units and eligible perspective tenants would need to be maintained. People could review whether or not a unit is supposed to be limited to being affordable and if there is a violation then it would be reported to the Zoning Enforcement Official. In most cases, it is natural that the in-law apartment is a modest unit and would thus only command an affordable housing level of rent. She said that there are existing illegal units, some of which are unsafe. The proposed amendment would create an amnesty type situation to allow those unsafe to become legalized provided they are brought into safety code compliance. She said the town would have to work out a provision of how to document existing units rather than allowing people to create new illegal units. She said there would be administrative and enforcement trade-offs to get the illegal units to become legal and safer and to control further rent increases. She said that making the illegal units into legal units does not actually create any new housing units.

Mr. Conze asked if there are any comments from the public. There were none. Mr. Ginsberg noted that the staff had prepared and distributed to the Commission members and the applicant a memorandum with attachments. Mrs. Stefanoni had mentioned the staff memo earlier in her presentation. He said that the memo's conclusion is that the proposed amendments are not consistent with the Town Plan of Conservation and Development.

There being no further comments, the following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 27 OF 29

Chairman Conze read the following agenda item:

**Flood Damage Prevention Application #304, Land Filling & Regrading Application #268, Kim & Christa Mathew, 68 Buttonwood Lane.** Proposing to fill in where the proposed residence is in the flood hazard area, and compensate by an excavation of equal area and volume in another part of the site; level the back yard; and perform related site development activities within a regulated area. The subject property is located on the south side of Buttonwood Lane, approximately 550 feet east of its intersection with Mansfield Avenue, and is shown on Assessor's Map #10 as Lot #50, in the R-1 Zone.

Lance Zimmerman, Project Architect, explained that the project involves removing the existing house and creating a new residential structure. As part of that project, they must comply with the Storm Water Management Regulations. A small portion of the existing flood plain located on the property needs to be filled in order to accommodate the house and associated development. A compensating area of the property will be lowered so that there is no reduction in flood storage capacity. They are also regrading a high portion of the land to become lower (even though that is not in the flood hazard zone). A storm water management system will be installed.

Steve McCallaster of McChord Engineering Associates, Inc. explained that portions of the property are at existing elevation 132. The expected flood level in the area is 132.5 to 133. They are on the edge of the flood zone but some of the regrading will occur within the flood hazard area, thus a 40 foot by 100 foot area will be lowered by approximately 14 inches. This will take place in the front yard of the house. He said that by lowering the land in the front yard they will actually create 20% more flood plain than the existing flood plain that they are filling. Mr. Spain asked what would happen when the new flood plain area is filled with rain water before a flood occurs. Mr. McCallaster said that a swale will allow water from the new flood plain area to drain toward the water course until the water course starts to back up. In this way the extra flood plain area will not be filled with water until it is needed as a flood storage area for the brook. He said that the new flood plain area is not a bowl, but rather it is a sloped area that will not fill up with rain water. Mr. McCallaster said the current plan is to have the storm water run-off from the impervious surfaces of the house and drive way be directed into a storm water detention area that will be underground. These underground galleries will be just up-hill of the wetlands that are on the southeast corner of the property. He said that there also has been some consideration about creating above ground storm water detention areas.

Mrs. Cameron said that when the Country Club of Darien performed some of its storm water management work and a house was built on the corner of Brookside Road and Buttonwood Road they changed how the flow of storm water comes through the area. It eliminated much of the standing water on those sites. She said that creating above ground rain garden type storm water detention systems would be appropriate and she would want to keep the public hearing open so that the Commission has another opportunity to review that alternate design.

Mr. Ginsberg said that the plan involves abandoning the existing septic system and connecting the new house to the sanitary sewer in the street. He also noted that the Environmental Protection Commission has reviewed and approved the plan which involves some work within their jurisdiction.

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 28 OF 29

There were no comments from the public regarding the application. The Commission discussed whether it would want to continue the public hearing or not. Mr. Ginsberg said that the next available date for continuation would be on January 10, 2012 but it is more than 35 days after the start of the public hearing, thus the Commission would need the consent of the applicant before continuing the application to that date. The Commission members indicated that they would want to see the alternative design for the above ground storage of storm water. Lance Zimmerman, on behalf of the applicant, consented to the extension of time so that the public hearing can be continued on January 10, 2012. The Commission decided to continue the public hearing on January 10, 2012 rather than closing the hearing at this time.

Chairman Conze read the following agenda item:

**Special Permit Application #270, Lloyd & Lynne Byrne, 26 Driftway Lane.** Proposing a seasonal temporary installation of a 30' x 60' ice rink in the back yard, with associated chiller condenser unit and to perform related site development activities. The subject property is located on the east side of Driftway Lane approximately 775 feet north of its intersection with Old Farm Road, and is shown on Assessor's Map #66 as Lot #124, and is in the R-1 Zone.

Mr. Ginsberg noted that materials regarding the temporary ice rink have been distributed to the Commission members. The proposed ice rink would have a chiller unit and boards of eight inches in height above the ice level and therefore would require Special Permit approval from the Planning & Zoning Commission. He said that the Environmental Protection Commission had already reviewed and approved the application because they felt that it would not have any impacts in the wetland resources.

Jeff McDougal of William W. Seymour & Associates explained that the plan was to establish a temporary skating rink on a flat, level portion of the property. The owner wishes to install a chiller unit which is similar to an air conditioner unit to make the ice a better quality. He said that the inclusion of the chiller unit would not necessarily extend the time period that the rink would be maintained. He said that the rink would not have any lights and that the grass under the temporary rink would recuperate in the spring after the rink was removed. There was a question regarding the noise that the chiller unit might make and Mr. McDougal said that it is lower sound level than an air conditioner unit for a house and he noted that it is operating at a time of the year when people will not be having open windows. He said that in accordance to the EPC's decision they will place a small protective fence around the chiller unit so that it would not be damaged by any stray puck that flies off the ice surface. He said the chiller unit will be located near some Evergreen trees so it will not be very visible.

Mr. Ginsberg said that all of the neighbors were notified and all of the neighbors have signed off on the temporary rink. In response to questions, Mr. McDougal said that the depth of the water will be three to four inches in most locations but a maximum of eight inches. He said that the pipes leading from the chiller to the ice rink will be on the surface of the ground and covered with a pad. He said that the fluid used in the system is an ethylene glycol type system or a propylene glycol type fluid as an alternate. Mr. Spain asked if there was any concern about the spillage of that fluid and how it might impact the wetlands or water courses. Mr. Conze said that some kind of containment might be needed around the pump to make sure that if there is a leak, it would not reach the wetlands. Mr. McDougal indicated that the systems have been operated in many locations without

DARIEN PLANNING & ZONING COMMISSION  
GENERAL MEETING AND PUBLIC HEARING  
MINUTES  
NOVEMBER 22, 2011  
PAGE 29 OF 29

any incidents but he will look into the possibility of providing a containment area and/or using another type of material that would have no impact on wetlands. He said that the client is anxious to get this temporary rink installed for the winter season and asked the Commission to act on the application before they have their December break.

Mr. Spain said that the Commission will try to accommodate the applicant's time schedule and noted that this is only requested as a one year temporary Special Permit. He said at the end of the season, the Commission should require a report from the applicant to document the experience and to provide any information about the possible spill of chemical contaminants. He said the applicant should also find out about any insurance rider that might be necessary.

Mr. Ginsberg noted that the Health Department had indicated that they need to review the situation more to make sure that the temporary rink would not adversely impact the septic system. Mr. McDougal said the applicant is working with the Health Department and anticipates the resolution of that issue in the very near future.

There were no comments from the public regarding the application. The following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Hutchison, seconded by Mr. Spain and unanimously approved.

Chairman Conze read the following agenda item:

**GENERAL MEETING (time permitting)**

**Deliberations and possible decision on any public hearing item closed on November 22, 2011.**

Commission members discussed the application for the temporary ice rink at 26 Driftway Lane. The following motion was made: That the Commission approve the application for a one-year temporary Special Permit to have the temporary ice rink in the back yard at 26 Driftway Lane in accordance with the submitted plans and the Environmental Protection Commission's approval. The staff is to formalize the Special Permit findings and the conditions of approval on behalf of the entire Commission. The motion was made by Mr. Spain and seconded by Mr. Hutchison and unanimously approved.

There being no further business, the following motion was made: That the meeting be adjourned. The motion was made by Mr. Spain, seconded by Mrs. Cameron and unanimously approved. The meeting was adjourned at 10:20p.m.

Respectfully submitted,

David J. Keating  
Assistant Planning & Zoning Director