

PLANNING & ZONING  
COMMISSION  
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TOWN HALL ANNEX  
238 Danbury Road  
Wilton, Connecticut 06897

## WILTON PLANNING & ZONING COMMISSION MINUTES MAY 9, 2011 REGULAR MEETING

**PRESENT:** Chairwoman Sally Poundstone, Vice Chairman John Wilson, Secretary Doug Bayer, Commissioners John Gardiner, Marilyn Gould, Chris Hulse, Bas Nabulsi, and Michael Rudolph

**ABSENT:** Dona Pratt (notified intended absence)

### ALSO

**PRESENT:** Robert Nerney, Town Planner; Daphne White, Assistant Town Planner; Recording Secretary; members of the press; and interested residents.

### PUBLIC HEARINGS

**1. SP3360, Plan B Retail Design, 920 Danbury Road, Expand existing shopping center**

Ms. Poundstone called the Public Hearing to order at 7:15 P.M., seated members Bayer, Gardiner, Gould, Hulse, Nabulsi, Poundstone, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. She noted that the hearing was continued from a previous date.

Mr. Wilson noted for the record that he had listened to the CD of the last meeting.

Present was Chuck Bomely, Plan B Retail Design; on behalf of the applicant.

Mr. Bomely distributed a revised special permit and Form B application, reflecting calculations for the entire shopping center as requested by the Commission at the last meeting. He explained that the last attachment of the revised application package reflects calculations that pertain to the entity of Caraluzzi's Market alone.

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Mr. Bomely next addressed the issue of the mezzanine space, noting that his research determined that similar mezzanine square footage at the Stop and Shop supermarket in Wilton Center was excluded for purposes of calculating parking requirements.

In response to questions from Mr. Bayer, Mr. Nerney confirmed that while a mezzanine, a basement and an elevator shaft at Stop and Shop were included in the total bulk of the building, they were discounted from the gross floor area (GFA) for purposes of calculating parking requirements, which are a function of GFA. He noted further that while Stop and Shop's 59,000+/- total GFA square footage did include the three aforementioned areas, it did not include a small shed and two trash compactors which, had they been included, would have put the supermarket over the 60,000 square foot maximum permitted. Mr. Bomely confirmed that the trash compactors are accessed through the store off of an area that is essentially a room.

In response to a question from Mr. Nabulsi, Mr. Nerney explained that all of this information was reflected on the Stop and Shop plan brought before the Commission but he did not believe that these particular issues received a lot of attention at the time from either the Commission or from staff.

Mr. Bomely cited Section 505.4 of the 2003 International Building Code pertaining to mezzanines. He referenced Exception #2 in particular, noting that "a mezzanine having two or more means of egress is not required to be open to the room in which the mezzanine is located." Since an outside stairway from the mezzanine level is proposed, he felt that the space would therefore not be required to be open.

In response to a question from Mr. Hulse regarding the refrigeration unit which the applicant was not counting toward GFA, Mr. Bomely noted that the unit could be hauled away easily if Caraluzzi's were to ever vacate its current space. Mr. Nerney noted further that the former Zeytinia's market in south Wilton was required to enclose its condenser unit, located behind the building, because of the noise it generated. He also noted that it was discounted for purposes of parking generation but not when calculating the mass of the building.

In response to a question from Mr. Bayer, Mr. Bomely confirmed that the plan as currently proposed does include the 224 square feet of outdoor storage display in the 25,454 square feet of existing space. He also confirmed, per a statement he made at the last meeting, that if for some reason the total GFA of the finalized plan for Caraluzzi's were to total more than 30,000 square feet, the amount over 30,000 would be removed.

Mr. Rudolph asked the applicant if there were any justification/foundation in our zoning regulations for excluding the mezzanine space or if, in fact, the applicant based the exclusion entirely on the International Building Code. Mr. Bomely stated that it was based on the Building Code, noting that he could not find any discussion in our

regulations pertaining to mezzanine space. Mr. Rudolph responded by reading the definition of “Floor Area, Gross (GFA)” in the zoning regulations, noting its reference to “every floor of a building, measured from the exterior face of outside walls . . . and including hallways, stairs, closets, columns, the thickness of walls and other features”. Mr. Nerney noted that the Building Code discounts mezzanine from floor area and thus does not consider it a floor. Mr. Rudolph also questioned the applicant’s justification for excluding the refrigeration unit space from GFA. Mr. Bomely stated that mechanical space is not mentioned in the zoning regulations so he referred to a different section in the Building Code pertaining to such space. He distributed photos of the refrigeration unit, noting that it is clear it does not qualify as “occupyable” space.

Referencing the issue of the mezzanine/discountable space, Mr. Nabulsi felt it was relevant that a comparable mezzanine area at Stop and Shop supermarket was not treated as GFA for purposes of parking requirements. Mr. Rudolph was not persuaded, noting that the applicant is not including 1500 square feet of space (attributable to the mezzanine and refrigeration areas) toward its calculation of GFA, and where such a calculation method results in the supermarket entity being only 2 square feet under the maximum 30,000 square feet permitted.

Ms. Poundstone asked if anyone in the audience wished to speak for or against the application.

**MOTION** was made by Ms. Gould, seconded by Mr. Hulse, and carried (8-0) to close the hearing.

There being no further comments from the Commission or the public, at 7:34 P.M. the Public Hearing was closed.

Ms. Poundstone scrambled the Agenda to next hear Communications Item #1.

## **F. COMMUNICATIONS**

### **1. Meeting with PZC’s SWRPA representative, Richard M. Murphy**

Ms. Poundstone introduced newly appointed SWRPA representative Richard M. Murphy to the Commission. She stated that they were looking forward to Mr. Murphy representing the interests of the Wilton community and hoped that he would share information with and advise the Commission during his tenure as SWRPA representative.

Mr. Murphy stated that he looks forward to representing Wilton and he asked for clarification as to what the Commission perceives the core issues to be.

Mr. Nerney explained that transportation needs for the region has been the primary focus of late. He noted that SWRPA is the gatekeeper of federal highway funds and without its prioritization, this region, including Wilton, would not benefit from the funds that are available. He cited the recently completed Access Management Study/curb cut analysis as an example of projects/issues addressed by SWRPA.

Mr. Nerney urged Mr. Murphy to communicate with him and/or the Commission if issues arise that might have relevance to local planning issues. Mr. Rudolph suggested that Mr. Murphy forward to someone in the Town anything that mentions Wilton.

It was also suggested that Bud Boucher, the Board of Selectmen's SWRPA representative, would be a great resource to Mr. Murphy, who indicated that he would reach out to Mr. Boucher.

Ms. Poundstone thanked Mr. Murphy for his anticipated service to the community.

## **PUBLIC HEARINGS**

- 2. CHZ#11329, Gueron, Extend Cannon Crossing Overlay District (CXD) on underlying R-2A Zone for property known as Assessor's Map 34, Lot 42 [Continued until May 23, 2011]**
- 3. REG#11330, Gueron, Amendments to Sections 29-2.B.13 and portions of Section 29-6 to establish additional regulatory criteria for the Cannon Crossing (CXD) District [Continued until May 23, 2011]**
- 4. SP#364, ECS Transportation, 390-392 Danbury Road, Restaurant use**

Ms. Poundstone called the Public Hearing to order at 7:44 P.M., seated members Bayer, Gardiner, Gould, Hulse, Nabulsi, Poundstone, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Bayer read the legal notice dated April 26, 2011 and he referenced a 2-page Planning and Zoning Staff Report dated May 2, 2011.

Present were Richard Kent, landscape architect; Brian McArdle, owner; and Karen Piazza, coffee shop manager.

Mr. Kent reviewed posted plans of the site. He stated that after receiving the Planning and Zoning Staff Report, and because the State had changed the planting islands along Route 7 and had done some planting, a revised site plan was developed which he

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submitted into the record. He also submitted into the record a response to the Planning and Zoning Staff Report, in addition to Form B data for each individual parcel (390 Danbury and 392 Danbury Road) and for the combined parcel (390-392 Danbury Road).

He explained that site modifications (as compared with the originally submitted site plan) include elimination of parking in front and an increase in size of the center landscaped island. He noted that the applicant is adding pavers and terraced areas to provide seating in warmer weather and is providing more parking spaces than are required on the site. He also noted that building and site coverages would be significantly decreased at 392 Danbury Road due to the removal of storage areas on the site. He reviewed proposed landscaping, noting that some day lilies would be added per staff request.

Mr. Kent next reviewed responses to Planning and Zoning Staff Report comments. Ms. Piazza noted in particular that there would not be any on-premises cooking except for coffee brewing and smoothies. She also explained that the intent is to preserve the natural appearance of the site, noting that there is ample outdoor seating space if the need arises, although she felt that business would consist primarily of take-out. She stated that there would be only three small tables and a small bar area inside, accommodating approximately twelve seats. She confirmed that no drive-through is proposed or anticipated.

Mr. Wilson raised the issue of raccoons and proper garbage disposal since no dumpster is proposed. Ms. Piazza stated that she had not given the issue much consideration but indicated that she was flexible in that regard and would consider it further.

Ms. Gould asked whether vehicles would be parked in the flood plain area on the eastern side of the property. Mr. Kent stated that vehicles would be parked there (as they are parked there currently). However he noted that the site is much improved as compared to its condition prior to his client's purchase of the site. With respect to paving, he stated that the intent is not to do any additional paving, aside from what was agreed to as part of the past application for the site, and he confirmed that there would not be any increase to the amount of paved area currently existing on the site. He also noted that there would not be any conflict from a timing perspective with respect to the various uses on the site.

Mr. Bayer asked if approval of the coffee shop use would essentially result in an approval of any restaurant use on the site. Mr. Kent agreed that it would, although he noted that the Health Department would regulate that further should a different restaurant be proposed for the site. Mr. Nerney agreed. He stated that he would be reluctant to specify what type of restaurant use would be permitted, noting that due to the very small square footage of the structure there would be practical limitations in that regard.

Mr. Kent indicated that the second floor would be used for storage purposes only.

Mr. Nabulsi felt that a formal cross-access easement agreement should be secured to lock in the relationship between the two parcels, particularly as it affects parking and vehicular circulation on both sites. Mr. Kent stated this is a family situation, noting that this issue did not arise when the property recently came before the Commission. Mr. Bayer concurred with Mr. Nabulsi, noting that it would be preferable, and not difficult, to formalize the relationship between the two properties. Mr. Nabulsi felt that such an easement could be conditioned and subject to staff review.

Parking and ease of access was discussed further. Mr. Kent noted that many options are available to rework parking on the site, if it were to become necessary, especially since an extra thirteen spaces are available over what is actually required by regulations. It was also noted that parking located on the 390 Danbury Road parcel is technically not a part of the subject application.

Ms. Poundstone asked if anyone in the audience wished to speak for or against the application.

There being no further comments from the Commission or the public, at 8:21 P.M. the Public Hearing was closed.

**5. SP#365, Building Blocks Early Learning Center, LLC, 59 Danbury Road, Refitting of portion of interior for child day care center**

Ms. Poundstone called the Public Hearing to order at 8:21 P.M., seated members Bayer, Gardiner, Gould, Hulse, Nabulsi, Poundstone, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Bayer read the legal notice dated April 26, 2011; and he referenced a letter dated May 9, 2011 from J. Casey Healy to Planning and Zoning Commission, and a 2-page Planning and Zoning Staff Report dated May 3, 2011.

Ms. Poundstone noted that the applicant had requested a continuance of the hearing until May 23, 2011. She asked if anyone in the audience wished to speak for or against the application.

There being no further comments from the Commission or the public, at 8:23 P.M. the Public Hearing was continued until May 23, 2011.

**REGULAR MEETING**

- A.** Ms. Poundstone called the Regular Meeting to order at 8:23 P.M., seated members Bayer, Gardiner, Gould, Hulse, Nabulsi, Poundstone, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

**B. APPROVAL OF MINUTES**

**1. April 25, 2011 – Regular Meeting**

MOTION was made by Mr. Bayer, seconded by Mr. Nabulsi, and carried (7-0-1) to approve the minutes of April 25, 2011 as drafted. Mr. Wilson abstained.

**C. SITE DEVELOPMENT PLAN REVIEW**

**D. ACCEPTANCE OF NEW APPLICATIONS**

- 1. SP#368, Standard Petroleum of CT, 287 Danbury Road, Modifications to existing service station and replacement of underground fuel storage tanks within an aquifer protection district**
- 2. SP#369, JP Morgan Chase Bank, 920 Danbury Road, Bank with drive-through facilities**
- 3. SUB#905, Ruddy, 95 Old Boston Road, 2-lot subdivision**

MOTION was made by Ms. Poundstone, seconded by Mr. Wilson, and carried unanimously (8-0) to accept the applications and set a public hearing date for SP#368, SP#369 and SUB#905 on June 27, 2011.

**E. PENDING APPLICATIONS**

- 1. SP#360, Plan B Retail Design, 920 Danbury Road, Expand existing shopping center**

The Commission discussed the subject application.

Mr. Nabulsi stated that he is persuaded that the mezzanine space is properly excluded from GFA for two reasons: 1) the definition of GFA as set forth in the regulations is tied to the word “floor” and the Building Code definition that excludes a mezzanine as qualifying from what is considered a floor therefore takes it out of the GFA definition; 2) when the Stop and Shop development was considered, its mezzanine space was not included in GFA for purposes of determining parking calculations/requirements and the two are directly tied to each other.

With respect to the refrigeration unit, Mr. Nabulsi stated that he could not find any direct

answer within the regulations regarding inclusion or exclusion of such a fixture-type unit within the GFA. In determining the intent of the regulations, he felt that a reasonable question to ask is whether it would make sense to require additional parking in connection with such space. He did not believe the regulations intended that additional parking/asphalt paving be required in connection with a walk-in refrigeration unit and therefore since parking calculations are directly tied to GFA he did not feel such space is required to be included as part of GFA.

Mr. Wilson noted further that such space could be considered as temporary in nature since it does not have a foundation and, as the applicant explained, it can easily be removed if the supermarket were to ever vacate the space.

Mr. Rudolph was not persuaded. He cited the definition of “Floor Area, Gross (GFA)” in section 29-2.B of zoning regulations, noting its specific reference to the sum of gross horizontal areas of “every floor of a building” and he did not see how mezzanine space could correctly be excluded based upon that definition. He also questioned applying the International Building Code as authority for not treating a mezzanine as part of GFA, noting his extensive land use experience and the fact that he had never encountered a citing of the Building Code as authority for granting or withholding approval for anything. He felt that this aspect of the application should have been addressed via a variance application. He also cited Sections 29-4.A.1 and 29-4.A.5 of zoning regulations as justification for disclaiming use of the Building Code as any sort of authority in this type of situation since the aforementioned sections basically state that if outside regulations have lesser requirements than our regulations, then our regulations must apply. He felt it was disingenuous for the applicant to exclude the mezzanine and refrigeration unit spaces from GFA, resulting in what he referred to as a defective application.

Mr. Nabulsi noted that there are many nouns used in our regulations that are understood to have a meaning based on experience and/or their use in the trade. He cited the example of a roof which is not specifically defined in our zoning regulations but which is clearly understood based on experience. Similarly, referring to the word “floor” and its definition for purposes of GFA, he felt it was as good a place as any to turn to the International Building Code which took the time to explain when something is or is not considered a floor.

Referencing the Stop and Shop application, Mr. Bayer noted that parking calculation requirements are judged differently than bulk area requirements, i.e. different allowances are made when calculating parking requirements, which he felt made sense in the example of discounting parking for refrigerator space, for example. It was his opinion that these zoning regulations were adopted to prevent structures and single use tenants of a certain size and the Commission should not have to strain to interpret its regulations so as to allow this application to go forward. He felt that if the subject application was for a



Walgreen's store, as one example, the Commission would be having a completely different discussion. He felt that the Commission knows what a floor is and if a person can walk upstairs and walk around in a room then it should be considered a floor.

Ms. Gould suggested the possibility of conditioning the application such that no customer access is allowed to the mezzanine level, and its associated space cannot be used for sales/retail at all. She felt that the criteria is how much parking is required and if an area is not available for customer use, then it doesn't generate the need for parking and therefore is only considered from the perspective of site coverage.

Mr. Bayer raised the question of whether the mezzanine space would be counted toward GFA if, in fact, it was open and used for retail space. He felt that the major issue associated with approving the subject application is one of setting an undesirable precedent. He referenced the fact that the Gateway shopping center in south Wilton currently has available approximately 45,000 square feet of vacant space and he felt that problems could result if the same arguments of "temporary" space are employed there. He felt that this is not a clear cut application and is therefore difficult to approve.

Mr. Nabulsi stated that he shared Mr. Bayer's concern. He stated that if the Commission decides to approve the application, it should make some fairly specific findings as to the basis upon which it approved the application and craft them clearly so as not to allow them to be finessed in any way for future applications. He referred to Section 29-6.B.3, which permits uses with a "GFA greater than 20,000 square feet with a maximum size of 30,000 square feet for retail business", emphasizing the phrase "*for retail business*". He suggested that any resolution of approval should make a clear finding that the 30,000 square feet is defined as retail space and that if the mezzanine space was to be used for retail (i.e. customer access) then it would have been counted toward total GFA, and also if it were to be converted to retail use then it would be considered a floor and would be counted toward GFA.

Mr. Bayer expressed concern with such a finding since other spaces included in GFA, such as storage space and offices, are not open to the public for retail use and thus could result in additional areas potentially being excluded from the definition of GFA. Ms. Poundstone felt that such language could clearly reference mezzanine space and thus avoid that type of confusion.

It was the consensus of the Commission at this point to take a straw vote to determine whether a clear majority opinion emerged with respect to approving or denying the application.

**MOTION** was made by Ms. Gould, seconded by Mr. Nabulsi, to determine who would be in favor of approving the subject application. The vote was (6-2) in favor of approving the application with Commissioners Rudolph and Bayer voting against

approval.

Based upon the foregoing straw vote, it was the consensus of the Commission to request a draft resolution of approval for vote at the next meeting.

It was also the consensus of the Commission that language be incorporated into the resolution clearly indicating that the 29,998 square-foot structure was approved because the mezzanine space and the refrigerated unit space were both considered as not having public access.

Mr. Nabulsi also requested that an issue raised at one of the earlier hearings pertaining to the type of barriers to be installed in front of the gas canister area be addressed.

Mr. Rudolph stated that he would like to see a draft of the resolution in advance of the next meeting.

**2. CHZ#11329, Gueron, Extend Cannon Crossing Overlay District (CXD)**

Tabled.

**3. REG#11330, Gueron, Amendments to Sections 29-2.B.13 and portions of Section 29-6 to establish additional regulatory criteria for the Cannon Crossing (CXD) District**

Tabled.

**4. SP#361, ROPO, LLC, 490 Danbury Road, Professional offices and residential apartments in Building #1, and professional office in Building #2**

Commissioners Hulse and Wilson recused themselves from applications SP#361 and SP#362.

Mr. Nerney advised Commissioners that staff had prepared resolutions of both approval and denial. He explained that if the Commission is inclined to approve application SP#361, then application SP#362 becomes moot, in which case the applicant would be requested to withdraw SP#362.

The Commission briefly discussed the application.

In response to questions from Mr. Bayer as to which approval would be more restrictive for the small building (i.e. professional office use as proposed in SP#361 or adaptive use of the structure for professional offices as proposed in SP#362), Mr. Nerney explained that there is some latitude with respect to changes of use on adaptive use properties via either staff or Commission approval. He noted that when the residential component was

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eliminated from the smaller building, the applicant felt it then complied under SP#361 and therefore did not require an adaptive use permit. He noted further that the subject application (SP#361) is strictly for office usage in the smaller building and thus if another use such as retail, restaurant, etc. were to be proposed, the applicant would have to come back and apply for an adaptive use permit. He also confirmed that approval of SP#361 does not preclude the applicant from the right to apply for an adaptive use permit someday for some alternative use if it so chose. In summary, he felt that approval of the first application would be more restrictive since it allows only professional office use.

**MOTION** was made by Mr. Bayer, seconded by Mr. Nabulsi, and carried (5-1-2) to adopt as amended Resolution #0511-9P for SP#361, effective May 12, 2011. Ms. Gould opposed. Commissioners Wilson and Hulse abstained.

**WHEREAS**, the Wilton Planning and Zoning Commission has received a Special Permit application (SP#361) from Dominick Polito for approval to allow one (1) professional office for non-resident occupants (lower floor level) and for three (3) residential apartments (first and second level) within Building #1 and to allow professional offices for non-resident occupants and no residential apartments within Building #2, for property located at 490 Danbury Road; in an R-2A (Single Family Residence District), Assessor's Map#35, Lot #50, and 3.753 acres; owned by ROPO, LLC and shown on the plans entitled:

Zoning Location Survey- Prepared for ROPO, LLC

Prepared by Roger A. Stalker, land surveyor, dated November 21, 2005, last revised July 18, 2007, scale: 1"=40', sheet#1 of 1.

Topographic Location Survey- Prepared for ROPO, LLC

Prepared by Roger A. Stalker, land surveyor, dated November 21, 2006, last revised May 21, 2010, scale: 1"=40', sheet#1 of 1.

Site Plan Special Permit- Prepared for ROPO, LLC

Prepared by Thomas S. Quinn, engineer, dated April 27, 2010, revised January 18, 2011, scale: 1"=40', sheet#SP-1.

Site Plan Special Permit- Prepared for ROPO, LLC

Prepared by Thomas S. Quinn, engineer, dated April 27, 2010, last revised January 18, 2011, scale: 1"=20', sheet#SP-1A.

Landscape & Lighting Plan- Prepared for ROPO NINE

Prepared by Katherine E. Throckmorton, landscape architect, dated April 19, 2010, scale: 1"=20', sheet#LP-1.

Landscape & Lighting Plan- Prepared for ROPO NINE

Prepared by Katherine E. Throckmorton, landscape architect, dated April 19, 2010, revised June

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24, 2010, scale: 1"=20', sheet#LP-1A.

Foot Candle Plan – Average Foot Candle = 1.75- Prepared for 490 Danbury Road  
Prepared by Hubbell Lighting Inc., lighting company, dated April 27, 2010, scale: 1"=30', sheet  
# 1R.

Foot Candle Plan- Average Foot Candle = 2.50- Prepared for 490 Danbury Road  
Prepared by Hubbell Lighting Inc., lighting company, dated April 15, 2010, scale: 1"=30', sheet  
# 2.

Floor Plans “Building 1”- Main Level Floor Plan- Prepared for 490 Danbury Road  
Prepared by Polito Builders, builders, dated May 26, 2010, scale: 1/4"=1'-0", sheet # 1 of 3.

Floor Plans “Building 1”- Upper Level Floor Plan- Prepared for 490 Danbury Road  
Prepared by Polito Builders, builders, dated May 26, 2010, scale: 1/4"=1'-0", sheet # 2 of 3.

Floor Plans “Building 1”- Lower Level Floor Plan- Prepared for 490 Danbury Road  
Prepared by Polito Builders, builders, dated May 26, 2010, scale: 1/4"=1'-0", sheet # 3 of 3.

Floor Plans “Building 2”- First and Second Floor Plan- Prepared for 490 Danbury Road  
Prepared by Polito Builders, builders, dated May 26, 2010, revised January 17, 2011, scale:  
1/4"=1'-0", sheet # 1 of 2.

Floor Plans “Building 2”- Office Floor Plan- Prepared for 490 Danbury Road  
Prepared by Polito Builders, builders, dated May 26, 2010, revised January 17, 2011, scale:  
1/4"=1'-0", sheet # 2 of 2.

**WHEREAS**, the Wilton Planning and Zoning Commission has conducted a public hearing on April 11, 2011 to receive comment from the public and has fully considered all evidence submitted at said hearing; and

**WHEREAS**, the Wilton Planning and Zoning Commission has determined that the application is in substantial compliance with the Wilton Zoning Regulations;

**NOW THEREFORE BE IT RESOLVED** that the Wilton Planning and Zoning Commission **APPROVES** Special Permit #361 for approval to allow one (1) professional office for non-resident occupants (lower floor level) and for three (3) residential apartments (first and second level) within Building #1 and to allow professional offices for non-resident occupants and no residential apartments within Building #2, effective May 12, 2011 subject to the following conditions:

1. This Resolution does not replace requirements for the applicant to obtain any other permits or licenses required by law or regulation by the Town of Wilton, such as, but not limited to: Zoning

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Permit, Sign Permit, Building Permit, Certificate of Zoning Compliance; or from the State of Connecticut or the Government of the United States. Obtaining such permits or licenses is the responsibility of the applicant.

2. In accordance with Section 8-3.(i) of the Connecticut General Statutes, all work or physical improvements required and/or authorized by the approved Site Plan shall be completed within five years of the effective date of this resolution. This five-year period shall expire on May 12, 2016.
3. The Planning and Zoning Commission approves the site plan layout represented in the plan entitled: Site Plan Special Permit Prepared for ROPO, LLC, Prepared by Thomas S. Quinn, engineer, dated April 27, 2010, last revised January 18, 2011, scale: 1"=20', sheet#SP-1A.
4. The Planning and Zoning Commission approves the lighting shown on the plan entitled: Foot Candle Plan – Average Foot Candle = 1.75 Prepared for 490 Danbury Road, Prepared by Hubbell Lighting Inc., lighting company, dated April 27, 2010, scale: 1"=30', sheet # 1R.
5. The Planning and Zoning Commission approves the waiver of one off-street loading space.
6. A bond estimate for site work shall be provided by the applicant to the Town Planner, which shall include, but not be limited to sedimentation and erosion controls, grading, curbing, lighting, drainage, paving, tree protection, landscaping, seeding, and 10% contingency. The applicant shall furnish to the Town a bond with proper surety, in form and amount satisfactory to the Commission's land use counsel and Wilton's Town Planner, prior to the issuance of any zoning permit.
7. The applicant shall revise the site plan to include a fence adjacent to the retaining wall located on the southern side of the residence, known at building #1 prior to the issuance of a Zoning Permit.
8. In accordance with submitted plans, the driveway shall be graded and widened as shown on the approved site plan.
9. With the exception of safety lighting, all other outside lighting shall be extinguished by 11:00 p.m.
10. All existing trees on the site are to be preserved or relocated as shown on the approved site plan.
11. The wheelchair accessible parking space shall be designed so as to comply with the

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Connecticut State Building Code and shall be fully operational prior to the issuance of a certificate of zoning compliance.

12. Mechanical equipment and refuse containers shall be screened from view on all sides prior to the issuance of a zoning certificate of compliance.
13. The office and residential areas of the structure shall not exceed the square footages shown on the approved layout plans unless otherwise approved by the Planning and Zoning Commission.
14. The professional offices and residence apartments shall comply with all requirements of Section 29-5.C.6. regarding signage and regarding the prohibition of outside storage or exterior display.
15. Three (3) completed revised sets, (collated and bound) shall be submitted to the Commission's office for endorsement as "Final Approved Plan" by the Town Planner. Said plans shall include all revisions noted above and shall bear an ORIGINAL signature, seal and license number of the professional responsible for preparing each plan or portion of it. Said plans shall include the following notes:
  - a. "According to Section 8-3.(i) of the Connecticut General Statutes, all work in connection with this Site Development Plan shall be completed within five years after the approval of the plan. Said five-year period shall expire on May 12, 2016."
  - b. "For conditions of approval for Special Permit #361, see **Resolution #0511-9P.**"

- END RESOLUTION -

**5. SP#362, ROPO, LLC, 490 Danbury Road, Adaptive use of Building #2 for professional offices**

Per his conversation with the applicant's attorney, Mr. Nerney suggested keeping this application active until a letter of withdrawal is received by staff, at which time the application would be dropped from the agenda.

**6. SP#364, ECS Transportation, 390-392 Danbury Road, Restaurant use**

The Commission briefly discussed the application. It was noted that the subject application does not request approval for anything on the abutting property at 390 Danbury Road, but rather just addresses the proposed restaurant use at 392 Danbury Road. It was the consensus of the Commission that there needs to be a dumpster somewhere on the subject site, as opposed to just garbage cans, to address trash generated by the restaurant; a cross-access easement agreement needs to be obtained and filed in the land records prior to issuance of a zoning permit; and lighting needs to be reflected on the final plans; all of which could be made subject to approval of the Commission or staff.

Draft resolution #0511-10P was amended as requested by the Commission.

MOTION was made by Mr. Wilson, seconded by Ms. Gould, and carried (8-0) to adopt as amended Resolution #0511-10P for SP#364, effective May 12, 2011.

**WHEREAS**, the Wilton Planning and Zoning Commission has received a Special Permit application (**SP#364**) from Brian McArdle, ECS Transportation (applicant) for authorization to allow the establishment of a 640 square foot restaurant/coffee shop for property located at 390 and 392 Danbury Road, in the General Business “GB” District, Assessor’s Map# 46, Lot#4 and Map #46, Lot #3, consisting of 1.01 acres and 0.55 acres respectively, owned by 390-392 Danbury Road Associates, LLC, and shown on the plans entitled:

Topographic Survey - Prepared for John F. Goetjen & Son, Inc. and Peter J. Hastings, Prepared by Douglas R. Faulds, land surveyor, dated November 4, 2006, scale 1”=20’, no sheet #.

Topographic Survey- with Islands Revised Per Route 7 Improvements- Prepared for John F. Goetjen & Son, Inc. and Peter J. Hastings, Prepared by Ryan and Faulds, LLC, land surveyors, submitted May 6, 2011, scale 1”=20’, no sheet #.

Vehicular Parking & Site Revisions - Prepared for Goetjen Coffee Shop, Prepared by Richard E. Kent, landscape architect, dated February 14, 2011, last revised May 5, 2011, scale as noted, sheet #SP-1.

Floor Plans and Elevations - Prepared for Karen Piazza, Prepared by Studio 90, designers, dated February 12, 2011, scale 1”=1/4”, sheet # 1.

**WHEREAS**, the Wilton Planning and Zoning Commission has conducted a public hearing on May 9, 2011 to receive comment from the public and has fully considered all evidence submitted at said hearing; and

**WHEREAS**, the Wilton Planning and Zoning Commission has determined that the application is in substantial compliance with the Wilton Zoning Regulations;

**NOW THEREFORE BE IT RESOLVED** that the Wilton Planning and Zoning Commission **APPROVES** Special Permit #364 to allow the establishment of a 640 square foot restaurant/coffee shop at 392 Danbury Road, effective May 12, 2011 subject to the following conditions:

1. This Resolution does not replace requirements for the applicant to obtain any other permits or licenses required by law or regulation by the Town of Wilton, such as, but not limited to: Zoning Permit, Sign Permit, Building Permit, Certificate of Zoning Compliance; or from the State of Connecticut or the Government of the United States. Obtaining such permits or licenses is the responsibility of the applicant.
2. In accordance with Section 8-3.(i) of the Connecticut General Statutes, all work or physical improvements required and/or authorized by the approved Site Plan shall be completed within five years of the effective date of this resolution. This five-year period shall expire on May 12, 2016.
3. The applicant shall file a Land Record Information Form with the Town Clerk (form to be provided by the Planning and Zoning Department) prior to the issuance of a zoning permit.
4. The applicant shall file on the land records a vehicular and pedestrian cross-access easement, so as to allow for the pass and re-pass between 390 and 392 Danbury Road. Said easement shall be recorded prior to the issuance of a zoning permit.
5. Prior to the issuance of a zoning permit the applicant shall receive approval from the Wilton Health Department.
6. The approved plans shall reflect the final revised site layout depicted on the plan entitled: Vehicular Parking & Site Revisions - Prepared for Goetjen Coffee Shop, Prepared by Richard E. Kent, landscape architect, dated February 14, 2011, last revised May 5, 2011, scale as noted, sheet #SP-1. Said revision shall be reviewed and approved by the Planning and Zoning Department prior to the issuance of a zoning permit.
7. Prior to the issuance of a zoning permit and subject to the approval of the Planning and Zoning Commission or its staff, the applicant shall revise the plans to reflect any proposed lighting and signage. In addition, the revised plans shall also include perennials to be inter-planted with the daffodils in the proposed planting islands.
8. Subject to the approval of the Planning and Zoning Commission's staff, the applicant shall provide a properly screened dumpster or equivalent-type container. Provisions for disposal of refuse shall be finalized prior to the issuance of a zoning permit.
9. Approval of this application does not constitute an authorization to change or modify improvements on property known as 390 Danbury Road.
10. All existing trees are to remain.
11. The installation of rooftop mechanical equipment shall be prohibited unless otherwise authorized by the Planning and Zoning Commission or by the Commission's staff.

**Submittal of revised plans and application:**

12. Three (3) completed revised sets, (collated and bound) shall be submitted to the



Commission's office for endorsement as "Final Approved Plan" by the Town Planner. Said plans shall include all revisions noted above and shall bear an ORIGINAL signature, seal and license number of the professional responsible for preparing each plan or portion of it. Said plans shall include the following notes:

a. "Pursuant to Section 8-3.(i) of the Connecticut General Statutes, all work in connection with this Special Permit shall be completed within five years after the approval of the plan. Said five-year period shall expire on May 12, 2016."

b. "For conditions of approval for Special Permit #364, see Resolution #0511-10P

-END RESOLUTION-

**7. SP#365, Building Blocks Early Learning Center, LLC, 59 Danbury Road, Refitting of portion of interior for child day care center**

Tabled.

**F. COMMUNICATIONS**

**2. Mandatory Referral (MR#132) pertaining to a gift of land for open space at 5 Dirksen Drive**

Mr. Bayer recused himself.

Mr. Nerney briefly reviewed the proposed gift of land for open space at 5 Dirksen Drive.

Mr. Wilson asked what the potential value of the parcel is to the Town. Mr. Nerney explained that maintaining the area as a small pocket of open space plays into the existing treescape and level of density in the area. He noted that Director of Environmental Affairs Pat Sesto visited the site and is of the same opinion as to the potential value to the Town, noting further that it is a very nice gesture on the part of the Perry Evans Estate.

After a brief discussion, it was the consensus of the Commission to recommend acceptance of the proposed gift of open space.

MOTION was made by Ms. Gould, seconded by Mr. Wilson, and carried unanimously (7-0) to recommend to the Board of Selectmen acceptance of the proposed gift of land at 5 Dirksen Drive.

Mr. Nerney indicated that he would advise the Board of Selectmen of the Commission's decision.

**3. Mandatory Referral (MR#133) pertaining to a scenic road designation for Wampum Hill Road**

Mr. Nerney briefly reviewed the applicant's request for a scenic road designation for Wampum Hill Road that was submitted to the Board of Selectmen. He noted that there is a minimum ½-mile length requirement for such a request and although the road is long, some of it is located in Weston. He explained, however, that the Board of Selectmen will address that particular issue and the Planning and Zoning Commission need only look at the application from a land use perspective.

MOTION was made by Ms. Gould to recommend an affirmative response to the Board of Selectmen.

Mr. Bayer moved to amend the motion, noting that he did not wish to recommend approval per se, but rather preferred to advise the Board of Selectmen that the Commission does not have any concerns about the proposal from a land use perspective nor does the proposal appear to be contrary to the Town's Plan of Conservation and Development.

The MOTION on the floor, as amended by Mr. Bayer, was then seconded by Mr. Wilson, and carried unanimously (8-0) to advise the Board of Selectmen that the proposal does not raise any land use issues nor is it contrary to the goals and objectives contained within the 2010 Plan of Conservation and Development.

**G. REPORT FROM CHAIRMAN**

**H. REPORT FROM PLANNER**

**I. FUTURE AGENDA ITEMS**

- 1. REG#11331, Greyrock of Wilton, Amendments to Section 29-5.B.10 of zoning regulations pertaining to affordable housing [P.H. May 23, 2011]**
- 2. SP#366, Teachers Insurance and Annuity Association of America, 10 Westport Road, Construction of 202 surface parking spaces [P.H. May 23, 2011]**
- 3. SDP, Lupinski, 53 Sugar Loaf Drive, Import 1000 yards of fill material to level yard area and build 5' stone wall [Discussion June 13, 2011]**
- 4. SP#367, Wilton Auto Park, LLC, 380 Danbury Road, Automotive sales and service facility [P.H. June 13, 2011]**

**J. ADJOURNMENT**

MOTION was made by Ms. Gould, seconded by Mr. Hulse, and carried unanimously (8-0) to adjourn at approximately 9:20 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary