RETURN DATE: SECOND TUESDAY OF JULY, 2015

CECILIA J. PFISTER, MARGARET P. CARBAJAL, KATHERINE SPENCE (formerly Katherine Harvey), SCHUTT REALTY LLC c/o Norman L. Schutt, EMILE J. GEISENHEIMER, SUSAN F. GEISENHEIMER, HENRY L. PLATT, DOUGLAS J. CROWLEY, and 33 MBW, LLC	: SUPERIOR COURT
PLAINTIFFS	: JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
V.	
MADISON BEACH HOTEL, LLC, MADISON BEACH HOTEL OF FLORIDA, LLC AND TOWN OF MADISON	: JUNE 8, 2015
DEFENDANTS	

COMPLAINT

FIRST COUNT

1. Plaintiff Cecilia J. Pfister is an owner of a single family residence known as 42 Whitman Road, Madison, CT 06443 and has been so since at least 2012.

2. Plaintiff Margaret P. Carbajal is an owner of a single family residence known as 73 Middle Beach Road West, Madison, CT 06443 and has been so since at least 2012.

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3. Plaintiff Katherine Spence (formerly Katherine Harvey) is an owner of a single family residence known as 73 Middle Beach Road West, Madison, CT 06443 and has been so since at least 2012.

4. Plaintiff Schutt Realty LLC c/o Norman L. Schutt is an owner of a single family residence known as 72 Middle Road West, Madison, CT 06443 and has been so since at least 2012.

5. Plaintiff Emile J. Geisenheimer is an owner of a single family residence known as 14 Middle Beach Road, Madison, CT 06443 and has been so since at least 2012.

6. Plaintiff Susan F. Geisenheimer is an owner of a single family residence known as 14 Middle Beach Road, Madison, CT 06443 and has been so since at least 2012.

7. Plaintiff Henry L. Platt is an owner of a single family residence known as 49 Middle Beach Road West, Madison, CT 06443 and has been so since at least 2012.

8. Plaintiff Douglas J. Crowley is an owner of a single family residence known as 6 Middle Beach Road, Madison, CT 06443 and has been so since at least 2012.

9. Plaintiff 33 MBW, LLC is an owner of a single family residence known as 33 Middle Beach Road West, Madison, CT 06443 and has been so since at least 2012.

10. Defendant Madison Beach Hotel, LLC ("MBH") owns property situated at 86 West Wharf Road, Madison, CT and 88 West Wharf Road, Madison, CT.

11. Defendant Madison Beach Hotel of Florida, LLC ("MBH") is the operating entity of the Madison Beach Hotel.

12. Defendant Town of Madison owns the grassy area located south of the Madison Beach Hotel building and on the west side of West Wharf Road, Madison, CT ("the grassy strip").

13. Defendants MBH, at the above premises owned by it, have operated a hotel, restaurant, bar/lounge and banquet/conference center since at least the spring of 2012.

14. At times defendants MBH have utilized the grassy strip in the course of the operation of defendants MBH's hotel, restaurant, bar/lounge and banquet/conference center.

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15. In the course of said operation, defendants MBH have permitted and/or caused the transmission of amplified sound and music thereby causing excessive noise to reach plaintiffs' residences.

16. During this period and in the course of such operation defendants MBH also have permitted and/or caused traffic congestion and the obstruction of private and public ways so as to interfere with the plaintiffs' and others' access to plaintiffs' residences.

17. Defendants MBH have used and continue to use unreasonably and unlawfully both their properties and the property owned by defendant Town of Madison.

18. As a proximate result of the foregoing, plaintiffs have been unable to perform and enjoy normal recreational and social activities of life on their properties and to use and fully enjoy their properties to the extent to which they could have but for said activities. Defendants MBH's interference with the plaintiffs' abilities to use and enjoy their properties is substantial and unreasonable.

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19. As a direct and proximate result of all of the aforesaid activities of defendants MBH, the plaintiffs have suffered diminution in the value of their real properties.

20. As a further result thereof, said noise has caused plaintiffs medical problems including but not limited to nervousness, anxiety and mental anguish.

21. The acts complained of constitute a private nuisance and have proximately caused and will proximately cause plaintiffs irreparable injury, harm and damage.

SECOND COUNT

1-21. Paragraphs 1 through 21 of the First Count are hereby made paragraphs 1 through 21 of this Second Count as if fully set forth herein.

22. Defendants MBH's use of their properties and the grassy strip in the course of the operation of its hotel, restaurant, bar/lounge and banquet/conference center is subject to the terms and conditions of a variance application approved by the Zoning Board of Appeals on November 5, 2008 ("the variance"). A copy of the variance is annexed hereto as Exhibit A.

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23. The acts described above in paragraphs 15 and 16 violate the conditions of the variance.

24. Complaints have been made to the defendants on multiple occasions about both the noise and the traffic congestion/obstruction of private and public ways.

25. Notwithstanding notice of such violations, defendant Town of Madison has taken no action to enforce the terms and conditions of the variance because the Madison Town Planner, David Anderson, and the Madison Zoning Enforcement Officer, John DeLaura, have claimed that the terms and conditions of the variance are unenforceable with respect to, *inter alia*, defendants MBH's use of the grassy strip.

26. The terms and conditions of the variance are, in fact, enforceable with respect to, *inter alia*, defendants MBH's use of the grassy strip.

27. The plaintiffs hereby request a declaratory judgment that the terms and conditions of the variance are enforceable.

28. The plaintiffs bring this action for declaratory relief pursuant to General Statutes § 52-29 against the defendants.

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Third Count

1-19. Paragraphs 1 through 19 of the First Count are hereby made paragraphs 1 through 19 of this Third Count as if fully set forth herein.

20. Pursuant to a lease agreement dated June 13, 2012, defendant Town of Madison leased to defendants MBH the grassy strip.

21. Defendants MBH's use of their properties and the grassy strip in the course of the operation of its hotel, restaurant, bar/lounge and banquet/conference center is subject to the terms and conditions of a variance.

22. Defendants MBH utilize their property and the grassy strip in the course of the operation of its hotel, restaurant, bar/lounge and banquet/conference center to, *inter alia,* host live music concerts regularly from May to September.

23. These live music concerts result in the transmission of amplified sound and music thereby causing excessive noise to reach plaintiffs' residences.

24. In addition, these live music concerts cause traffic congestion and the obstruction of private and public ways so as to interfere with the plaintiffs' and others' access to plaintiffs' residences.

25. In causing the aforementioned excessive noise, traffic congestion and obstruction of private and public ways through use of the grassy strip, defendants MBH have violated the terms and conditions of the variance.

26. Complaints have been made to the defendants on multiple occasions about both the noise and the traffic congestion/obstruction of private and public ways.

27. As a proximate result of the foregoing, plaintiffs have been unable to perform and enjoy normal recreational and social activities of life on their properties and to use and fully enjoy their properties to the extent to which they could have but for said activities. Defendants MBH's interference with the plaintiffs' abilities to use and enjoy their properties is substantial and unreasonable.

28. As a direct and proximate result of all of the aforesaid activities of defendants MBH, the plaintiffs have suffered diminution in the value of their real properties.

29. As a further direct and proximate result thereof, said noise has caused plaintiffs medical problems including but not limited to nervousness, anxiety and mental anguish.

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30. The acts described above in paragraphs 12 and 13 constitute a private nuisance and have proximately caused and will proximately cause plaintiffs irreparable injury, harm and damage.

31. In leasing the grassy strip to defendants MBH to be used in the operation of its hotel, restaurant, bar/lounge and banquet/conference center to, *inter alia*, host live music concerts, despite notice of the risk of imminent harm and the occurrence of harm to the plaintiffs, defendant Town of Madison has caused the resulting nuisance in violation of Connecticut General Statutes § 52-557n(a)(1)(C).

Fourth Count

1-21. Paragraphs 1 through 21 of the Third Count are hereby made paragraphs 1 through 21 of this Fourth Count as if fully set forth herein.

22. At all times mentioned herein, David Anderson was employed by the Town of Madison as the Town Planner and acted within the scope of his employment or official duties for the Town of Madison.

23. At all times mentioned herein, John DeLaura was employed by the Town of Madison as the Zoning Enforcement Officer and acted within the scope of his employment or official duties for the Town of Madison.

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24-31. Paragraphs 22 through 29 of the Third Count are hereby made paragraphs 24 through 31 of this Fourth Count as if fully set forth herein.

32. The duty on the part of defendant Town of Madison, including Mr. Anderson and Mr. DeLaura, to enforce the conditions of the variance is a discretionary duty, the breach of which subjected an identifiable group of persons, including the plaintiffs, to the risk of imminent harm.

33. Despite notice of this risk of imminent harm and notice of the occurrence of harm, defendant Town of Madison has failed and refused to enforce the conditions of the variance.

34. The losses suffered by the plaintiffs were directly and proximately caused by the negligence of defendant Town of Madison in its failure and refusal to enforce the conditions of the variance.

35. Defendant Town of Madison is liable for its negligent conduct pursuant to General Statutes § 52-557n.

WHEREFORE, plaintiffs claim,

As to the First Count:

1. A temporary and permanent injunction prohibiting and restraining defendants MBH from maintaining said nuisance;

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2. A mandatory injunction requiring defendants MBH to cease and desist from the activities that constitute the aforesaid nuisance;

3. Money damages; and

4. Such other relief as to which plaintiffs may be entitled.

As to the Second Count:

1. A declaratory judgment that the terms and conditions of the variance are enforceable; and

2. Such other and further relief as to which plaintiffs may be entitled.

As to the Third Count:

1. A temporary and permanent injunction prohibiting and restraining defendant Town of Madison from maintaining said nuisance;

2. Money damages; and

3. Such other relief as to which plaintiffs may be entitled.

As to the Fourth Count:

1. Money damages; and

2. Such other relief as to which plaintiffs may be entitled.

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THE PLAINTIFFS

BY: _____

WILLIAM H. CLENDENEN, JR.
Clendenen & Shea, LLC
400 Orange St.
New Haven, CT 06511
203/787-1183

RETURN DATE: SECOND TUESDAY OF JULY, 2015

CECILIA J. PFISTER, MARGARET P. CARBAJAL, KATHERINE SPENCE (formerly Katherine Harvey), SCHUTT REALTY LLC c/o Norman L. Schutt, EMILE J. GEISENHEIMER, SUSAN F. GEISENHEIMER, HENRY L. PLATT, DOUGLAS A. CROWLEY, and 33 MBW, LLC	: SUPERIOR COURT
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MADISON BEACH HOTEL, LLC, MADISON BEACH HOTEL OF FLORIDA, LLC AND TOWN OF MADISON	: JUNE 9, 2015
DEFENDANTS	

STATEMENT OF AMOUNT IN DEMAND

Therefore, the plaintiffs claim damages. The plaintiffs state that the amount in demand exclusive of interest and costs is not less than Fifteen Thousand Dollars.

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THE PLAINTIFFS

BY_____

WILLIAM H. CLENDENEN, JR.
Clendenen & Shea, LLC
400 Orange Street
New Haven, CT 06511
203/787-1183

LAW OFFICES • CLENDENEN & SHEA, LLC
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EXHIBIT A

Exhibit C

VOL: 1647 PG: 284
Inst: 4281

14-10 EXHIBIT 3
ZBA variance
from Michael
Solis backup 6/14/

TOWN OF MADISON
ZONING BOARD OF APPEALS
CERTIFICATE OF DECISION
VARIANCE

MADISON BEACH HOTEL

STREET ADDRESS OR LOCATION: 86 & 88 WEST WHARF ROAD

OWNER OF RECORD: Ric Duques
712 North Casey Key Road, Osprey, Florida 34229

APPLICATION NO.: 7969+CSP DATE OF APPROVAL: November 5, 2008

This certifies that on the above date a Variance was granted by the Madison Zoning Board of Appeals as follows:

Based on the application as presented and its discussion, the following motion was made by Mr. Marcus, seconded by Mr. Guy:

Whereas, the Zoning Board of Appeals has received Variance and Coastal Site Plan Review applications from Paul Coady (Coady Construction LLC), and Ric Duques, owner, (Application 7969+CSP), regarding 86 – 88 West Wharf Road, (Assessor's Map 15, Lots 34, 62, 63), to vary Secs. 2.17, 3.6(d,e), 2.9/3.6(f), 8.1 & 12.3 of the Madison Zoning Regulations to permit construction in the critical coastal resource (beach); 39.5% area coverage; height variances of 5.1 ft. to 2-story wharf structure, 5.5 ft. to 2-story hip roof structure, 15.4 ft. to 3-story structure, 24.9 ft. to 4-story structure, 32.2 ft. to 4-story wall/shaft; West Wharf Road front yard variances of 94.4 ft. & 82.1 ft. to 2-story structure, 87.8 ft. to roofed decks, 68.9 ft., 61.5 ft., 50.1 ft. to 4-story structure; Parker Avenue front yard variances of 83.7 ft to northeast steps, 74.4 ft. to 2-story structure, 77.8 ft. to 63 ft. wall, 12.5 ft. to 3-story structure; Church Street front yard variances of 99.9 ft. to steps and landing, 97.7 ft. to 4-story building, 97.5 ft. to 3-story wing; south side yard variance of 95.4 ft.; 87 parking spaces where 162 are required; expansion of nonconforming hotel/restaurant use as to building volume devoted to the use, but reduction as to occupancy and number of buildings; all to permit demolition of existing hotel/restaurant and construction of new hotel/restaurant; and

Whereas, a duly noticed public hearing was held on September 2, 2008 and October 7, 2008; and

Whereas, the application was referred to the Office of Long Island Sound Programs for comment, and comments were received and considered by the Commission; and

Whereas the applicant proposed modifications and indicated that he would be willing to accept additional modifications to the original proposal, all of which were part of the public hearing record and were discussed by the Board; and

Whereas, the Board has considered all of the evidence presented at the hearing as well as the input of its staff and has deliberated fully;

Now, therefore, the Board makes the following findings with regard to the application:

1. Use of this property for a hotel and for the serving of meals predates the adoption of zoning regulations in Madison. Previous variances allowed year-round hotel and restaurant use, the

right to sell and dispense alcoholic beverages, and various room totals, parking configurations and setback/coverage infringements for the existing and predecessor buildings, thereby establishing a legal, nonconforming use. The long history and consistent use of the property for the existing hotel and restaurant make the property uniquely suitable for the continuation of such uses and have allowed it to become an intrinsic component of the character of the area in which it is located.

2. The proposal would provide zoning-related benefits in that it would reduce nonconformities relating to coverage and to setbacks on Parker Avenue and Church Street, reduce the number of hotel guest rooms and restaurant/lounge/bar seats, and remove unauthorized encroachments onto Town property.

3. Approval of the proposal as presented, and as modified by the conditions established herein, would provide a comprehensive means to defining and controlling the existing commercial use in a residential neighborhood.

4. The building design endeavors to maintain the character of the existing building and minimize the streetscape impact.

5. The proposal is consistent with the applicable goals and policies of the Coastal Management Act.

In accordance with the preceding findings and conclusions, the Commission hereby approves the Variance and Coastal Site Plan Review applications as shown on the following plans:

- ***Madison Beach Hotel, 94 West Wharf Road, Madison, CT,*** **prepared by Glen Coben Architecture + Design as follows:**
  - *A-0.0.0, Title Sheet*, dated 5/15/08, revised to 9/12/08
  - *A-1.10, Ground Floor Plan*, dated 5/15/08, revised to 9/12/08
  - *A-1.11, Second Floor Plan*, dated 5/15/08, revised to 9/12/08
  - *A-1.12, Third Floor Plan*, dated 5/15/08, revised to 9/12/08
  - *A-1.13, Fourth Floor Plan*, dated 5/15/08, revised to 9/12/08
  - *A-1.14, Roof Plan*, dated 5/15/08, revised to 9/12/08
  - *A-2.00, South and East Exterior Elevation*, dated 2/1/08, revised through 5/15/08, revised to 9/12/08
  - *A-2.01, North and West Exterior Elevation*, dated 5/15/08, revised to 9/12/08
  - *A2.50 Exterior Building Section and Accoustic Details*, dated 5/15/08, revised to 9/12/08
- ***Madison Beach Hotel, Madison, Connecticut Landscape Plan – L1,*** prepared by TEC Landscape Design, Inc., dated 3/07/08, revised through 9/12/08
- ***Topographic Survey, #88, #86, #91 & Assessors I.D. 15-62, West Wharf Road & Parker Avenue, Madison, Connecticut Prepared for Ric Duques,*** dated September 12, 2006, revised to 4/1/08, prepared by Donald L. Gesick, Jr. L.S., Sheet 1 0f 2: Title Sheet and Sheet 2 of 2: Topographic Survey
- ***Point by Point Calculations (Lighting)***, prepared by Louis Poulsen Lighting, Inc., 3260 Meridian Parkway, Fort Lauderdale, FL, received on 10/2/08
- ***Madison Beach Hotel and Wharf Restaurant, Madison, Connecticut, Municipal Submission,*** **prepared by Brian C. Curtis, P.E. as follows:**
  - *Existing Conditions and Demolition Plan*, dated January 30, 2008, revised to 9/12/08, sheet 1 of 7
  - *Existing Parking Plan*, dated January 30, 2008, revised to 9/12/08, sheet 2 of 7
  - *Site Layout Plan*, dated January 30, 2008, revised to 10/6/08, sheet 3 of 7

- *Civil Utilities, Grading and Erosion Control Plan,* dated January 30, 2008, revised to 10/6/08, sheet 4 of 7
- *Coastal Site Plan,* dated January 30, 2008, revised to10/6/08, sheet 5 of 7
- *Building Height Computation Plan,* dated January 30, 2008, revised to 9/12/08, sheet 6 of 7
- *Soil Erosion and Sediment Control Notes and Details,* dated January 20, 2008, revised through 4/2/08, sheet 7 of 7

Subject, however, to the following additional conditions and modifications:

1. The approved use is limited to the hotel, restaurant, bar/lounge, and banquet/conference use as defined and represented in the application. The variances granted herein are in replacement of, and shall be deemed to terminate and supersede, all variances previously granted with respect to the subject property. At such time as the applicants or their successors or assigns file the Certificate of Variance in the Land Records in accordance with Conn. Gen. Stat. § 8-3d, they shall be deemed to have accepted the termination of all such prior variances. The sale of units, time-shares, or memberships for hotel amenities shall be considered to be a change of use not permitted under the terms of this approval.

2. The maximum occupancy shall be set at 34 guest rooms, 346 restaurant/banquet seats, and 34 bar seats. There shall be no increase in hotel or restaurant/lounge/bar occupancy unless approved by the Zoning Board of Appeals.

3. The on-premise restaurant/lounge/bar, banquet and conference facilities shall be permitted to operate only during the hours of 6:00 a.m. to 12:00 midnight Sunday through Thursday, and 6:00 a.m. to 1:00 a.m. Friday and Saturday. Last call shall occur a minimum of one half hour before closing time.

4. Tented and outdoor functions:
   a. shall be held only in the Wharf beach, deck, or guest drop-off/parking area on the south side of Parker Avenue;
   b. shall not exceed 120 guests in total, which number shall be included in the 346 maximum restaurant/banquet occupancy;
   c. shall end by 11:00 p.m.;
   d. shall not utilize exterior lighting other than the lighting shown on the approved site plans, with the exception that there may be interior tent lights;
   e. shall cease electronically amplified music by 10:30 p.m. Sunday through Thursday;
   f. shall restrict electronically amplified music to no more than five hours in a single day.

5. Music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a distance of 50 feet in any direction from the property. "Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound. It is not necessary that the title, specific words, or artist of the song be identifiable.

6. The kitchens shall not be used for off-premise catering.

7. It is deemed that although on-site patron parking would be increased from that which was previously available, there is not adequate area for on-site parking to accommodate full

utilization of the site as proposed. Therefore, in order to minimize the impact on the residential neighborhood, the following shall apply:

a. Parking space delineations shall be maintained and clearly visible in order that the full number of vehicles can be accommodated when self-park is utilized.
b. When valet parking is utilized, it is expected to permit full lot utilization without respect to delineated spaces.
c. Valet parking shall be utilized between 8:00 a.m. and 11:00 p.m. on Memorial Day weekend and daily between June 15 and Labor Day.
d. From Memorial Day weekend through Labor Day weekend, valet parking shall be utilized whenever events are booked that accommodate a total of 80 or more guests.
e. From Labor Day weekend to Memorial Day weekend, valet parking shall be utilized whenever events are booked that accommodate a total of 120 or more guests.
f. From Memorial Day weekend through Labor Day weekend, a combination of valet and offsite parking (sufficient to minimally accommodate all anticipated guests in excess of 120) shall be arranged and utilized whenever events are booked that accommodate a total of 120 or more guests.
g. From Labor Day weekend to Memorial Day weekend, a combination of valet and offsite parking (sufficient to minimally accommodate all anticipated guests in excess of 160) shall be arranged and utilized whenever events are booked that accommodate a total of 160 or more guests.
h. A combination of valet and offsite parking shall be arranged and utilized whenever a tented or outdoor event is held in the guest drop-off/parking area.
i. Employee offsite parking shall be provided whenever patron thresholds for valet or offsite parking are triggered.
j. The valet and offsite parking requirements set forth in condition numbers 7.c through 7.i are intended to prevent the overburdening of the nearby public parking facilities and to prevent an unreasonable overflow of motor vehicles into the residential neighborhood. The Board finds that the achievement of those goals is essential to the protection of the public convenience, welfare and property values, but that the inherent uncertainties associated with planning for hotel events and occupancy in a variety of circumstances and seasons makes it difficult to determine whether the foregoing conditions will address those concerns satisfactorily. Therefore, the Board finds that this approval must be made on a provisional basis, with the foregoing conditions being subject to adjustment after further experience is gained with actual parking conditions. The Board may, after written notice to the property owner and a public hearing thereon, adjust the specified requirements in order to meet the goals expressed in this paragraph.

8. Buses utilized by groups of guests shall refrain from prolonged idling.

9. There shall be no signage that restricts public parking areas to patron use only.

10. With the exception of the entrance area lights and the manually controlled guest room lights, exterior lights shall be extinguished no later than one hour after the restaurant closes.

11. The security light fixture shown on the eastern side of the south face of the building shall be eliminated. Use of the security lights shown on the western side of the south face of the building shall be limited to emergencies and clean up activities. The lights shall be fully shielded and the light shall be directed in a manner that conforms to the photometric plan submitted.

12. The applicant shall arrange for CL&P replacement of the existing cobra head light fixtures on SNET poles number 228 and number 2294 with currently approved dark sky fixtures.

13. There shall be no exterior lighting beyond what is shown on the plans except for code required emergency fixtures which shall be dark sky compliant and shall be programmed for emergency use only.

14. Normal supply deliveries shall occur only between 8:00 a.m. and 4:00 p.m. Monday through Friday and shall not exceed forty-five per week. Delivery service such as FedEx or UPS, event floral deliveries, and deliveries by light truck or van shall not be bound by these restrictions.

15. Delivery trucks shall not exceed 40 feet in length except that there may be occasional (not to exceed five per month) deliveries by larger trucks.

16. There shall be no exterior storage of trash (not including cardboard). Trash shall be removed from the building at the time of pick up, which pick up shall occur three times per week between 8:00 a.m. and 10:00 a.m. with the exclusion of Sunday. The dumpster located in the southeast corner of the parking area shall be used for cardboard only. Pick up shall be restricted in the same manner as for trash.

17. There shall be no additional business identification signage beyond that which is indicated on the plans. Sign permit applications shall be submitted prior to installation of the signs.

18. The lots identified on Assessor's Map 15 as numbers 62 and 63 shall be legally merged in documentation filed in the Madison Land Records prior to filing the Certificate of Variance. Additional documentation, in a form satisfactory to the Board's counsel, shall be filed on the Madison Land Records to prohibit separate ownership of this lot for as long as the hotel/restaurant use exists on lot 34.

19. The easements offered to the Town for the portions of Parker Avenue and the portions of the parking spaces along West Wharf Road that are on the subject property shall be in a form satisfactory to the Board's counsel and shall be filed on the Madison Land Records prior to filing the Certificate of Variance.

20. Parker Avenue road reconstruction shall be completed in accordance with the approved plans prior to issuance of Zoning Compliance for a Certificate of Occupancy for the building. Construction shall be in accordance with Town standards and shall be inspected by the Town Engineer. An as-built plan for the completed construction shall be provided to the Town.

21. There shall be no unauthorized use of Town property, including the Town-owned parcel on the beach side of the Wharf property, and no private events shall be held on Town property unless specific Town approval has been obtained.

22. All landscaping and site development shall be maintained in good condition and lack of maintenance shall be deemed a violation of this approval.

23. The variances granted herein have been based solely upon the Board's review of the overall project in accordance with the specific construction and site development plans presented, and its determination that, if constructed in accordance with those plans, as conditioned and

modified herein, the project will reasonably protect and conserve the public health, safety, convenience, welfare and property values. Therefore, no changes may be made to the project as shown on the approved plans without the prior approval of the Board, which approval will be granted if the Board determines that such changes will also reasonably protect and conserve the public health, safety, convenience, welfare and property values. This condition includes changes that would not otherwise require a variance or other approval by the Board in the absence of this condition.

24. These conditions are essential to and inseparable from the variances permitted hereunder. If any of the conditions set forth herein are determined to be invalid or unenforceable by a court of competent jurisdiction, this variance shall be deemed to be void in its entirety.

In accordance with Section 13.5 of the Zoning Regulations, this variance shall expire on November 5, 2010 unless a Certificate of Occupancy has been obtained or unless an extension is sought by the applicant and granted by the Board.

The motion carried 5-0-0.
IN FAVOR: Marcus, Moore, Darren, Cozean, Guy; OPPOSED: none; ABSTAINED: none

In accordance with C.G.S. §8-3d, this variance shall not become effective until recorded in the Madison land records.

Joel Marcus
Chairman, Zoning Board of Appeals

RECEIVED FOR RECORD
Dec 07,2009 10:22A
DOROTHY C. BEAN
TOWN CLERK
MADISON, CT