


MEMORANDUM

TO: Planning & Zoning Commission

FROM: Jeremy Ginsberg, Planning & Zoning Director 

RE: Proposed Amendments to Darien Zoning Regulations (COZR #4-2020),
Business Site Plan Application #128-B, Special Permit Application #314
7-Eleven, Inc., 306 Boston Post Road

DATE: November 5, 2020

At the public hearing of October 27, 2020, questions were raised regarding other gas stations/convenience stores in Darien, and how they may have been acted upon by the Planning & Zoning Commission. I attach the following three resolutions:

1. Business Site Plan #67-F/Special Permit, Tamburro Realty, LLC d/b/a Shell, 180 Noroton Avenue (2008)
2. Business Site Plan #95-I/Special Permit, Texaco, 164 Noroton Avenue (2002)
3. Business Site Plan #177-C/Special Permit, Kronberg, Exxon, 1358 Boston Post Road (2002)

winword\pzc\memo re: 7-Eleven other gas

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
March 11, 2008**

Application Number: Business Site Plan #67-F/Special Permit
Tamburro Realty, LLC d/b/a Shell, 180 Noroton Avenue

Street Address: 180 Noroton Avenue
Assessor's Map #40 Lots #27 & #28

Name and Address of Applicant: Mark Smith, PE
And Applicant's Representative: TO Design, LLC
114 West Main St., Suite 201
New Britain, CT 06051

Name and Address of Copied Applicant's Representative: David F. Sherwood, Esq.
PO Box 1420
Glastonbury, CT 06033

Name and Address of Property Owner: Tamburro Realty, LLC
180 Noroton Avenue
Darien, CT 06820

Activity Being Applied For: Proposal to convert existing service station to a convenience store, relocate one diesel dispenser and eliminate one curb cut on Noroton Avenue.

Property Location: The subject property is located at the southeast corner formed by the intersection of Noroton Avenue and West Avenue.

Zone: SB

Date of Public Hearing: March 4, 2008

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

Publication of Hearing Notices
Dates: February 21 & 28, 2008 Newspaper: Darien News-Review

Date of Action: March 11, 2008 Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action: Newspaper: Darien News-Review
March 20, 2008

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

- the proposed use and activities must comply with all provisions of Sections 660, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.

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

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

1. During the public hearing, the applicant briefly explained the proposal to convert existing service station to a convenience store, relocate one diesel dispenser and eliminate one curb cut on Noroton Avenue. It was specifically noted that the subject application is very similar to that of Business Site Plan #67-E/Special Permit approved by the Commission on January 8, 2008. This application was submitted due to a flaw in the ZBA legal notice. Since that time, the applicant has re-applied to both the Zoning Board of Appeals and the Planning & Zoning Commission. Because this was a re-application, the prior record of Business Site Plan #67-E/Special Permit was incorporated into the record of this matter. That application was approved by the Commission on January 8, 2008.
2. The Zoning Board of Appeals (ZBA) granted a variance for this project as part of ZBA Calendar #3-2008, approved on February 13, 2008. That approval is hereby incorporated by reference. This was the ZBA re-application due to the flawed legal notice that occurred in the first application.
3. At the public hearing on Business Site Plan #67-E/Special Permit, Attorney David Sherwood submitted a memorandum re: performance controls (dated December 4, 2007) that the applicant would abide by in order to better limit any potential impacts upon the neighbors. These include: no sale of any alcoholic beverages; operating hours from 6 a.m. until 10 p.m. instead of midnight; no lottery machine; no propane sales; no public telephone on the premises; limiting deliveries and trash pick-ups to between 8 a.m. and 5 p.m.; and no car wash or vacuum services. Those same conditions and limitations are proposed as part of this re-application.
4. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
5. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
6. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the

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site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.

7. The location and nature of the proposed use, the size and height of the building are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
8. The elements of the Site Plan, submitted as part of this application, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Business Site Plan #67-F/Special Permit is hereby approved subject to the foregoing and following stipulations, modifications, and understandings:

- A. Construction and renovation shall be in accordance with the plans entitled:
 - Site Plan Render Revised, by TO Design, LLC, dated December 3, 2007, Sheet #: REN-R.
 - Property & Topographic Survey 180 Noroton Avenue prepared for Naples I, by William W. Seymour & Associates, last revised January 15, 2008.
 - Proposed: Convenience Store Conversion Shell Service Station, 180 Noroton Avenue by TO Design, LLC, Sheets L-1, L-2, L-3, A-1, A-2. Sheets L-1, L-2 and L-3 last revised December 3, 2007 and Sheets A-1 and A-2 last revised October 16, 2007.Because the restrooms shall be accessed from inside the building, outdoor lighting on that side of the building shall be reduced and made suitable solely for parking purposes and walkway needs.
- B. Because there are residences immediately to the east of this property (on Palmer Lane), the maximum hours of operation shall be from 6 AM to 10 PM every day for all business operations conducted on this property.
- C. The plans for the convenience store building shall be modified so that patrons can access the restrooms from within the building so that no outside access to the bathrooms would be necessary.
- D. The approved accessory use is a convenience store of limited size and variety, not a food preparation or food service facility. There will be no cooking other than brewing of coffee and heating up pre-packaged food in a microwave oven. The performance controls put forth by the applicant in a December 4, 2007 memorandum are hereby integral conditions of this approval. As noted in Finding #3 above, these include: no sale of any alcoholic beverages; operating hours from 6 a.m. until 10 p.m. instead of midnight; no lottery machine; no propane sales; no public telephone on the premises; limiting deliveries and trash pick-ups to between 8 a.m. and 5 p.m.; and no car wash or vacuum services.
- E. Now that there will be internal retail sales of goods, there shall be no display or storage of goods for sale outside of the building, except for normal automobile-related items such as oil and antifreeze located adjacent to the gasoline pumps. Otherwise, there shall be no materials, supplies, merchandise, equipment or other items stored outside the building. There shall be no

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ice storage machine outside of the building, and any future request for outdoor storage shall be reviewed and acted upon by the Planning and Zoning Commission.

- F. No commercial or other vehicles shall be parked at the site overnight.
- G. Because this application is for an accessory convenience store, and retail sales are not permitted in this Service Business (SB) Zone, the Commission hereby requires that there be no retail sales activity without the gas pumping facilities being in operation. The convenience store shall not become a principal use on-site, and shall not be in operation without the gasoline pumps also being in operation.
- H. A final "as-built" survey is hereby required to certify that the site development is in compliance with the approved plans. A Professional Engineer shall certify in writing prior to the issuance of a Certificate of Zoning Compliance for the convenience store that all work has been properly completed in accordance with the approved plans. A certification shall also be submitted that the proposed landscaping (including the fencing and new white pines, as shown on the submitted plans) has been installed. It is incumbent upon the property owner to maintain the landscaping.
- I. The granting of this Business Site Plan/Special Permit does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, review and action by the Darien Fire Marshal and the Darien Health Department prior to approval of a Zoning or Building Permit, and a Street Opening Permit from the Public Works Department for work on the curb cuts.
- J. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- K. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (March 10, 2009). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. All completed requirements and materials, including revised plans, shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void. A Special Permit form shall also be filed in the Darien Land Records by the applicant or property owner within 60 days of this approval.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 9, 2002**

Application Number: Business Site Plan #95-I/Special Permit

Street Address: 164 Noroton Avenue

Tax Assessor's Map #40 Lots #31 and #32

Name and Address of Applicant: Sohail Mehmood
164 Noroton Avenue
Exit 10 Texaco
Darien, CT 06820

Name and Address of Applicant's Representative: David F. Sherwood, Esq.
Alter and Sherwood, LLC
701 Hebron Ave, PO Box 1420
Glastonbury, CT 06033-6620

Name and Address of Property Owner: Rocco J. Palmer, Tr., et. al.
264 Heights Road
Darien, CT 06820

Activity Being Applied For: proposing to renovate the existing service station by converting the existing office area and inactive service bays into retail space.

Property Location: east side of Noroton Avenue approximately 100 feet northeast of its intersection with Heights Road.

Zone: SB

Date of Public Hearing: June 25, 2002

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

Publication of Hearing Notices
Dates: June 13 & June 20, 2002

Newspaper: Darien News-Review

Date of Action: July 9, 2002

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
July 18, 2002

Newspaper: Darien News-Review

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

- the proposed use and activities must comply with all provisions of Sections 660, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.

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

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

- A. During the public hearing, the applicant explained that this proposal is generally the same as Business Site Plan #95-G/Special Permit, approved in 1997 (that approval has since lapsed, and is now null and void). As one of the findings in that proposal, it was noted that the applicant proposes a 1,100 square foot accessory retail convenience store selling pre-packaged foods and beverages, an enlargement from the existing 230 square foot store. As part of that prior application, it was noted that coffee will be brewed on the premises, and donuts, muffins, and/or bagels will be brought in from another location, but not baked on the premises. A microwave oven is proposed for re-heating food. No other cooking or heating facilities have been proposed by the applicant besides a microwave oven, coffee machine and hot dog grill. No indoor or outdoor seating has been proposed or has been approved.
- B. Approval for a groundwater remediation shed was granted in September, 2001 as part of Business Site Plan #95-H/Special Permit. That shed and equipment is now located in parking spaces 8, 9, and 10 on the submitted plans. The Commission acknowledges that the shed is temporary, and that the proposed accessory convenience retail store, even with the presence of the remediation shed, will still have sufficient parking.
- C. The applicant has proposed no change to the signage of the existing facility. The Architectural Review Board, at its meeting of June 18, 2002, approved the new design to the facade of the building. That approval is hereby incorporated by reference.
- D. There are no automobile repair services, towing services, or truck and trailer rentals conducted at the site, and none are proposed.
- E. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
- F. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.

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- G. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
- H. The location and nature of the proposed use, the size and height of the building are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
- I. The elements of the Site Plan, submitted as part of this application, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Business Site Plan #95-I/Special Permit is hereby approved subject to the foregoing and following stipulations, modifications, and understandings:

- A. Construction and renovation shall be in accordance with the plans entitled:

“Convenience Store Conversion 164 Noroton Avenue” by TO Design. Date: 1/22/02. 3 pages—
Sheets L-1, A-1.0 (last revised 2/15/02) and A-2.0.
except as to be modified herein.

- B. Because there are residences immediately to the east of this property (on Palmer Lane), the maximum hours of operation shall be from 6 AM to 12 midnight every day for all business operations conducted on this property.
- C. The seven parking spaces on the north side of the property shall be properly designed and striped, so that the sizes of the spaces meet the Darien Zoning Regulations, even with the presence of the car vacuum and air machines in that area. Revised plans reflecting this change shall be submitted prior to the issuance of a Zoning or Building Permit.
- D. The plans submitted at the public hearing show the relocation of the existing trash enclosure. Due to the existing adjacent residential properties on Palmer Lane, and the loading and unloading associated with the dumpster(s) possibly impacting these residences, the Commission hereby requires that the proposed trash enclosure and fence be relocated to the area shown on the plans as “Existing undersized trash enclosure to be removed”. Revised plans reflecting this change shall be submitted prior to the issuance of a Zoning or Building Permit.
- E. Now that there will be internal retail sales of goods, there shall be no display or storage of goods for sale outside of the building. This includes the relocation of the existing outdoor ice machine and newspaper racks to inside of the building prior to the issuance of a Certificate of Zoning Compliance for the new building. The existing exterior pay telephone(s) and the car vacuum and air machines may remain.
- F. Because this application is for an accessory convenience store, and retail sales are not permitted in this SB Zone, the Commission hereby requires that there be no retail sales activity without the

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gas pumping facilities being in operation. The convenience store shall not become a principal use on-site, and shall not be in operation without the gasoline pumps also being in operation.

- G. The granting of this Business Site Plan/Special Permit does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, review and action by the Darien Health Department prior to approval of a Zoning or Building Permit.
- H. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- I. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (July 8, 2003). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. All completed requirements and materials, including revised plans, shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void.

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
January 8, 2002**

Application Number: Business Site Plan #177-C/Special Permit

Street Address: 1358 Boston Post Road

Tax Assessor's Map #63 Lots #11, #12, #13

Name and Address of Applicant: Ken Kronberg
And Applicant's Representative: 1510 Post Road East
Westport, CT 06880

Name and Address of Property Owner: Kenyon Oil Company, Inc.
PO Box 866
N. Grosvenordale, CT 06255

Activity Being Applied For: Proposing to raze the existing employee kiosk and construct a new 525 +/- square foot accessory convenience store and perform related site development activities.

Property Location: The subject property is located on the southeast side of Boston Post Road directly across from its intersection with Thorndal Circle.

Zone: SB Zone

Date of Public Hearing: November 27, 2001

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

Publication of Hearing Notices
Dates: November 15 & 21, 2001

Newspaper: Darien News-Review

Date of Action: January 8, 2002

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
January 17, 2002

Newspaper: Darien News-Review

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

- the proposed use and activities must comply with all provisions of Sections 660, 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 development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.

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- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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

1. The proposed convenience store is an auxiliary use that will be in conjunction with the principal use which is a gasoline sales facility. The existing kiosk structure will be razed, and a new 525 square foot +/- accessory convenience store built in its place.
2. The applicant noted that there will be no cooking of food by the employees, but there would be a small microwave oven for use by customers to heat up pre-packaged sandwiches and other food. There would be a coffee pot and a hot plate to keep the coffee warm. There would be no food assembled or prepared, or any baking done on-site. There are no provisions for eating on the premises (no tables, counter space to eat at, or indoor or outdoor seating).
3. The proposed hours of operation are 24 hours-a-day.
4. There are no automobile repair services conducted at the site, and none are proposed.
5. The applicant received a variance from the Zoning Board of Appeals on July 25, 2001 (Calendar No. 61-2001). That approval is hereby incorporated by reference.
6. At its meeting of November 20, 2001, the Architectural Review Board approved the new convenience store. That approval is also incorporated by reference.
7. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
8. The location and nature of the proposed use, the size and height of the building are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
9. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
10. The elements of the Site Plan, submitted as part of the Special Permit application accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.
11. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they

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

NOW THEREFORE BE IT RESOLVED that Business Site Plan #177-C/Special Permit is hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction of the accessory convenience store shall be in accordance with the plans entitled:
 - o Proposed Convenience Store Prepared for Kenyon Oil Company, Inc., by CME/CPK Design Group, date Sept. 24, 2001, Sheet A2.
 - o Preliminary Site Layout Prepared for Kenyon Oil Company, Inc. By CME/CPK Design Group, last revised 10/16/01 Sheet 1 of 1 and Sheet A1 (dated Sept. 24, 2001).
- B. Now that there will be internal retail sales of goods, there shall be no display or storage of goods for sale outside of the new building. This includes the removal of the existing outdoor vending machines, prior to the use or the issuance of a Certificate of Zoning Compliance for the new building. The existing exterior pay telephones and the vacuum and air machines may remain.
- C. The hours of operation are 24 hours a day for both the accessory convenience store and gas pumping facilities; although the applicant noted that he may decide to remain open fewer hours than that. That is permitted, subject to Item D, below. If the late night and/or early morning operation of the business causes disturbance to the nearby residents, then the Commission reserves the right to restrict the hours of operation to 6:00 A.M. to midnight.
- D. Because this application is for an accessory convenience store, and retail sales are not permitted in this SB Zone, the Commission hereby requires that there be no retail sales activity without the gas pumping facilities being in operation. The convenience store shall not become a principal use on-site, and shall not be in operation without the gasoline pumps also being in operation.
- E. There shall be no cooking of food on the premises, but there can be one small microwave oven for use by customers to heat up pre-packaged sandwiches and other food. There can be a coffee pot and a hot plate to keep the coffee warm. There shall be no food assembled or prepared, or any baking done on-site. There shall be no provisions for eating on the premises (no tables, counter space to eat at, or indoor or outdoor seating). There shall be no cooking facilities installed other than those outlined herein.
- F. Final review and approval from the Darien Health Department for the accessory convenience store shall be submitted to the Planning and Zoning Office prior to approval of the Zoning Permit.
- G. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right to modify, suspend, or revoke the permit as it deems appropriate.

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- H. The granting of this Special Permit does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, approval from the Darien Health Department, as noted in Item F, above.
- I. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (January 7, 2003). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan, as approved, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations, the signing of the final documents by the Chairman, and filing of the Special Permit form in the Darien Land Records.

KronbergAmoco BSP177/ SP