

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.