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By Email

Darien Planning and Zoning Commission
Darien Town Hall
2 Renshaw Road
Darien, CT 06820

RE: COZR #4-2020, BSP #128-B, SP #314

Dear Commissioners:

This office represents 320 BPR Holdings, LLC, the owner of 320 Boston Post Road, as well as a group of neighbors living on Birch Road, Richmond Drive, Sylvan Road and other impacted residential streets near the subject site who oppose this application.

Applicant, 7-Eleven Inc, seeks to amend the Darien Zoning Regulations to allow three primary uses at this site, each of which requires Special Permit approval pursuant to the applicable Service Business (SB) Regulations. By combining these uses onto one small site near a residential neighborhood, 7-Eleven, Inc. is forced to seek major amendments to the existing Regulations. Two of the uses as proposed, the Quick Service Restaurant and "Retail Store," are not allowed on the site under current Regulations, and the third use, a 24 hour/7 days per week gas service station, is only allowed after the ZBA determines the site is suitable pursuant to Section 1124 of the Regulations and all requirements for Special Permit approval have been met. The application seeks to vary or modify many recently adopted regulations, and to allow uses which are not otherwise permitted by the SB Zone Regulations and are inconsistent with the objectives of the Darien Plan of Conservation and Development (POCD). The application should be denied.

7-Eleven Inc. is a national company with numerous stores in New York, Virginia, Texas and many other states. A quick view of the locations on its website shows that the stores are generally located either in an urban area (city) or just off a major highway, such as I-95. We understand that evidence in this hearing indicates that the 7 -Eleven mobile app has been downloaded 22,000,000 times so users can easily locate a 7-Eleven for cheap gas while on a highway. Catering to the travelling public on I-95, not residents of the Darien Community, appears to be the applicant's primary objective.

That is clear from the following;

1. The 7-Eleven, Inc. application to ZBA to vary pole sign regulation from 18 sf allowed to 45 sf on a site abutting I-95, when PZC just completed a comprehensive review and revision of sign regulations in September 2018 and there is no legal hardship to justify the adjustments 7-Eleven seeks;
2. ARB issued an unfavorable decision at its 10-20-20 meeting and the applicant has not sought to modify its design further and receive a favorable report from ARB, which indicates 7-Eleven's corporate design is more important than adjusting same to fit within the Darien community;
3. The pending application to PZC where 7-Eleven, Inc. seeks to amend the Regulations to allow three uses on a single site, each of which would ordinarily be considered a principal or primary use and each of which requires Special Permit Approval pursuant to Section 1000 et. seq., namely:
 - a. gas service station use;
 - b. A 4,000-sf retail store; and
 - c. A Quick Service Restaurant with 100 sf of indoor space devoted to customer tables or seating, when 1,200 sf is required.

While a service station use is allowed by Special Permit pursuant to Section 753.g., under Section 1003.e. PZC cannot act on this request until ZBA approves same pursuant to Section 1124. In addition, the applicant seeks to remain open 24 hours per day/7 days a week, which is not consistent with approvals given for service stations in Darien. In addition, such 24/7 proposal is not consistent with Section 751, the preamble to the recently modified Service Business zone regulations, which provides in pertinent part:

“This zone is intended to provide, in appropriate areas, for certain business uses which serve a community need or convenience. It is in intention of these Regulations to protect and preserve existing SB districts for the continue provision of such services in a manner which will not be detrimental to the surrounding residential areas.... This zone may allow Commercial Sales and Service uses via Special Permit, in certain requirements and standards are met.....” (emphasis supplied).

24/7 operation of a large 7-Eleven at this site will have a detrimental impact on the nearby residential neighborhood.

Current SB zone regulations, which were adopted on August 11, 2019, require a Quick Service Restaurant to have 1,200 sf of indoor area for customer seating or tables. (Section 753.d.) Rather than work with that requirement, 7-Eleven, Inc. wants to reduce the 1,200 sf to 100 sf. Having considered this option last year and overruled a staff recommendation that the indoor seating requirement for Quick Service Restaurant use be eliminated, PZC should not revisit this issue. It should deny the applicant's request.

Applicant also seeks to install a “4,000 sf retail store” on the site. While parts of the application narrative claim this is an “accessory use,” to the proposed “gas service station use,” the text changes proposed by the applicant for Sections 755 and 904w reference a “retail store.” (See **Exhibit A** attached), Darien Zoning regulations do not define “retail” uses, and instead reference “commercial sales and service use” which would customarily be viewed as “retail.” Such uses are differentiated between “commercial sales and service use which include external storage and activities” (Section 752.a.) from those which do not include such “external storage or activity.” (Section 753.a.) Per Section 753.a of the Regulations regular “commercial sale and service use” is only allowed pursuant to Section 757 (g). This provision of the Regulations requires a minimum 3-acre site located within 1000’ of the Central Business District, requirements the 7-Eleven site does not meet as it is 1 acre and located 3000+’ from the CBD.

While the applicants intend to sell/exchange propane and provide for outdoor sales of firewood, such activities cannot convert their proposed “retail or commercial sales and service use” into one “including exterior sales and services.” When Whole Foods Market sought to occupy its current location on Ledge Road, PZC rejected Whole Food’s claim that exterior displays and sales of seasonal goods, outdoor storage of shopping carts, the need for shopping carts to bring groceries to customer cars, the storage of vehicles to deliver food to customers and outdoor seating for customers eating prepared foods, and similar activities were sufficient for Whole Foods to qualify as a “commercial sales and service use requiring external storage or activity” (the then language of what is now Section 753.a.). Accordingly, the 7-Eleven application seeks a Special Permit use, “commercial sales and service” which does not include external storage or activity. Per Section 757 (g) such use is not allowed at the site.

While the applicant also claims the “retail” use is “accessory” to the main or principal use of a gas service station, this claim is inconsistent with the Commission’s prior interpretations of Section 1056.2.d. which allows “The sale of non-automobile related goods and services.” as **accessory** to an automotive services use.”

”Use, Accessory”, is defined in Section 220 of the Regulations as:

“A use which is customarily incidental and subordinate to the principal use of a lot or a building and located on the same lot therewith.” (emphasis supplied)

The 4,000-sf retail store proposed by the applicant is not incidental or subordinate to the gas service use. The retail use is a principal use. Review of the many gas station approvals on file confirms that no “accessory use” involving 4,000 sf of “retail sales” for a service station has ever been approved by Darien’s PZC. The area of such accessory sales is generally limited to 500 sf or less and with most of the approvals involving substantially smaller accessory sales area.

Finally, 7-Eleven seeks approval of a service station use which will operate 24 hours per day for 7 days per week. This is not consistent with the objectives of the SB zone for a small site near a residential neighborhood nor is it consistent with the many service station approvals which typically limit the hours of operation to between 6 AM and 11 PM. And, as noted earlier, until

ZBA approves the site for a service station as required by Section 1124, PZC should not consider this use.

Finally, the applicants requests to amend the Regulations are inconsistent with the POCD (See excerpts attached as **Exhibit B**)

For the above reasons the application should be rejected.

Sincerely,


Wilder G. Gleason

cc: Jeremy Ginsberg, by email
Fred Doneit, by email
Darien Zoning Board of Appeals, by email
John W. Knuff, Esq., by email
Amy E. Souchuns, Esq., by email
320 BPR Holdings, LLC, by email
Birch Road Residents, by email
Robert Maslan, Esq., by email

Exhibit A

Section 755 (SB Zone Accessory uses)

*d. Quick Service Restaurants provided that at least (1) 1,200 square feet of indoor space shall be devoted to customer tables and seating area or (ii) 100 square feet of indoor space shall be devoted to customer seating when located in a **retail store** co-located with a gas station.*

(Emphasis supplied)

Section 904w (Parking)

*“When stations are operated as gas stations co-located with a **retail store** and/or quick service restaurant, parking shall be provided in accordance with the requirements of the **retail** and/or restaurant uses. (Emphasis supplied)*

EXHIBIT B

DARIEN

2016 Plan of Conservation and Development

Planning and Zoning Commission

BOS Vision Statement

As part of the review of this POCD, the Board of Selectmen reiterated their support for the overall vision statement located in the front of this POCD.

At the same time, the Board also indicated that the vision should be a "guide post" for the future conservation and development of Darien and not as a "stumbling block."

Maintain And Enhance Overall Character

Darien has a number of areas and resources that contribute to the character of the Town and enhance the overall quality of life. Darien will continue to undertake programs and projects which enhance community character and seek to prevent things that negatively affect character.

The "vision statement" from the Board of Selectmen indicates that "Darien continues to be primarily a New England style, single family dwelling community." This sentiment was echoed by others in the community as well. As interpreted and applied in the past, this does NOT mean an *exclusively* single-family dwelling character. However, it does mean that building design and scale which are harmonious with this vision statement will be more consistent with community objectives.

Residential Character



Residential Character



Coastal Amenities



Strategic Amenities



Continue To Promote Architectural Character

Architectural design influences the character of a community. Buildings consistent with local architectural styles enhance community character. Buildings that do not reflect the established scale and style of local architecture negatively affect community character.

Darien recognizes this and has had an Architectural Review Board for some time. The Board reviews commercial developments and provides comments to the applicant and to the Commission. To aid in their work, they prepared "Commercial Design Guidelines" in 2009 to help applicants in the formative stages of project design.

Darien will maintain a design review process (for other than single-family residential development) to ensure that buildings and sites contribute to overall community character.

Continue To Promote Architectural Character		
Policies	Leader	Partners
1. Continue to promote architectural character and community design as part of new development.	ARB	PZC
2. Encourage developments that contribute to, and enhance, a "sense of place" in Darien.	Town	
3. Maintain the Architectural Review Board to help enhance community character.	RTM	
4. Encourage a diversity in "sense of place" in order to promote the character of each area and the overall community.	ARB	
5. Promote the preservation and adaptive re-use of an existing building, when possible.	PZC	HS
Action Steps		
6. Consider extending design review to multi-family residential development, mixed uses, and institutional uses.	ARB	PZC
7. Review and update the Design Guidelines on a regular basis to ensure they properly reflect current design standards for Darien.	ARB	PZC

Key Considerations

The following are key considerations in terms of evaluating the overall impact on character:

- Design
- Size / height / scale
- Density
- Traffic
- Parking
- Quality of Life

Maintain Residential Character

Maintaining the residential character of the community is a key element of the Plan. A corollary to this is maintaining the character of residential neighborhoods by continuing to seek a balance between people’s desires to improve / expand their homes and the impacts on their neighbors and the community.

Darien’s zoning approach will continue to recognize the prevailing development pattern of:

- **predominantly single-family development;**
- **a range of housing types to meet a broad array of housing needs;**
- **higher densities in and near downtown Darien and around the train station in the Noroton Heights business district,**
- **moderate densities in areas with bus service, and**
- **a reduction in density as distance from these centers increase.**

Maintain Residential Character		
Policies	Leader	Partners
1. Continue to maintain the character of Darien as a residential community which is primarily comprised of lower-density single-family neighborhoods.	Town	PZC
2. Maintain the basic organizational pattern of higher densities in and near downtown Darien and the Noroton Heights business district and a reduction in density as distance from these centers increase.	PZC	
3. Within this overall framework, seek to provide for a range of housing types and densities to meet a broad array of housing needs.	PZC	HA
4. Continue careful monitoring of land uses in and near residential areas to minimize impact on surrounding residential neighborhoods.	PZC	

Promote Business / Economic Development

Business and economic development provide a number of advantages to the community and Darien should continue to promote and encourage appropriate business and economic development.

Darien has an excellent regional location, a number of areas zoned for business development, and benefits from having some key locational advantages within the town:

- two train stations (Darien and Norton Heights),
- Interstate 95 with 4 full or partial interchanges,
- Boston Post Road (US Route 1), and
- bus transit services.

The range of principal and accessory uses allowed in the business districts seems reasonable and appropriate. The uses which are only allowed by Special Use Permit could have impacts on other uses and so the level of review which occurs as part of the Special Use process is necessary and reasonable.

As noted in the 2006 POCD:

The amount of commercial property in Darien is quite limited, and as ... there is a desire for the community to have a mix of zones, and not be entirely residentially zoned. While [Darien] is and should remain primarily a residential community ..., the quality of residential life in such a community is enhanced by well-planned commercial and other "support" uses within the Town.

This philosophy remains relevant and is continued in this POCD.

Promote Business / Economic Development		
Policies	Leader	Partners
1. Continue to encourage business and economic development to provide jobs, provide goods and services, and enhance the tax base.	Town	
2. Continue to work with the Chamber of Commerce and other organizations to promote economic growth of Darien.	Town	
3. Continue to encourage vibrant commercial areas.	Town	PZC
4. Carefully review any proposal to rezone existing commercial properties for other uses.	PZC	

Manage Business Development		
Policies	Leader	Partners
1. Keep future commercial development consistent with the existing small-town New England character of Darien.	PZC	ARB
2. Continue to enhance the design of buildings and sites through the design review process.	ARB	PZC
3. Encourage adaptive reuse of existing buildings and sites.	PZC	
4. Enhance the function of the roadway through access management in business areas.	PZC	TA
5. Encourage coordination between property owners/developers to minimize curb cuts and encourage cohesive development in all commercial zones.	PZC	TA
6. Seek to limit business impacts and intrusion on adjacent residential properties and streets.	PZC	
7. Encourage pedestrian access, continue to require sidewalks and pedestrian amenities (such as benches) in all commercial areas and in front of all commercial properties.	PZC	
Action Steps		
8. Review the various business zoning districts and their locations to determine if they are accomplishing what the community desires in an efficient way (such as the requirement that commercial sales and service in the Service Business zone <u>require</u> "external storage or activity").	PZC	Done 2019
9. Establish an access management section in the zoning regulations applicable to development in all areas.	PZC	
10. Review the parking requirements in the zoning regulations.	PZC	
11. Review the parking stall size requirement in the zoning regulations.	PZC	
12. Undertake a comprehensive review and revision of the signage regulations.	PZC	Done 2019