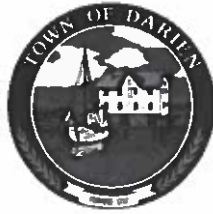


TOWN OF DARIEN
PLANNING & ZONING COMMISSION

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MEMORANDUM

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TO: Darien Planning & Zoning Commission

FROM: Jeremy B. Ginsberg, AICP *JBG*
Fred W. Doneit, AICP *FWD*

SUBJECT: Special Permit Application #317
Compass Real Estate, 1049-1053 Boston Post Road

DATE: November 24, 2020

The applicant, Compass Real Estate, has submitted an application for Special Permit approval to establish a new 1,896+/- square foot Compass Real Estate office in the first floor space of the building which was formerly occupied by the retail store, Tina Dragone from 2015-2020. The subject property is located at 1049-1053 Boston Post Road in the Central Business District (CBD) Zone. We offer the following comments for your review and consideration:

Real estate offices fall under the definition of Business and Professional Office. In the Central Business District, business and professional office uses are allowed by Special Permit on the first floor in accordance with Section 724(g). The Regulations require that the Commission make a finding that the first floor space is "...impractical, undesirable, and/or inconsistent with the standards under Subsection 1005(h)."

As a matter of record, the Commission adopted several amendments to the zoning regulations relative to first floor financial service uses in the CBD, including banks, in 2008 and 2017. The purpose was to have a more vibrant first floor in downtown of retail and restaurant uses, rather than office uses. In short, these amendments allowed financial service uses on first floors, provided that no drive-up window or drive up ATM be allowed, except under special circumstances. To be clear, the subject application for Compass Real Estate, is not subject to these regulations regarding financial service uses (Section 723(d)).

Zoning Regulations

The application is subject to review under Sections 720 and 1000 of the Town's Zoning Regulations. Note the following applicable sections of the Regulations, relative to the review of the proposed use: (emphasis added in bold/italics)

Section 722 (CBD Zone).

Permitted Principal Uses

(b) Business and professional offices, provided such uses are located on *upper floors*.

Section 723 (CBD Zone).

Principal Uses Requiring Special Permits

(g) Business and professional offices on the first floor, provided that the Commission makes a finding that the retail/commercial sales and service use of such space is impractical, undesirable, and/or inconsistent with the standards under Subsection 1005(h).

Section 1005.

Special Permit Requirements

(h) In cases involving a request for an exception of Section 723(g) for special permission for first floor Business or Professional office use in lieu of commercial sales and service within the Central Business District, the Commission shall consider the presence or *absence of off-street parking* in direct proximity of the site, the *character of surrounding uses, convenience of pedestrian access, location within the CBD* and directly related types of considerations regarding the policies of the Town Plan of Conservation and Development and the *preference for commercial sales and services use on the first floor*.

History of subject property and proposed tenant space

The entire first floor of subject property, including the proposed tenant space at 1049 Boston Post Road, has been utilized as retail space for nearly a century, since the building was originally constructed in 1922. Tina Dragone, a woman's retail clothing store, most recently occupied the proposed space for Compass Real Estate. Before that, women's retail clothing store Erica k occupied the space. The balance of the first floor (other than an access stair to the second floor) is currently occupied by Sipsters liquor store on the first level. For many years, that Sipsters first floor space was occupied by Nicholas Roberts, a liquor store. Professional office space is now on the entirety of the second floor, and has been for many years.

Off-street parking

The property is nonconforming with respect to Section 904 of the Regulations, Off-Street Parking Spaces. Three parking spaces at the rear of the building are accessible from a driveway off Grove Street. There is no access to the rear of the building and the parking in the back of the building from Boston Post Road. Section 904(p) requires one parking space for each 200 square feet of retail space, and one space for each 250 square feet of office space. The gross floor area for the entire building is 9,576 square feet. The floor area of the proposed Compass space is 1,896 square feet.

There is no requirement for the applicant to meet the number of parking spaces required by Section 904 of the regulations, since the building pre-dates the zoning regulations and is non-conforming relative to parking; however, the proposed use does raise some concerns with respect to the availability of sufficient parking. Though we acknowledge that office space generally has a lower standard than retail for the provision of parking, real estate offices typically represent a higher intensity use than other types of professional office uses. The availability of parking for full time office staff, brokers/real estate sales people and their clients is a concern. The applicant also notes that occasional office meetings will occur. In these instances, we believe that it is reasonable to assume that 15 to 20 or more brokers/sales people would attend these meetings.

Convenience of pedestrian access

The location of the subject property within the Central Business District is central to pedestrian access, making the site highly desirable for retail use of the space.

POCD preference for commercial sales and services use on the first floor in the CBD.

We note that it has been a long-time policy of the Planning & Zoning Commission to encourage first floor retail use where possible. As noted on page 67 of the 1995 Town Plan of Conservation and Development: "...it remains the firm policy of the Planning and Zoning Commission that retail use of first floor space be encouraged as strongly as possible with office space or apartments occupying upper floors."

We are of the opinion that the prevalence of first floor retail, personal service, and food related uses in the Central Business District, particularly along Boston Post Road, is critical for establishing and maintaining a vibrant and thriving downtown as the area continues to be developed. The Commission specifically modified the Zoning Regulations to further that important policy.

Brief history of first floor office approvals in the CBD

34 Old King's Highway South (2020).

Office building. Demolition of an existing 2-story office building and construction of a new office building with associated site improvements. The existing building has been utilized as an office building for more than 30 years on the fringes of the CBD with frontage on Old King's Highway South. The property is bounded by office uses on the north, south, and east, and the Center Street municipal parking lot to the west. The Commission made a finding in its 2020 approval that the retail and/or commercial sales and service use of the property is impractical, undesirable, and is inconsistent with the standards under Subsection 1005(h) of the regulations.

1063 Boston Post Road (2017).

Bank (Bankwell). The applicant sought a finding from the Commission that the Commission that retail and/or commercial sales and service use of the property was impractical, undesirable, and was inconsistent with the standards under Subsection 1005(h) of the regulations. The Commission was not able to make that finding and the application for the bank was withdrawn.

The applicant returned to the Commission with an application to amend the zoning regulations to permit financial institutions on first floors in the CBD by Special Permit, provided that no drive-up window or drive up ATM be allowed. The Commission approved the zoning amendment and the applicant was ultimately successful in getting the bank use approved for the space. It was not necessary for the Commission to make a finding that retail and/or commercial sales and service use of the property was impractical, undesirable.

22 Grove Street (2016).

Real estate office. The subject property was converted from a residence to an office space in 2005 and was deemed inadequate for retail space. It was also noted by the Commission at the time that there was insufficient parking for the site to accommodate a retail use. The Commission made a finding that the retail and/or commercial sales and service use of the property is impractical, undesirable, and is inconsistent with the standards under Subsection 1005(h) of the regulations. Similar to 34 Old King's Highway South, this property does not front on Boston Post Road.

Summary

Given the history of the use of the property and its first floor retail use which has occurred for many years, and its central location within the Central Business District, and its prime Boston Post Road frontage, Planning & Zoning Commission staff are unable to support the applicant’s claim that the continued retail use of the subject space is impractical and undesirable. The subject property has and continues to be marketed as “prime retail space” (see sign in window in photo below).



Photo: Planning & Zoning Department, November 2020



Photo: Planning & Zoning Department, November 2020