

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
October 27, 2020**

Application Number: Special Permit Application #172-E / Site Plan

Street Address: 171 Boston Post Road
Assessor's Map #12 Lot #35

Name and Address of Property Owner:
& Applicant: Gnosis Real Estate, Inc.
93 Boston Post Road
Darien, CT 06820

Name and Address of Applicant's
Representative: Robert F. Maslan, Jr., Esq.
Maslan Associates, P.C.
30 Old King's Highway South
Darien, CT 06820

Activity Being Applied For: Proposal to amend existing Site Plan and Special Permit to convert a portion of the basement to a food preparation area; convert a portion of the attic to an office; and to approve restaurant liquor sales.

Property Location: The 0.34+/- acre subject property is located on the northwest side of Boston Post Road at its intersection with Richmond Drive.

Zone: Service Business (SB)

Date of Public Hearing: October 20, 2020

Time and Place: 8:00 P.M. Room 213 and online Via GoToMeeting Town Hall

Publication of Hearing Notices

Dates: October 8 & 15, 2020 Newspaper: Darien Times

Date of Action: October 27, 2020

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of
Action: November 5, 2020

Newspaper: Darien Times

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

- the proposed use and activities must comply with all provisions of Sections 650, 905, 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 proposed floor plans of the basement and attic, and the statements of the applicant's representative 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 subject application is to amend the existing Site Plan and Special Permit in three aspects: 1) to convert a portion of the basement to a food preparation area; 2) convert a portion of the attic to an office; and 3) to authorize restaurant liquor sales. This property is within the Service Business (SB) Zone. In the SB Zone, restaurants are permitted by Special Permit. Prior Planning & Zoning Commission approval had been given for the restaurant in this location. That prior approval did not allow finished space in the basement or attic, and did not authorize liquor sales.

PROPOSAL FOR FINISHED SPACE IN BASEMENT AND ATTIC

2. It was represented by the applicant's attorney at the public hearing that the proposed "food preparation area" within the basement would be 150+/- square feet. New equipment to be installed within this space includes 3 food preparation tables and 3 sinks. Additional square footage in the basement includes 2 warming ovens, 2 ice machines, 3 refrigeration systems, including 2 walk-ins, and dry storage of food and food related goods. The applicant has been working with the Darien Health Department on appropriate equipment and storage design of the basement area, which has resulted in the plans/drawings on page A-8 and A-9.
3. The applicant also requests approval for a 288+/- square foot office space in the attic level of the building. Limited dry storage of food and food related goods is also proposed within the attic space, although it is not specifically called out on the plans/drawings (page A-10). The dry storage is not considered part of the 288+/- square foot calculation.
4. The Planning & Zoning Commission finds that, in accordance with the definition of story within the Darien Zoning Regulations, in this non residential zone, any finished space in the basement or third floor/attic counts as a story. The proposed limited amount of finished or habitable space in the basement and the proposed restricted and limited use of the basement were allowed by the ZBA, but they choose not to authorize it as 2 ½ stories because that could imply that more space could be finished or be used for other purposes without going back to the ZBA for prior review and action. Similarly, a small area of the second floor/attic space was authorized by the ZBA to be used for very limited purposes. The Planning and Zoning Commission is also amending its past approvals to allow for the limited spaces in the basement and attic to be used for limited purposes as currently proposed. Prior to any additional space in the basement or attic being finished, or any space in the basement or attic to be used for any other purpose, the owner or applicant must return to both the ZBA and PZC for review and action.
5. At the public hearing on the matter, the applicant indicated that no cooking of animal proteins will occur as part of the operations of the business and that no cooking will occur in the basement or attic level of the building. There will be no customer access to the basement or the attic.

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OTHER LOCAL APPROVAL

6. The Zoning Board of Appeals (ZBA) on October 14, 2020 (Calendar No. 19-2020), granted in part amendments to existing variances (ZBA Calendar Nos. 65-1996 and 98-1997) to allow food preparation space in the basement; office space in the attic; and to permit liquor sales as part of the business. That approval is hereby incorporated by reference. The ZBA deferred the requested interpretation regarding number of stories (2½ stories in lieu of a maximum of 2 stories in the SB Zone) to the the Planning & Zoning Commission. This portion of the request to the ZBA was thus denied.

DESCRIPTION OF SUBJECT PROPERTY AND PRIOR APPROVALS

7. In the Commission's previous approval for the Driftwood and Darien diners in this space, the applicant proposed maximum hours of 6 a.m. to 11 p.m. Sunday through Thursday and from 7 a.m. to 12 a.m. Fridays and Saturdays. As part of the subject application, the applicant indicated that the hours of operation for the new business would not change from that previously approved.
8. At the time of the prior approvals for the site, Section 904 of the Zoning Regulations required a minimum of one off-street parking space for each 50 square feet of gross floor area, not including unfinished storage space. In 2007 the Planning and Zoning Commission amended Section 904, reducing the minimum parking requirements for restaurants by one-half. The minimum is now one space for each 100 square feet of gross floor area, not including unfinished storage space. The result of this amendment is that the previous ZBA variance for parking spaces is not necessary, and the current 18 parking spaces will support up to 1,800 square feet of active floor area – 300 square feet more than the existing first floor of the building.
9. At the October 20, 2020 public hearing, it was agreed that the prior Special Permit/Site Plan application be incorporated by reference. Thus, the following plans, relative to the previous approvals for the site (Special Permit Application #172-D / Site Plan and Special Permit Application #172-C) are hereby incorporated by reference:
 - New Restaurant, 171 Post Road, Proposed Site Plan by Patterson Architects, Inc., scale 1"=10', last revised November 18, 1996;
 - New Restaurant, 171 Post Road, Proposed Floor Plans by Patterson Architects, Inc., last revised October 8, 1990;
 - New Restaurant, 171 Post Road, Proposed Elevations by Patterson Architects, Inc., last revised March 12, 1990, Sheet A-3;
 - Front Entrance Renovation and Addition For: Darien Diner, 171 Post Road, by Sound Architecture, last revised January 14, 2009, Drawings No. A-0 through A-6. (lettering crossed off the proposed canopies on pages A-4, A-5, and A-6 per ARB approval);
 - Landscape and Site Plan, The Driftwood Diner, 171 Post Road, by Patterson Architects, Inc., last revised November 18, 1998, Sheet SP-A.
10. It was represented by the applicant at the public hearing that no outdoor seating/dining is proposed as part of this application. The Commission notes that if the owner or applicant wishes to have outdoor seating/dining in the future, a subsequent application will need to be made to the Commission.

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AMENDING PRIOR APPROVAL TO ALLOW LIQUOR SALES

11. The Commission finds that adding liquor sales would be appropriate, in light of the fact that the hours of operation are not scheduled to change; the space continues to be a restaurant, and not a bar; and there is no outdoor seating/dining.

SPECIAL PERMIT FINDINGS

12. The location and size of the use, the nature 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.
13. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
14. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a) through (g) and will not adversely affect public health, safety and welfare.
15. 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.
16. The elements of the Site Plan, submitted as part of the application accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.
17. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
18. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE, BE IT RESOLVED that Special Permit Application #172-E / Site Plan is hereby modified and granted subject to the foregoing and following stipulations, conditions, modifications and understandings:

- A. The Commission is approving only the specific use as described in detail in the application and at the Public Hearing. If, at some time in the future, the tenant and/or property owner wishes to expand the business (either within the building or outside of the building), then prior review and action by the Planning & Zoning Commission is required. All interior construction and related activity in the basement and attic shall be in conformance with the floor plans submitted to and reviewed by the Commission:
Driftwood Diner, 171 Post Road, Darien, CT (8-1/2" x 11" floor plan sketches);
 - Driftwood Diner, Existing Basement and Proposed Food Prep Area; Pages A-8 and A-9.
 - Driftwood Diner, 2nd Floor 39'6" x 18', Page A-10.

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Modifications to the basement and attic floor plans may be made with the prior approval of the Fire Marshal, Health Department, and Building Official, only consistent with this approval. The Planning and Zoning Commission is also amending its past approvals to allow for the limited spaces in the basement and attic to be used for limited purposes as currently proposed. Prior to any additional space in the basement or attic being finished, or any space in the basement or attic to be used for any other purpose, the owner or applicant must return to both the ZBA and PZC for review and action.

- B. In the Commission's previous approval for restaurant, the applicant proposed maximum hours of 6 a.m. to 11 p.m. Sunday through Thursday and from 7 a.m. to 12 a.m. Fridays and Saturdays. As part of the subject application, the applicant indicated that the hours of operation would not change. It is acknowledged that employees may need to come in earlier or stay later. Due to the location of the business directly adjacent to a residential neighborhood, any expansion of the maximum hours of operation shall require further review and action by the Planning and Zoning Commission.
- C. Because of this restaurant's location immediately adjacent to a residential area, it is imperative that fumes, odors, and noise be controlled and minimized so as not to become a nuisance. The Commission confirms the importance of the maintenance of any existing hood and filtering system to minimize the possible impacts of fumes/odors from the business. Even if the odor control system is properly maintained and utilized, if the use creates any odor nuisance that is not corrected, then the use would be in violation of Section 323 of the Regulations and the Commission may take actions to revoke this approval.
- D. The Commission hereby approves the sales and service of liquor in connection with the operation of the business, only in accordance with approval from the State Liquor Control Commission. Liquor sales and service shall not be conducted outside of the interior of the building.
- E. All prior conditions related to the previous two approvals for the site (June 2, 2009, Special Permit Application #172-D / Site Plan and January 28, 1997, Special Permit Application #172-C) are all still in full force and effect unless superseded herein.
- F. Because of the fact that all of the proposed work is interior work, and there is no new impervious surface proposed as part of this application, the Commission hereby waives the requirement for stormwater management under Sections 888a(3) and 888a(4).

CERTIFICATIONS REQUIRED

- G. Prior to issuance of the Certificate of Occupancy (CO) for this project, the applicant shall submit verification to the Planning & Zoning Department that all aspects of the landscaping plan have been completed in compliance with ZBA Calendar No. 19-2020 and the Commission's previous Special Permit approval (Special Permit Application 172-C).
- H. In evaluating this application, the Planning & Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive,

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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. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies, including the Darien Health Department and the State Liquor Control Commission. Zoning and Building Permits will be required for any interior tenant fit-up modifications that may be required by the Health Department such as new doors or walls in the basement. Any signage or change in signage requires review and comment by the Architectural Review Board (ARB).
- J. This permit shall be subject to the provisions of Section 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action by (October 27, 2021). This may be extended as per Section 1009.

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. Prior to the issuance of a Zoning & Building Permit for work in the basement or attic AND prior to the use of the basement or attic (ie. The re-opening of the restaurant), a Special Permit form must be filed in the Darien Land Records or this approval shall become null and void.