

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 14, 2020

Application Number: Proposed Amendments to Darien Zoning Regulations (COZR #2-2020)
Business Site Plan Application #308, Special Permit Application #312
Baywater 34 OKHS, LLC, 34 Old King's Highway South

Street Address: 34 Old King's Highway South
Assessors Map #72 Lot 29

Name and Address of Applicant Baywater 34 OKHS, LLC
1019 Boston Post Road
Darien, CT 06820

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

Name and Address of & Property Owner: John W. Sheppard, Jr., LLC
10 Davis Lane
Darien, CT 06820

Activities Being Applied For: Proposal to revise/clarify a noted discrepancy between the front and rear building lines to reflect decisions made by the Planning & Zoning Commission in 1961 and 1979 respectively, regarding same (modifying Appendix 'A' of the Regulations—Building Line Restrictions), and to modify Section 1057 of the Zoning Regulations relative to Dedication of Public Parking Areas. Proposal to raze the existing commercial building on the site and to construct a new 5,624+/- square foot, two-story office building with a 1,320+/- square foot rooftop deck, reconfigure parking areas on the rear of the site, construct a new public plaza area, construct a new stormwater management system, allow office uses on the first floor of the new building, and to perform related site development activities.

Property Location: The subject property is located on the west side of Old King's Highway South approximately 150 feet north of its intersection with Corbin Drive.

Zone: CBD

Dates of Public Hearing: June 2, 2020 continued to June 9, 2020
Deliberations Held: July 7, 2020

Time and Place: 8:00 P.M. Room 119 (June 2), Room 206 (June 9, July 7), and via
GoToMeeting Darien Town Hall

Publication of Hearing Notices
Dates: May 21 & 28, 2020

Newspaper: Darien Times

Date of Action: July 14, 2020

ZONING REGULATION AMENDMENTS:

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ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, AUGUST 9, 2020 AT 12:01 P.M.

SITE PLAN/SPECIAL PERMIT APPLICATION:

APPROVED WITH CONDITIONS

WITH AN EFFECTIVE DATE OF SUNDAY, AUGUST 9, 2020 AT 12:05 P.M.

Scheduled Date of Publication of Actions: Newspaper: Darien Times
July 23, 2020

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

- the proposed zoning regulation amendment(s) must be consistent with the 2016 Town Plan of Conservation & Development for the Commission to adopt it.
- the proposed use and activities must comply with all provisions of Sections 720, 1000, 1020 and 1057 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 plans and application narrative, 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.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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

1. The submitted application consists of proposals for:
 - Amendment of Section 1057(a) of the Darien Zoning Regulations to provide that structures not be subject to the minimum lot width requirement where the rear building line restriction applies;
 - Revision/clarification of the front and rear building lines across the subject property (Amending Appendix A of the Zoning Regulations—Building Line Restrictions);
 - Business Site Plan review for the demolition of the existing building and construction of a new 2+ story office building with related site improvements with associated public plaza area;
 - Special Permit to allow a professional office use(s) in the first floor in downtown (the CBD Zone).

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ZONING REGULATION AMENDMENT PROPOSALS

2. Section 1057 now reads as follows:

- a. *No rear yard, parking or loading space shall be required, maximum building coverage limitations shall not apply, and the maximum permissible floor area shall be equal to twice the area of such lot, not including therein any required front or side yard, remaining after such gift of such portion, provided that any building or addition constructed thereon shall have a direct public entrance from said public parking area.*
3. The applicant has proposed adding wording to Section 1057 relative to lot width. It was noted that the subject property is triangular-shaped, and gets very narrow towards the rear of the property. The Commission finds that this is one of the very few properties in downtown that would be affected by this zone change. The existing front and rear building lines have an effect on possible locations of development on the property.
4. The Commission finds that the text amendment would allow construction of a new building on the portion of a lot that is forward of the rear building line but less than the minimum width. The purpose of the amendment is to allow such a new building to be located within a rear setback, which would be allowed under Section 1057 of the Regulations, but for the minimum lot width requirement.
5. In the Central Business District (CBD) zone, the minimum lot width is 40 feet. On the triangular shaped subject property, the lot width decreases to less than 40 feet, approximately 27 feet from the rear building line. The Commission finds that #17, #19, and #21 Tokeneke Road could potentially be affected if they were redeveloped in the future, and the land behind the rear building line on those lots were conveyed to the Town for municipal parking.
6. The applicant has proposed a revision/clarification of the front and rear building lines which are now described in Appendix 'A'—Building Line Restrictions of the Darien Zoning Regulations. This aspect of the application is described on pages A-3 and A-4 of the submitted application narrative, and is a revision/clarification of previously filed Building Line Maps from 1961 and 1979. A map was submitted entitled, "Data Accumulation Plan Depicting Proposed Building Lines prepared for Baywater Properties", last dated March 5, 2020. That plan shows the proposed front and rear building lines.

FINDING OF CONSISTENCY WITH 2016 TOWN PLAN OF CONSERVATION & DEVELOPMENT

7. The Commission finds that the proposal is consistent with the 2016 Town Plan of Conservation & Development. Examples include:
 - a. Policies to Guide Business and Economic Development:
 1. "Darien should continue to promote and encourage appropriate business and economic development."
 2. "The quality of residential life in such a community is enhanced by well-planned commercial uses within the Town."
 3. "Continue to encourage business and economic development to provide jobs, provide goods and services, and enhance the tax base."

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4. "Continue to encourage vibrant commercial areas."

PARKING

8. The Subject Property qualifies under Section 1057 for an exemption from rear setback and off-street parking requirements, in exchange for the dedication to the Town, by conveyance or perpetual easement, of land behind the rear building line for public parking.
9. The rear portion of the Subject Property, which is 2,193+/- square feet in area, is presently subject to a Parking Agreement, whereby the area behind the rear building line and a portion of the land directly behind the existing building, are available for municipal parking.
10. To comply with Section 1057, the applicant proposes to convey a parking easement to the Town of Darien covering the 2,193+/- square foot portion of the site that is located behind the rear building line. The parking easement will be the same as the existing parking easement behind 1014-1020 Boston Post Road. There will be no practical change in the use of the land behind the rear building line, as that land will continue to be part of the municipal parking lot.

TRASH COLLECTION, GARBAGE & RECYCLING AREA

11. The building will share an existing dumpster area located in the parking lot, through an amendment of the existing Dumpster Agreement among the properties at 1014-1018 and 1020 Boston Post Road, and 36 Old King's Highway South.

LOCAL REVIEWS AND APPROVALS

12. The Architectural Review Board (ARB) reviewed the architectural plans for the site at their meetings on May 27, April 29, and June 16, 2020 as part of ARB #04-2020, and sent a letter for the record dated June 1, 2020, issuing a favorable report for the proposal. That report is hereby incorporated by reference.
13. Darren Oustafine, Assistant Director of the Department of Public Works (DPW) reviewed the proposal relative to stormwater management and engineering. Mr. Oustafine's May 28, 2020 comments are included as part of the record. In that memo, he notes that the applicant has requested a waiver of stormwater management under Section 880 of the Zoning Regulations, and Mr. Oustafine makes a recommendation regarding as-built drawings as a condition of approval.

REQUIRED PUBLIC PLAZA AREA

14. The applicant is required to provide one or more on-site, public plaza area(s) as required by Sections 726 of the Regulations, which allow permitted building heights to be increased beyond 30 feet, as is proposed for the site.
15. A 1,180+/- square foot public plaza area is proposed on the south side of the project site, with frontage on Old King's Highway South. The plaza area is designed for use by the general public. Direct pedestrian access to the plaza area is provided from the sidewalks along Old King's Highway South and the Town's right of way between Old King's Highway South and the Center Street municipal parking lot.

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16. The Commission finds that the area of the public plaza is sufficient to support a third story (more than 30 feet in height) if in the future plans are submitted to the Planning & Zoning Department / Building Department for the buildout of the rooftop deck level of the building. At this point, the only enclosed area on the third floor is a vestibule, which is shown as approximately 590+/- square feet.
17. The Commission finds that the size, shape, and proposed features of the identified public plaza area complies with Section 726 of the Regulations.

STORMWATER MANAGEMENT

18. As part of the originally submitted application, Tighe & Bond submitted an Engineering Report, dated March 13, 2020 showing a stormwater management system. Included in Part 'E' of that report is a Maintenance and Inspection Plan.
19. The applicant has requested a waiver from the "fresh meadow" existing conditions analysis in Section 880 of the Regulations, based on the size, location and nature of the project site. Due to the location of the project within the watershed, and the fact that the amount of new impervious surface is minimal, the Commission hereby waives the requirement for a stormwater management relative to the use of the "fresh meadow" approach.
20. The proposed project includes both stormwater quality and quantity improvements and improves the existing storm drainage conditions. Peak runoff rates are reduced in all storms through the 100-year peak storm event. The project also includes water quality volume measures that meet the requirements of the CT DEEP Connecticut Stormwater Quality Manual. The proposed stormwater management system is planned to be incorporated into the stormwater management system that will serve the Corbin project.
21. During the public hearing, Professional Engineer John Block, of Tighe & Bond, said that the project site has been designed to meet the requirements of Section 880 of the Zoning Regulations and that a detailed analysis of the watershed was completed. He compared the existing condition to the proposed mitigated, improved condition.

SPECIAL PERMIT TO ALLOW OFFICE USE(S) ON THE FIRST FLOOR OF THE PROPOSED BUILDING

22. The applicant is requesting a Special Permit to allow business and professional office uses on the first floor of the proposed building. Section 723(g) of the Regulations allows business and professional offices on the first floor provided that the Commission makes a finding that the retail and/or commercial sales and service use of such space is impractical, undesirable, and/or inconsistent with the standards under Subsection 1005(h) of the regulations.

SITE PLAN AND SPECIAL PERMIT FINDINGS

23. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements and standards for approval as specified in Section 1005 (a) through (g) of the Regulations and will not adversely affect public health, safety and welfare.

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24. During the public hearing, the applicant's representative, Attorney Robert Maslan, pointed out that the building on this property has a long history of being used for office use. Based upon the location of the building, the nature of the buildings around it, and its long history of being used as office space, not as retail space, the Commission finds that retail and/or commercial sales and service use of the first floor space of the proposed building is impractical, undesirable, and/or inconsistent with the standards under Subsection 1005(h) of the Regulations.
25. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
26. The nature of the proposed changes and uses are such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
27. The plan has been reviewed by the Commission and is in general compliance with the intent, purposes and objectives of Section 1020.
28. 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.

NOW THEREFORE BE IT RESOLVED that the Amendment to the Darien Zoning Regulations (COZR #2-2020) is hereby adopted subject to the foregoing and following modifications and understandings:

NEW WORDING UNDERLINED:

(Table of Contents and Appendix C of the Zoning Regulations to be amended accordingly.)

- A. Section 1057(a) shall be amended to read as follows:
 - a. No rear yard, parking or loading space shall be required, the location of structures shall not be subject to the minimum lot width requirement, maximum building coverage limitations shall not apply, and the maximum permissible floor area shall be equal to twice the area of such lot, not including therein any required front or side yard, remaining after such gift of such portion, provided that any building or addition constructed thereon shall have a direct public entrance from said public parking area.
- B. The Commission hereby modifies Appendix 'A'—Building Line Restrictions relative to the front and rear building lines, pursuant to the applicant's proposal. A mylar shall be prepared and filed in the Darien Land Records reflecting this requested amendment, entitled:
Data Accumulation Plan Depicting Proposed Building Lines, Prepared for Baywater

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Properties, 34 Old King's Highway South by William W. Seymour & Associates, P.C. The wording in Appendix 'A' of the Regulations will be modified to reflect the title and date of this new map, which shall be filed in the Darien Land Records and supersede the 1961 and 1979 maps now noted in Appendix A.

These zoning regulation amendments shall take effect on Sunday, August 9, 2020 at 12:01 p.m.

NOW THEREFORE BE IT RESOLVED that Business Site Plan Application #308 and Special Permit Application #312 are hereby approved subject to the following conditions:

A. Construction and other site development activity shall be in accordance with the following plans submitted to the Commission:

SURVEYS

- Zoning Location Survey Depicting Proposed Conditions, Prepared for Baywater Properties, 34 Old King's Highway South by William W. Seymour & Associates, P.C., dated November 21, 2019, last revised March 3, 2020;
- Zoning Location Survey Depicting Easements and Area Subject to Parking Agreement Prepared for Baywater Properties, #1014 & 1020 Boston Post Road by William W. Seymour & Associates, P.C.

ENGINEERING PLANS

Plans generally titled 'Baywater 34 OKHS, LLC, 34 Old King's Highway South', Prepared by Tighe & Bond, dated May 13, 2020, unless otherwise noted:

- Sheet C0.0, General Notes, Legend and Standard Abbreviations Plan;
- Sheet C1.0, Overall Site Plan, last revised May 27, 2020;
- Sheet C2.0, Site Plan, last revised May 27, 2020;
- Sheet C3.0, Site Grading, Drainage, and Utility Plan, last revised May 27, 2020;
- Sheet C4.0, Soil Erosion and Sediment Control Plan and Details, last revised May 27, 2020;
- Sheet C5.0, Site Details;
- Sheet C5.1, Site and Stormwater Details;
- Sheet C5.2, Stormwater Infiltration System 1 Detail.

LANDSCAPE PLANS

Plans generally titled 'Architectural Review Board Submission', Prepared by Towers Golde and Dale Design, Inc., dated May 11, 2020, unless otherwise noted:

- Sheet LSK-1, Overall Site Plan;
- Sheet LSK-4, 34 Old King's Highway Plaza Plan;
- Sheet LSK-5, 34 Old King's Highway Perspective View;
- Sheet LI.0, Landscape Plan, Baywater 34 OKHS, LLC, 34 Old King's Highway South, Darien, Prepared by Towers Golde, dated May 28, 2020.

ARCHITECTURAL PLANS

Plans generally titled '34 Old King's Highway South, ARB Submission', Prepared by Beinfield

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Architecture, various dates, as noted:

- Sheet A.000, Cover Sheet, dated April 10, 2020;
- Sheet A.060, Materials Board, dated May 11, 2020;
- Sheet A.061, Architectural Rendering from OKHS Looking South, dated May 11, 2020;
- Sheet A.080, GSF/FAR Plans, dated March 6, 2020;
- Sheet A.090, Architectural Site Plan, dated May 28, 2020;
- Sheet A.101, Level 1 Floor Plan – Zoning, dated May 28, 2020;
- Sheet A.102, Level 2 Floor Plan – Zoning, dated June 1, 2020;
- Sheet A.103, Roof Plan – Zoning, dated March 6, 2020;
- Sheet A.201, Zoning Elevations, dated May 11, 2020;
- Sheet A.301, Building Sections, dated June 1, 2020.

The interior architectural flood plans may be modified by the applicant. The Fire Marshal and Building Official shall review the interior floor plans as part of the Zoning & Building Permit process.

STORMWATER MANAGEMENT

- B. A Stormwater Maintenance and Inspection Plan was prepared by the applicant's engineer, and is included in the Tighe & Bond Engineering Report dated March 13, 2020. This Drainage Maintenance and Inspection Schedule requires the property owner and all subsequent property owners to maintain the on-site drainage facilities. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit for the new building foundation and within 60 days of this approval.
- C. The applicant shall install the drainage system pursuant to the final submitted plans in accordance with this resolution. The applicant/property owner shall have the continuing obligation to make sure that stormwater runoff and drainage from the site will not have any negative impacts upon the adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible for remedying the situation at their expense as quickly as possible.

SEDIMENT & EROSION CONTROLS

- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans in Condition 'A', above, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and immediately after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans.
- E. 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.

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- F. The approval of this Business Site Plan and 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 the following:
- A Demolition Permit from the Building Department;
 - A Sewer Disconnect/Connection Permit from Darien Sewer Services for demolition of the existing building and construction of the proposed new building;
 - Street Opening Permit from the Department of Public Works;
 - Filing the new Building Line Map in the Darien Land Records prior to the issuance of a Demolition Permit;
 - Zoning and Building Permit applications (one for the building foundation, and separate permit for work above the foundation).

AS-BUILTS AND CERTIFICATIONS REQUIRED

- G. Prior to issuance of any Certificate of Occupancy (CO) for this project, the following shall be submitted to the Planning & Zoning Department:
1. Verification from the project engineer that all aspects of the building construction and the stormwater management system have been completed in compliance with the approved plans.
 2. An as-built survey showing grading and drainage and a certification from a licensed land surveyor of the building height. The Commission hereby accepts the recommendation of Mr. Oustafine of DPW, and is requiring the following:
 - a) Condition of approval should include as-built drawing prepared by licensed land surveyor or certified by registered professional engineer.
 - b) As-built drawing should show all utilities or buried infrastructure installed as part of this land use proposal. As-built should include measurements from known, permanent, and visible surface features so that buried infrastructure can be located in the field in the future.
 3. A public plaza easement shall be filed in the Darien Land Records denoting specifically the details and location of the easement(s).
 4. Any easement over proposed parking area(s) will also need to be filed in the Darien Land Records. A referral under CGS 8-24 may be needed for this easement.
- H. 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 two (2) years of this action (July 14, 2022). This may be extended as per Sections 1009 and 1028

All provisions and details of the plan and use shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final approved plans by the Chairman, or this approval shall become null and void. A Special Permit form and Notice of Drainage Maintenance shall be filed in the Darien Land Records within 60 days of this approval and prior to the issuance of a Zoning & Building Permit for the construction.