

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 25, 2008**

Application Number: Proposed Amendment to the Darien Zoning Regulations
Business Site Plan #265

Street Address: 17 Old King's Highway South
Assessor's Map #38 Lots #12 & #13

Name and Address of Property Owner: Baywater 17 OKHS, LLC
78 Harvard Street, Suite 300
Stamford, CT 06902

Name and Address of Applicant & Applicant's Representative: Robert F. Maslan, Jr., Esq.
Maslan Associates, PC
3 Parklands Drive
Suite 207
Darien, CT 06820

Activity Being Applied For: Proposal to modify Section 715 of the Darien Zoning Regulations to increase the existing maximum Developed Site Area in the Office Business (OB) Zone from 70% to 80%; and to raze the existing office building, and construct a new two story building, reconfigure parking lot; and perform related site development activities.

Property Location: The subject property is located on the east side of Old King's Highway South, directly across from its intersection with Center Street.

Zone: OB Zone

Date of Public Hearing: July 29, 2008 continued to September 23, 2008
and immediately continued to October 21, 2008

Time and Place: 8:00 P.M. Auditorium (7/29); Room 206 (9/23); Room 119 (10/21) Town Hall

Publication of Hearing Notices

Dates: July 17 & 24, 2008
September 11 & 18, 2008

Newspaper: Darien News-Review

Date of Action: November 25, 2008

Action: AMENDMENT TO THE ZONING REGULATIONS ADOPTED, WITH AN
EFFECTIVE DATE OF SUNDAY, DECEMBER 21, 2008 AT TWELVE NOON.
SITE PLAN APPROVED WITH CONDITIONS,
EFFECTIVE ON DECEMBER 21, 2008 AT 12:01 P.M.

Scheduled Date of Publication of Action: December 4, 2008
Newspaper: Darien News-Review

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

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- the proposed use and activities must comply with all provisions of Sections 710 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 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:

Business Site Plan Application #265:

1. The application consists of two parts: 1) to raze the existing one story office building and to construct a new two story building, reconfigure parking lot; and perform related site development activities; and 2) to modify Section 715 of the Darien Zoning Regulations to increase the existing maximum Developed Site Area in the Office Business (OB) Zone from 70% to 80%. The subject property is 1.2275+/- acres and has access to public water and public sewer.
2. When the application was originally submitted, the request was for a Business Site Plan approval only. The applicant's representative modified the application on September 25, 2008 to include an Amendment of the Zoning Regulations.
3. The Architectural Review Board (ARB) approved this request as part of ARB #21-2008 on July 16, 2008. That approval is hereby incorporated by reference. The applicant specifically noted that no work is proposed within 100 feet of the Goodwives River, or within 50 feet of its adjacent wetlands, and thus, no formal review or action from the Environmental Protection Commission (EPC) was required.
4. The proposal is to raze the existing one story, 8,000 square foot building and construct a new two story building. The first floor would contain 9,400-9,500 square feet gross floor area and the second floor would contain 9,500+/- square feet of gross floor area. There would also be 786 square feet of an elevator and storage area. There would be, at most, 18,872 square feet of proposed usable floor area. The building would occupy just less than 20% of the lot area. The Office Business (OB) Zone only allows two-story buildings, and thus, there cannot be any finished space in the basement. No finished space in the basement was proposed as part of this application.
5. The current proposal is to have office use on each of the two floors. The applicant has designed the first floor so that at some point in the future, they might be able to convert it to a retail use. Such use is not currently allowed in the OB Zone. Before such a change takes place, applicant

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would need to come back to the Planning & Zoning Commission for an amendment of this decision.

6. During the public hearing, it was noted that the applicant will attempt to save the large honey locust tree and pin oak trees at the front and sides of the proposed building. They will be adding new trees and shrubs to the front of the building as shown on the submitted Planting & Lighting Plan. The applicant proposes to perform maintenance and cleaning of debris from the area along the edge of the Goodwives River, but otherwise, there is no work planned in that EPC-regulated area.
7. The applicant's engineer said that there is no change to the volume of runoff being created. The storm water runoff will be put through a new series of cleansers before the water is detained and eventually the outflow will be directed toward the Goodwives River.
8. There is now a shared parking agreement in effect with the property at 9 Old King's Highway South (former Exxon Chemical office building) and 65 Tokeneke Road (the former Darien Dinner Theater, now the New Life Christian Fellowship). A copy of that agreement was submitted for the record (from Vol. 415 Page 317 of the Darien Land Records) and will remain in full force and effect with no proposed changes to it. Applicant relies on the Joint Parking Arrangement involving all three sites. In 1977, approvals were obtained for the existing one story building to be expanded to a two story building, but that second floor construction never took place.
9. During the public hearing, the applicant's traffic and parking engineer stated that the on-site parking can support the proposed 18,872+/- square foot building. He also noted that the proposed building is close enough to have workers walk to and from the Darien train station two blocks away. He said that the on-site parking does not comply with the current Regulations, but there will be sufficient on-site parking to accommodate the employees and visitors to the building through the existing Shared Parking Agreement.
10. Relative to parking, the applicant noted that the proposed building is across the street from the municipally-owned Center Street North municipal parking lot. The applicant is not relying upon municipal parking. The 300+/- spaces on the three private properties will support the three buildings involved in the Shared Parking Agreement. The applicant noted that they will come back before the Planning and Zoning Commission if, in the future, they desire to convert any portion of the proposed building from office use to retail use. The Commission confirms that any change in the future from office use to retail use will require an analysis of adequacy of on-site parking and other issues.
11. 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.

Amendment to the Zoning Regulations

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1. The applicant proposes to amend the Darien Zoning Regulations by modifying Section 715 of the Darien Zoning Regulations to increase the maximum Developed Site Area in the Office Business (OB) Zone from 70% to 80%.
2. A September 25, 2008 two-page letter was submitted to the Planning & Zoning Department by the applicant, outlining the proposed zoning regulation amendment and how the request is consistent with the 2006 Town Plan of Conservation & Development. Per the State Statutes, that letter was also filed with the Darien Town Clerk on September 25, 2008.
3. Regarding the proposed zoning text amendment, the current maximum Developed Site Area in the Office Business (OB) Zone is 70%. The applicant proposes to change that to be 80%, which is similar to other commercial zones in Darien. The DB-2 and OB Zones are now the only two zones in Darien which require Developed Site Area to be 80% or less. The applicant said that the Developed Site Area on the subject property is now 75%+. They propose to increase that by one percent as part of the subject application. The applicant noted at the public hearing that the 80% maximum is consistent with many other commercial zones in Town.
4. The Commission hereby finds that the proposed Amendment of the Darien Zoning Regulations is fully consistent with the 2006 Town Plan of Conservation & Development, as amended.

NOW THEREFORE BE IT RESOLVED that : Business Site Plan #265 is hereby approved with conditions, EFFECTIVE ON DECEMBER 21, 2008 AT 12:01 P.M., subject to the foregoing and following stipulations, modifications and understandings:

- A. All construction and related activity shall be in accordance with the plans submitted to and reviewed by the Commission:
 - Zoning Location Survey #17 Old Kings Highway South prepared for Baywater 17 OKHS, LLC, by William W. Seymour & Associates, scale 1"=30', dated July 25, 2008.
 - Planting & Lighting Plan, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Environmental Design Associates PC, dated June 2008, last revised 7.29.08, S3.1.
 - Drainage & Utility Plan, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, dated June 2008, C1.1.
 - Sedimentation & Erosion Control Plan, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, dated June 2008, C2.1.
 - Sedimentation & Erosion Control Details, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, dated June 2008, C2.2.
 - Drainage Detail, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, dated June 2008, C3.1.
 - Drainage Detail, Baywater 17 OKHS, LLC, 17 Old King's Highway South, by Tighe & Bond, dated June 2008, C3.2.
- B. The submitted Planting & Lighting Plan shows four trees to be removed which are not on the subject property. It also shows the construction of traffic islands, and the installation of some landscaping, including tree planting on an adjacent property to the northeast. Prior to removal

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of those trees or any work on the adjacent property, the applicant must obtain approval from the property owner for that work, and provide written copies of that approval to the Commission.

- C. Per the comments of the Public Works Department, a Stormwater Maintenance Agreement shall be filed in the Darien Land Records noting that the property owner is responsible for maintaining the proposed drainage system, and not the Town of Darien. That Agreement shall be filed prior to the request for the Zoning and Building Permits for the proposed building.
- D. Because of the nature of the proposed office use, the Commission hereby waives the requirement for a loading zone as authorized by Section 909 of the Darien Zoning Regulations. Although the applicant has a loading zone laid out on the submitted Planting & Lighting Plan, it does not have to be signed as such on the property. However, any change in uses may require a loading zone in the future. If in the future, the applicant proposes retail uses in this building, the Commission will likely require modifications to the size and location of any loading area on-site.
- E. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans and any additional measures as may be necessary due to site conditions. These sediment and erosion controls 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 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. All erosion control measures must be maintained until the disturbed areas are stabilized.
- F. The Dumpster enclosure area shall be neatly maintained, and the doors shall remain shut at all times that someone is not loading or unloading garbage. The property owner is responsible for maintaining this shared trash area, including ensuring that it is emptied frequently enough to minimize odors. It is imperative that the doors remain shut when not in use, because if the doors are left opened, it may obstruct parking spaces within the property. The Commission specifically notes that it is highly unusual to approve a Dumpster enclosure area which opens out onto parking spaces. However, in this specific circumstance, it is appropriate as the fact that this is a two-story office building and the existing building does not have any Dumpster area at all, according to the June 16, 2008 Zoning Location Survey. If in the future, the applicant proposes retail uses in this building, the Commission will likely require modifications to the size and location of any Dumpster enclosure area on-site.
- G. Per the Fire Marshal's comments, a fire hydrant shall be located on the sidewalk area adjacent to Boston Post Road. This shall be specifically sited to minimize any impacts or loss of existing on-street parking. The Fire Marshal shall be consulted prior to the siting of the hydrant. This will provide necessary service and shall be installed prior to the Certificate of Occupancy for the building. Alterations to the interior floor plans may be required by the Fire Marshal as part of his Zoning and Building Permit review.
- H. With the Zoning and Building Permit applications, the applicant shall submit detailed information regarding the building coverage of the proposed building including any and all

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transformers, HVAC units and other ancillary structures to be on the property to ensure that the 20% building coverage maximum is not exceeded.

- I. All utilities serving this property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring.
- J. The owner will need to make arrangements for the staging and construction process so as not to encumber any of the adjacent right-of-way or parking areas, or any on-street parking in the vicinity.
- K. The applicant shall install the drainage system as shown on the submitted June 2008 Drainage and Utility Plan referenced in Condition A, above. The applicant/property owner shall have the continuing obligation to make sure that storm water 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 of remedying the situation at their expense and as quickly as possible.
- L. All site work, including but not limited to sidewalks, access drive, curbing, paved and striped parking spaces, drainage systems, safety signage, transformer, dumpster enclosure, landscaping and other site improvements as shown on the approved plans shall be properly installed and completed prior to the use of or the issuance of a Certificate of Occupancy for any portion of the proposed building.
- M. All landscaping shall be installed per the submitted Planting & Lighting Plan referenced in Condition A, above. Any requested changes or substitutions are subject to prior action in writing by the Planning and Zoning Commission. Prior to the removal or cutting of any trees or vegetation within Town property (along the Old King's Highway South) the applicant must obtain authorization from the Town Tree Warden for work on Town property.
- N. It is incumbent upon the property owner and applicant to maintain the installed drainage system, including, but not limited to, maintenance of the underground structures, (such as inspection and clean out once every 18 months or more frequently as needed). A long-term maintenance plan for drainage shall be submitted for review and action by the Planning & Zoning Director, Town Counsel and the Department of Public Works prior to the request for the Zoning and Building Permits for the new building. Once approved, the plan shall be filed in the Darien Land Records and implemented by the applicant and future property owners.
- O. This is not a stand-alone project. It is dependent upon a joint parking area to serve the parking needs of this site. The entire joint parking area and related access must be completed and accessible prior to the use of the building. If, due to ongoing construction on the project, the entire joint parking area will not be available for use in conjunction with this building, then the applicant must submit a detailed plan to the Commission illustrating how the parking, unloading, waste management and pedestrian access will function on an interim basis. The Commission shall consider the request to temporarily modify this condition about the completion of the entire joint parking area. Depending upon the specific circumstances, the

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Commission may or may not allow use or occupancy of the building prior to the completion of all parking.

- P. A final "as-built" survey is hereby required to certify that the site improvements (including drainage and landscaping) are all in compliance with the approved plans. In addition, a Professional Engineer shall certify in writing that the required drainage work has been properly completed in accordance with the approved plans.
- Q. An as-built survey from a licensed land surveyor shall be submitted to the Planning and Zoning Office before a Certificate of Occupancy for the building is requested, or any use of the proposed building occurs. This survey shall show the building as well as the lighting, locations and elevations of all drainage and drainage-related structures, and lined parking spaces. A certification shall be submitted regarding the final building height, setbacks, building coverage, and developed site area as constructed.
- R. 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.
- S. The granting of this Business Site Plan 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, final approval from the Darien Fire Marshal; a Demolition Permit from the Building Official; a street opening permit from DPW for work within the Town right-of-way on Old King's Highway South, and a Sewer Connection Permit from Sewer Services.
- T. This permit shall be subject to the provisions of Section 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of the effective date of this action (December 20, 2009). This may be extended as per Section 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 shall be submitted to the Planning and Zoning Department within 90 days of this action or this approval shall become null and void.

NOW THEREFORE BE IT RESOLVED that ***Proposed Amendment to the Darien Zoning Regulations*** regarding Section 715 requirement #13, Maximum Developed Site Area is hereby ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 21, 2008 AT TWELVE NOON.

The approved wording for Section 715 is as follows:
New wording in bold, deletions in strikeout:

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715. Area and Bulk Requirements

The following requirements shall be deemed to be the minimum and maximum requirements in every instance of their application. Dimensions are in feet unless otherwise indicated.

1. Minimum Lot Area	½ acre (21,780 sq. ft.)
2. Minimum Lot Width	100
3. Minimum Lot Frontage	100
4. Minimum Lot Depth	150
5. Minimum Front Yard	30 (See Note a)
6. Minimum Side Yard	10 (See Note b)
7. Minimum Rear Yard	50
8. Maximum Height in Stories	2
9. Maximum Height in Feet	28
10. Maximum Building Coverage	20%
11. Minimum Off-Street Parking and Loading	(See Note c)
12. Minimum Front Landscape Depth	10
13. Maximum Developed Site Area	80% 70%
14. Minimum Setback from Any Residential or DOR Zone	50

Notes:

- a. As stated above, except no parking shall be permitted in front of any building unless the setback from the street line shall be at least 75 feet. On streets of less than 50 feet width, the front yard setback shall be measured from the center line of the street and 25 feet shall be added to the required front yard setback. See Subsection 372 for requirement where setback of existing buildings shall be greater or less than minimum requirement.
- b. As specified above, except that at least 25 feet shall be provided where the side yard furnishes vehicular access to the rear, and except that the Commission, in approving a Site Plan, may permit a building to abut a side line where it finds such shall create a better plan.
- c. Minimum Parking Setback: 10 feet from street line, five feet from side line (except where common or shared parking shall be permitted), 25 feet from a Residential Zone.