

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
June 28, 2011

Application: Proposed Amendments of Darien Zoning Regulations #2-2011,
Site Plan Application #269-A/Special Permit Application #265,
Land Filling & Regrading Application #225-A
Post Road Eleven, LLC, 1292 Boston Post Road

Street Address: 1292 Boston Post Road
Assessors Map #63 Lot #1

Name and Address of Applicant: Post Road Eleven, LLC
23 Butler's Island Road
Darien, CT 06820

Name and Address
of Property Owner(s): CB Griffith, LLC
17 Shawmut Avenue
Hudson, MA 01749

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

Activity Being Applied For: Proposing to raze the existing building, and to construct a new two-story building with associated landscaping and shared parking; and to regrade and construct a new retaining wall and perform related site development activities. Associated amendments to Darien Zoning Regulations Subsections 226, 661, and 666 are proposed, as is the creation of a new subsection 667.1. The change to subsection 226 (Design Standards for Parking) would allow high eaves to be excluded from the calculation of parking space and aisle dimensions. The change to subsection 661 (Background and Purposes in the SB Zone) is to add to the Background and Purposes subsection a statement regarding lots of less than 10,000 square feet in size. The change to subsection 666 (Area and Bulk Requirements in the SB Zone) is to add a new note "e" to the Area and Bulk requirements, which refers to subsection 667.1. A new subsection 667.1 is proposed, which is entitled, "Special Controls and Design Standards for Small Lots in Existence on January 1, 2010", and proposes to establish such special controls and design standards for certain lots of less than 10,000 square feet in size.

Subject property: The subject property is on the southeast side of Boston Post Road at the corner formed by its intersection with the northbound on ramp at interchange 11 of I-95.

Zones: Service Business (SB)

Date of Public Hearing: May 3, 2011 continued to June 7, 2011
Deliberations held on June 7, 2011

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices
Dates: April 22 & 29, 2011

Newspaper: Darien News

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Date of Action: June 28, 2011

Amendments to the Darien Zoning Regulations: ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, JULY 24, 2011 AT TWELVE NOON.

Special Permit Application #265, Site Plan Application #269-A, Land Filling & Regrading Application #225-A, Post Road Eleven, LLC, 1292 Boston Post Road.

Proposing to raze the existing building, and to construct a new two-story building with associated landscaping and shared parking; and to regrade and construct a new retaining wall and perform related site development activities. GRANTED WITH STIPULATIONS WITH AN EFFECTIVE DATE OF SUNDAY, JULY 24, 2011 AT 12:01 PM.

Scheduled Date of Publication of Action:
July 8, 2011

Newspaper: Darien News

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

1. The subject applications consists of two parts:
 - a) Zoning Regulation amendments to Subsections 226, 661, and 666 are proposed, as is the creation of a new subsection 667.1.
 - b) Proposing to raze the existing building at 1292 Boston Post Road and to construct a new two-story building with associated landscaping and shared parking; and to regrade and construct a new retaining wall and perform related site development activities.The first part of this Adopted Resolution addresses part “a” of the application.
2. In Tab 7 of the bound binder of the applicant’s submitted materials, portions of the Town Plan of Conservation & Development were submitted. The applicant notes that the proposed amendments and related development are consistent with the Town Plan.
3. The Commission finds that the proposed zoning regulation amendments are consistent with the 2006 Town Plan of Conservation & Development, as amended.

NOW THEREFORE BE IT RESOLVED that based upon the review of all of the materials and information, the Commission, acting in its legislative capacity, hereby ADOPTS WITH MODIFICATIONS the ***Proposed Amendments to the Darien Zoning Regulations*** WITH AN EFFECTIVE DATE OF SUNDAY, JULY 24, 2011 AT TWELVE NOON, as revised herein:

The approved wording is as follows:

New wording in bold, deletions in strikeout:

Add a new Note to the end of Section 226:

Eaves located higher than 16 feet above the surface of a parking lot shall not be included in the calculation of dimensions C, D, or E.

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Add the following sentence to the end of Section 661:

Development and redevelopment on lots less than 10,000 square feet in area, that existed on January 1, 2010, are allowed in accordance with special controls and design standards.

Add to 2, 3 and 4 in the chart in subsection 666:

(See Note e)

Add to the end of Notes in subsection 666:

e. Development and redevelopment on lots less than 10,000 square feet in area, that existed on January 1, 2010, and that do not meet the minimum of either lot width, frontage or lot depth set forth above shall be subject to Section 667.1.

Add new Subsection 667.1. Special Controls and Design Standards for Small Lots:

667.1. Special Controls and Design Standards for Small Lots in Existence on January 1, 2010. Development and redevelopment of lots in existence on January 1, 2010, that do not comply with the minimum lot width, frontage or lot depth requirements set forth in Section 666 shall be permitted by Special Permit, and shall be subject to Section 1000 and the following additional special controls:

- a. **The Commission may reduce the minimum setbacks, landscaping, screening and buffer areas required by Note b of Section 666 and Sections 900 to 909.2, where the Commission finds that the proposed screening and landscaping provide adequate screening from adjacent residential parcels.**
- b. **Solid fencing and/or dense evergreen vegetation shall be required along rear lot lines adjacent to or within 100 feet of residential zones.**
- c. **The Commission may reduce the minimum rear yard to not less than four feet, provided the Commission makes the following findings:**
 1. **Existing topographic features on or adjacent to the site minimize impacts on adjacent residential properties, and**
 2. **Fencing, landscaping and screening shall be sufficient to minimize impacts to adjacent residential properties.**
- d. **The Commission may allow Building Coverage up to 35 percent and Developed Site Area up to 85 percent where the property is located within 1,000 feet of the Central Business District (CBD), and the Commission finds that the proposed development shall include sufficient fencing, landscaping, screening, and site drainage to reduce impacts to abutting residential and commercial properties.**
- e. **Uses allowed in the Central Business District (CBD) may be allowed by Special Permit on property located within 1,000 feet of the CBD.**
- f. **Where the provisions of this Section 667.1 shall conflict with any other provisions of the Zoning Regulations, the provisions of this Section 667.1 shall govern.**

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The Commission has adopted the applicant's zoning regulation amendments largely as proposed, with the principal modification to the request being a change to the numbering in 667.1c and changing the words "lot coverage" changed to "building coverage" in 667.1d.

The second part of this Adopted Resolution addresses part "b" of the application—the Special Permit, Site Plan, and Land Filling and Regrading Applications for the proposed re-development of the subject property.

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

- the proposed use and activities must comply with all provisions of Sections 660 as amended, 850, 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 plans, and the statements of the applicant and applicant's representatives 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.
1. As shown on the submitted plans, the proposal is to raze the existing one-story building and construct a new two-story building with related parking and landscaping. The subject property is served by public water and sewer. The subject building at 1292 Boston Post Road was previously used as Stolfi-Fairfield electric and appliance store. The submitted architectural plans show the footprint of that building as 3,905 square feet. The submitted survey notes that the subject property is .185 acres or 8,048 square feet.
 2. The existing parking layout results in all vehicles backing into the Boston Post Road to exit the site. The Commission believes that this results in an unsafe condition. The Commission's policy is to eliminate such design as part of the redevelopment of a property. The proposed design submitted by the applicant does eliminate all backing of vehicles into Boston Post Road.
 3. The Architectural Review Board (ARB) reviewed and approved this project as part of ARB #23-2008 in September 2008. That approval is hereby incorporated by reference.
 4. A total of 10 parking spaces are proposed within the parking area, with one of those ten being reserved for handicapped-accessible parking. This parking area would be shared among the two proposed uses within the building. Under the Darien Zoning Regulations, development proposed solely within the subject application would require 24 spaces as follows:
 - a. One Space per 150 sf for 1st floor retail. 2,209 sf proposed: 15 spaces required
 - b. One space per 250 sf for 2nd floor office. 2,226 sf proposed: 9 spaces required.

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5. The applicant proposes to utilize a Joint Parking arrangement as expressly permitted by Section 905 of the Darien Zoning Regulations. Section 905 reads as follows:

“905. Joint Parking

Where two or more different uses occur on a single lot, the total amount of parking facilities to be provided shall be the sum of the requirements for each individual use on the lot, except that the Commission may approve the joint use of parking space by two or more establishments on the same or on contiguous lots, the total capacity of which space shall be less than the sum of the spaces required for each, provided:

- a. The Commission finds that the proposed capacity shall meet the intent of the requirements;*
- b. Approval of such joint use shall be automatically terminated upon the termination of the operation of any of such establishments;*
- c. Legal documentation shall be furnished establishing such rights for the duration of such joint use.*

Such shared parking arrangements shall be limited to use and shall not include shared parking by time. No parking spaces shall be reserved for any specific building tenant”

6. A Traffic Study was submitted as part of this application. Pages 5-7 of that Traffic Study reviews parking. Its conclusion is that “...the ten proposed parking spaces within the site are adequate for the specific proposed land uses at this location: an antique shop and an architect office with a maximum of five employees.” At the May 3, 2011 public hearing, it was noted by the applicant’s traffic consultant that the 10 on-site parking spaces would appear to be adequate provided there are no special events or sales that would attract extra customers. The Town hired Michael Galante of Frederick P. Clark Associates to peer review the application. In his April 13, 2011 letter, Mr. Galante notes, “It is likely that the only possible overflow of parking demand may be on a Saturday or Sunday if the antique store was to have a sale or other event. In the event of tenant(s) changes it would be appropriate for the Applicant to submit a request for change in tenant(s) and provide a parking analysis for the new use.”
7. The Commission notes the need for the applicant or property owner(s) to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
8. The submitted Landscape Screening Plan dated June 4, 2011 shows plantings both on the subject property as well as on adjacent residential properties. As described at the public hearing, the applicant has worked with the neighbors on the design and creation of this Plan. No neighbors spoke in opposition to the application at the May 3, 2011 or June 7, 2011 public hearings, although one letter with concerns was received.

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9. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000. The Commission finds that the proposed re-development of the site complies with the provisions of Section 667.1, including, but not limited to:
- the proposed screening and landscaping shall provide adequate screening from adjacent residential parcels;
 - solid fencing and dense evergreen vegetation shall be provided along rear lot line adjacent to or within 100 feet of residential zones;
 - the reduction of the minimum rear yard is due to the existing topographic features on or adjacent to the site and will minimize impacts on adjacent residential properties;
 - fencing, landscaping and screening shall be sufficient to minimize impacts to adjacent residential properties; and
 - the Building Coverage up to 35 percent and Developed Site Area up to 85 percent is allowed because the property is located within 1,000 feet of the Central Business District (CBD); and the Commission finds that the proposed development shall include sufficient fencing, landscaping, screening, and site drainage to reduce impacts to abutting residential and commercial properties.
10. The proposal conforms to the standards for approval as specified in Section 850 and Section 1005 (a) through (g) of the Darien Zoning Regulations.
11. The design, location, and specific details of the proposed use and site development, as modified and approved herein, 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.
12. The elements of the Site Plan, submitted as part of the application, AS GRANTED HEREIN, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Special Permit Application #265, Site Plan Application #269-A, Land Filling & Regrading Application #225-A, to raze the existing building, and to construct a new two-story building with associated landscaping and shared parking; and to regrade and construct a new retaining wall and perform related site development activities are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction and other site activity shall be in accordance with the following plans as submitted to and reviewed by the Commission, entitled:
- Topographic and Zoning Location Survey prepared for Post Road Eleven LLC, scale 1"=10', by William W. Seymour & Associates, dated January 9, 2008 and last revised February 2, 2011.

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- Proposed Site Plan, Post Road Eleven, LLC, 1292 Post Road, by GHD, dated February 7, 2011.
 - PG Properties, Post 11, by Carol Guthrie Landscape Design, Ltd., scale 1"=10', dated June 4, 2011.
 - Post Eleven, 1292 Boston Post Road, by Robert A. Cardello Architects, LLC, revised 2.17.11, Drawing #C-1, A-1.1 through A-1.2, A-2.0 through A-2.3.
- B. All utilities serving the 1292 Boston Post Road property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring.
- C. Since there is no new public or private road construction and no extension of public utility facilities, the Commission waives the requirement for submission of a Performance Bond.
- D. The installation of the retaining walls near the rear lot line and the stabilization of the disturbed areas are critical components of the project. This work must be completed prior to work on the building above the foundation level. Because the majority of the regrading portion of this project must be implemented prior to work on the building above the foundation level, a performance bond for the filling and regrading is hereby waived. Another critical aspect of the work is the proper installation of the fencing and landscaping plants to provide screening between this commercial property and the nearby residences. The fencing and screening landscaping shall be installed before or during the framing of the building and must be completed before the roof of the building is installed.
- E. On page 8 of the Traffic Study submitted by the applicant, it states, "The architecture firm should be limited to no more than five employees to limit their parking demand and reduce the need for more spaces." It notes that parking supply will be adequate if the proposed uses of an antique shop and five-person architecture firm are as described. The Town hired Michael Galante of Frederick P. Clark Associates to peer review the application. At the May 3, 2011 public hearing, he noted that the 10 on-site parking spaces would appear to be adequate provided there are no special events or sales that would attract extra customers. The Commission hereby limits the types of uses and numbers of workers to that which was submitted by the applicant and limits the first floor antique store tenant to no special sales or events that would attract extra customers.
- F. It is clear that the current proposed uses will have parking needs satisfied on-site. Any change of use or change of tenants shall require review and action by the Planning and Zoning Commission. If, in the future, the applicant constructs additional parking on the adjacent State property, this condition of approval may be eliminated by action of the Commission.
- G. This application does not rely upon or use the adjacent State land. The Commission strongly encourages the applicant to pursue that property for use as parking. This additional parking would certainly enable the applicant to have future flexibility regarding potential tenants and uses within the proposed building.

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- H. Because of the nature of the proposed use, the Commission hereby waives the requirement for a loading zone as authorized by Section 909 of the Darien Zoning Regulations. Any change in uses may require a loading zone in the future.
- I. The garbage bins area shown on the plans shall be neatly maintained, and the lids shall remain shut at all times that someone is not loading or unloading garbage. The property owner is responsible for maintaining this area, including ensuring that it is emptied frequently enough to minimize odors and for scheduling collection times to be sensitive to the nearby residential area.
- J. All site work, including but not limited to 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 any portion of the building and/or the issuance of a Certificate of Occupancy for that building.
- K. All landscaping shall be installed per the submitted Layout and Landscape Plan and Details Plan referenced in Condition A, above. Any changes or substitutions must be approved in writing by the Planning and Zoning Commission.
- L. Prior to any occasions when the on-site parking might not be sufficient, the Commission strongly encourages the applicant to coordinate with nearby businesses and institutions to allow staff and/or visitors to park off-site. This will help to avoid on street parking and to ensure that sufficient on-site parking exists during those events.

DURING CONSTRUCTION:

- M. 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.

DRAINAGE/STORMWATER MANAGEMENT

- N. The applicant shall install the drainage system as shown on the submitted plans. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have 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 such owner's expense and as quickly as possible.
- O. By August 28, 2011 (within the next 60 days) and prior to the issuance of a Zoning or Building Permit for the proposed construction and prior to the start of any filling or regrading work, a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by

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the two Directors, such plan shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 1292 Boston Post Road to maintain the on-site drainage facilities, and will alert future property owners of the on-site drainage facilities and the need to maintain said facilities to minimize impacts upon adjacent properties. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this approval.

- P. Prior to the issuance of a Certificate of Occupancy, a Professional Engineer shall certify in writing that the required drainage work has been properly completed in accordance with the approved plans. A final “as-built” survey is required to certify that the building, drainage, retaining walls, landscaping, regrading and all other site improvements are all in compliance with the approved plans.
- Q. Prior to a Certificate of Occupancy for any portion of the building, the applicant shall complete all common improvements for the entire building. These improvements include, but are not limited to: the drainage work and landscaping.
- R. 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. This would include, but not be limited to: approval from ConnDOT for the new curb cut on Boston Post Road; a Demolition Permit for the existing building; Darien Sewer Services approval to abandon the sewer lateral which now feeds the building. Permits from the Fire Marshal will be needed to remove any existing underground oil tanks, to install any new oil tanks, and for removal of any above-ground or underground propane tanks.
- S. 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 this permit as it deems appropriate.
- T. This permit shall be subject to the provisions of Sections 858, 1009 and 1025 of the Darien Zoning Regulations, including but not limited to implementation (i.e., the start of construction) of the approved plan within one year of this action (June 28, 2012). This approval may be extended as per Sections 858, 1009 and 1025.

All provisions and details of the plans 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. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void. All completed requirements and materials: including the drainage maintenance plan and Notice of Drainage Maintenance Plan; shall be completed and submitted to the Planning and Zoning Department within 90 days of this action; and Notice of Drainage Maintenance Plan filed in the Darien Land Records, or this approval shall become null and void.