

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 22, 2011

Application: Amendment of the Darien Zoning Map (COZM #1-2011);
Amendments to the Darien Zoning Regulations (COZR #6-2011);
Site Plan Application #280; Special Permit Application #268;
Land Filling & Regrading Application #265
Baywater 745 BPR, LLC, 745 Boston Post Road

Street Address: 745 Boston Post Road
Assessors Map #16 Lots #15 & #16

Name and Address of Property Owner(s): Baywater 745BPR, LLC
c/o 1019 Boston Post Road
Darien, CT 06820

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: Proposing to replace the existing building at 745 Boston Post Road with a new mixed use building and perform related site development activities. Zoning Regulation amendments are proposed to Sections 585, 614, 615 and 616 to permit the development as proposed. Proposed amendment of the Zoning Map would make the entire property in the DB-1 Zone.

Subject property: The subject property is on the northwest corner formed by the intersection of Academy Street and Boston Post Road.

Zones: DB-1, and R-1/3 Zones; and DBR overlay Zone

Dates of Public Hearing: September 27, 2011 continued to October 18, 2011

Time and Place: 8:00 P.M. Rooms 206 & 119 Town Hall

Publication of Hearing Notices
Dates: September 17 & 24, 2011

Newspaper: Darien News

Date of Actions: November 22, 2011

Amendments to the Darien Zoning Map (COZM #1-2011): ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011 AT TWELVE NOON.

Amendments to the Darien Zoning Regulations (COZR #6-2011): ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011 AT TWELVE NOON.

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Site Plan Application #280; Special Permit Application #268; Land Filling & Regrading Application #265, Baywater 745 BPR, LLC, 745 Boston Post Road. Proposing to replace the existing building at 745 Boston Post Road with a new mixed use building with associated parking and landscaping, and perform related site development activities. GRANTED WITH STIPULATIONS AND MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011, 2011 AT 12:01 PM.

Scheduled Date of Publication of Action:
December 2, 2011

Newspaper: Darien News

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

The subject applications consist of three parts:

- I. Zoning Map amendment
- II. Zoning Regulation amendments to Subsections 585, 614, 615 and 616 to permit the development as proposed.
- III. Proposing to raze the existing building at 745 Boston Post Road and to construct a new three-story mixed use building with associated landscaping and shared parking; and to regrade and construct a new retaining wall and perform related site development activities.

There is a related fourth part to the application:

- IV. How to address the issue of Inclusionary Zoning, including, but not limited to, the issue of whether any inclusionary unit should be constructed on-site, off-site, or a fee-in-lieu payment required.

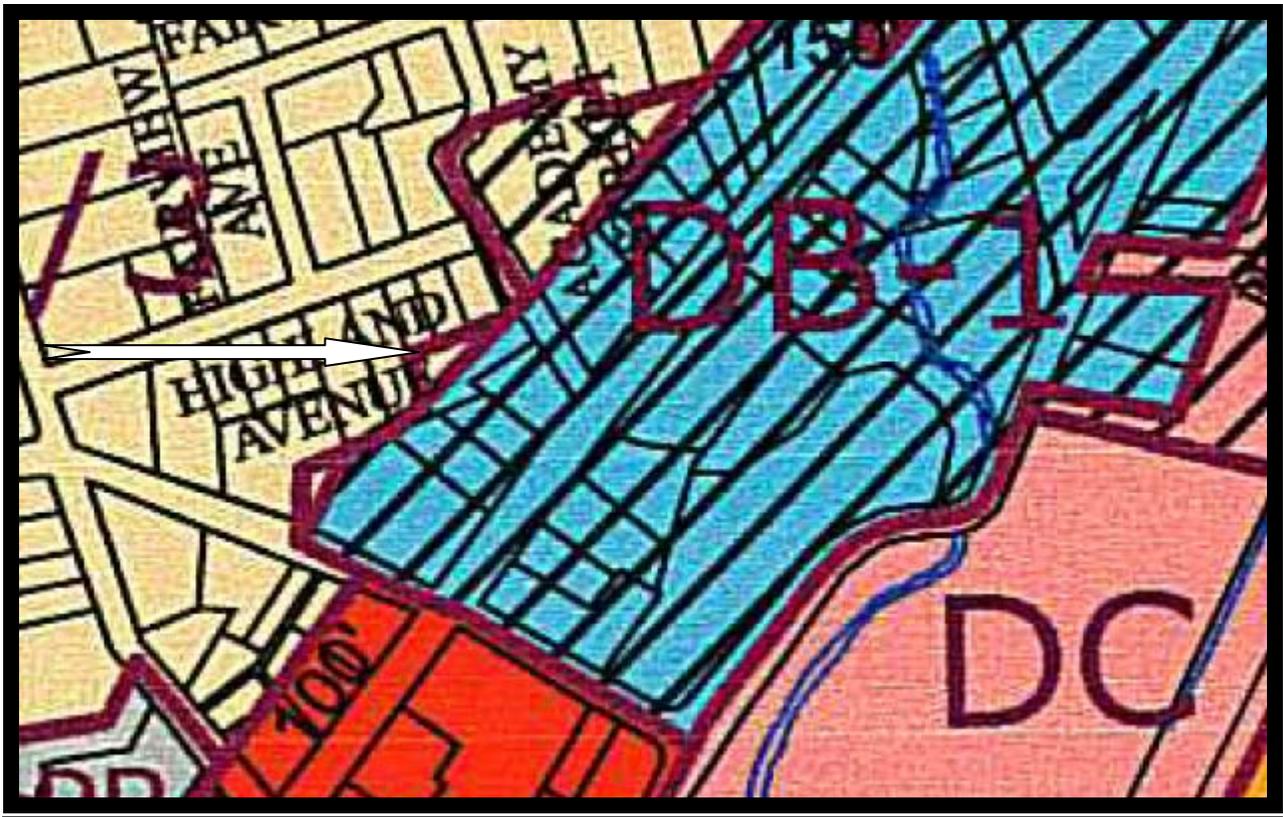
The first part of this Adopted Resolution addresses part I of the application.

One needs to note that the intent of the Zoning Map amendments and Zoning Regulation amendments is to allow the site plan submitted with the application.

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I. ZONING MAP AMENDMENT

The Applicant proposes that the boundary between the Designed Business 1 (DB-1) Zone, which bisects the property located at 745 Boston Post Road (Assessor's Map #16, Lot #15 and #16), be relocated to the northerly and westerly boundaries of the property. The attached excerpt of the Darien Zoning Map shows the area of the proposed amendment.



The Commission finds that the proposed map amendment is consistent with the Town Plan of Conservation & Development, and hereby extends the DB-1 Zone to be coincident with the current property line.

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 the *Proposed Amendment to the Darien Zoning Map* WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 18, 2011 AT TWELVE NOON:

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II. ZONING REGULATION AMENDMENTS

As noted in Tab 1 and Tab 5 of the applicant’s submitted application booklet, there are a total of seven (7) zoning regulation amendments, and they are lettered a-g within the application. Some of the proposed regulation amendments deal with building setbacks, building height, and building coverage. Proposals are to amend subsections 585, 614, 615, and 616 of the Darien Zoning Regulations, and are addressed here in the order presented in the application materials.

a. *Amend subsection f of Section 614 to read, “Dwelling units located on upper floors.”*

The Commission agrees that if in the future, the DB-1 Zone can allow residential units on a 2nd and 3rd floor, that the wording in the regulations should be changed to clarify that.

Existing wording, subsection 614f:

- f. Dwelling units located on second floor of existing building.

Deletions in strikeout, new wording in bold:

Approved wording subsection 614f:

- f. Dwelling units located on **upper floors.** ~~second floor of existing building.~~

b. *Amend Section 615 by adding “(See Note e)” to the Minimum Front Yard, and adding new Note e: “See section 615a for corner lots in the DB-1 Zone.”*

c. *Add new Section 615a: “On sites having frontage on Boston Post Road and on another street, the minimum yard from the other street shall be the minimum side yard.”*

Regulation amendment proposals b and c are related, and are relative to the treatment of setbacks for corner lots in the DB-1 Zone. The Commission believes that the proposed wording is awkward, and converts one front yard to a side yard on corner lots in the DB-1 Zone. From an administrative standpoint, it would be more logical to continue to treat corner lots in the DB-1 Zone as having two front yards, but allow modifications of those front yards by Special Permit (and/or Inclusionary Zoning incentive) subject to review and action by the Planning & Zoning Commission. Thus, while the Commission disagrees with the specific wording proposed, the wording hereby adopted by the Commission would essentially have the same effect—reducing the front yard setback along Academy Street. The Commission believes that having a reduction in front yard setback via Special Permit, allows the Commission to review any possible impacts on a case-by-case basis. In this case, the unique topography present, the elimination of the current parking spaces in the yard adjacent to Academy Street, the design of the building, along with the plaza area shown on the plans are justification for less building setback along Academy Street than would normally be required.

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Wording proposed by applicant:

- b. Amend Section 615 by adding “(See Note e)” to the Minimum Front Yard, and adding new Note e: “See section 615a for corner lots in the DB-1 Zone.”*
- c. Add new Section 615a: “On sites having frontage on Boston Post Road and on another street, the minimum yard from the other street shall be the minimum side yard.”*

Add an additional sentence at end of current Note b, this approved new wording in bold:
615 Note b:

Where the lot is a corner lot, the front yard setback on a street which is not Boston Post Road may be reduced from twenty (20) feet to ten (10) feet by Special Permit.

- d. Add new subsection f to Section 616 Special Controls: “Accessory structures shall be allowed, subject to the area and bulk requirements set forth in section 406 for the residential zone that abuts the site, provided that the Commission finds that the accessory structures do not unreasonably impact abutting residential properties. The minimum yard adjacent to parking garages shall be a minimum of three feet, provided that the Commission finds that the turning area will not unreasonably impact adjacent residential properties.”*

The proposed amendment is to be modified to assure that the parking garage is only one level high and is properly screened from the adjacent property. The Commission modifies and approves this proposed amendment.

Approved wording in bold to be added at the end of Section 616 Special Controls:

f. Accessory structures shall be allowed, subject to the area and bulk requirements set forth in section 406 for the residential zone that abuts the site, provided that the Commission finds that the accessory structures do not unreasonably impact abutting residential properties. The minimum yard adjacent to one level high parking garages shall be a minimum of three feet, provided that the Commission finds that the parking garage and turning area will be appropriately screened from, and not unreasonably impact, adjacent residential properties.

- e. Amend subsection e of Section 585 to read, “Height may be increased to allow three stories, and a maximum building height of 35 feet.”*

The Commission believes that to allow an increase of Building Height should be by Special Permit or incentive only, and not as-of-right. The Regulations currently allow 2 stories in the DB-1 Zone, with a 3rd story allowed by incentive. It is clear that the Commission must, to be consistent, specifically allow an increase in height above the 28 feet now permitted in the DB-1 Zone. When the Inclusionary Zoning Regulations were adopted, no associated height in feet standard was included. This amendment would specifically include the provision for a 25% increase. Thus, in the DB-1 Zone, one could build a 35 foot high building by making the relevant findings required in Section 585. The Commission is allowing only a maximum of 32.5 feet.

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“...the Commission determines that such incentives do not adversely affect the health, safety and welfare of the public in general, and the immediate neighborhood. In such cases, the Commission may, at the absolute discretion of the Commission, allow any or all of the following waivers, provided the Commission finds that such waiver encourages the development of below market rate housing and is consistent with the surrounding neighborhood:”

As noted in Section 585, the decision on whether to grant the incentives is the “...absolute discretion of the Commission...”

Deletions in strikeout, new wording in bold:
Approved wording at the end of Section 585 Incentives. Add a new f.

f. Height may be increased to allow up a maximum building height of 32.5 feet by Special Permit.

e. Amend Section 615, Area and Bulk Requirements by deleting item 14, Maximum Floor Area Ratios, and replacing it with a Maximum Building Coverage of 25 percent.

The Commission notes that most zoning districts in Darien regulate the building size based upon Maximum Building Coverage, rather than through Floor Area Ratio (FAR). In the DB-1 and DB-2 Zones, FAR is used because a concerted effort has been made to preserve and reuse existing residential style buildings on their existing modest size parcels. The Commission also has included wording which will reduce the incentive for accumulation or assemblage of properties and construction on larger lots, which is in keeping with the purposes of this zoning district. It continues to use FAR for larger lots, while allowing a Building Coverage standard to be used only on smaller lots (lots of .6 acres or less in size) within the DB-1 zone.

This change will possibly increase development potential on lots of .6 acres or less in size in the DB-1 zone, but not affect the larger lots, which will still use the FAR standard.

Deletions in strikeout, new wording in bold:
Existing wording Section 615:

14.Maximum Floor Area Ratios	0.40 of the first 10,000 s.f. of lot area plus 0.20 of next 20,000 s.f. of lot area 0.10 plus of all lot area over 30,000 s.f.
Approved wording in Section 615:	
14a.Maximum Floor Area Ratios (for lots of 0.6 acres in size or more)	0.40 of the first 10,000 s.f. of lot area plus 0.20 of next 20,000 s.f. of lot area 0.10 plus 0.10 of all lot area over 30,000 s.f.
14b.Maximum Building Coverage (for lots of less than 0.6 acres in size--For mixed-use and commercial projects on contiguous lots, coordinated development shall be treated as a single parcel for these properties).	25%

NOTE: THIS WILL NOT BE ENOUGH FOR THE GARAGES PROPOSED BY THE APPLICANT

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g. Amend the last sentence of Note d of Section 615 to read, “The total number of dwelling units shall not exceed 6 dwelling units on any site for the first 10,000 square feet of land area or part thereof, and one additional dwelling unit for each additional 10,000 square feet.”

While the Commission agrees that an increase from 6 dwelling units is appropriate, it does not wish to “reward” assemblage by allowing additional dwelling units based upon the size of the lot. The modified wording adopted by the Commission ties the number of units to the size of the lot, while at the same time, discouraging assemblage. The proposed amendment, as modified herein, is consistent with the more recent trend toward mixed use development in business zones.

Thus, the Commission hereby adopts alternate wording as follows:

Existing wording Section 615d:

- d. If more than 2 dwelling units, then at least 30 percent of the total number of units shall be limited to one bedroom. One additional off-street parking space per bedroom shall be required. The total number of dwelling units shall not exceed 6 dwelling units on any site.

Add new approved wording in bold to amend Section 615d:

- d. If more than 2 dwelling units, then at least 30 percent of the total number of units shall be limited to one bedroom. One additional off-street parking space per bedroom shall be required. The total number of dwelling units shall not exceed 6 dwelling units on any site **of 20,000 square feet or less, and seven (7) dwelling units on any site greater than 20,000 square feet.**

1. In Tab 3 of the bound binder of the applicant’s submitted materials, portions of the 2006 Town Plan of Conservation & Development (the “Town Plan”) were submitted. The applicant notes that the proposed amendments and related development are consistent with the Town Plan.
2. The Commission finds that the proposed zoning regulation amendments, as modified and adopted herein, 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, DECEMBER 18, 2011 AT TWELVE NOON, as revised herein:

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A) SITE PLAN/SPECIAL PERMIT/LAND FILLING & REGRADING

The THIRD part of this Adopted Resolution addresses part “C” 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 580 as amended, 610 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 redevelopment 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.

THE SUBJECT APPLICATION & PROPERTY

1. The subject application is to replace the existing building at 745 Boston Post Road with a new mixed use building and perform related site development activities. The subject property is served by public water and sewer. The Subject Property is located at the northwest corner of the intersection of the Boston Post Road and Academy Street, and is partially in the Design Business 1 (“DB-1”), currently partially in the R-1/3 Residence Zone, and entirely in the Design Business Residence (“DBR”) Overlay Zone. The parcel consists of 0.598 acres, and is served by public water and sewer.
2. The Commission notes that as explained in Section 611 of the Zoning Regulations, the DB-1 Zone is considered as a transition zone between the Central Business District (“CBD”) and the Designed Business 2 (“DB-2”) Zone.
3. The existing primary structure on the property is a two and one-half story, mixed use building. The building footprint is 7,000± square feet. An outbuilding is located at the northwestern corner of the property. The applicant proposes to demolish the existing structures and to construct a new, three-story, mixed use building with approximately three stories of 6,455± square feet of gross floor area (including elevator and stair well), and two detached garages. The project includes updated drainage, landscaping and related site development features. The first floor will consist of 6,171± square feet of professional and/or medical office space. The second and third floors will consist of four apartments each, with a total bedroom count of twelve, and total residential area of 12,910± square feet. The project includes 14 surface parking spaces and 8 garage spaces on site, and 10 additional parking spaces located at 722 Boston Post Road, for a total of 32 off-street parking spaces.

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4. The Commission notes that the subject property has a sloping topography from north to south. The highest part of the property is at elevation 77+/-, and the lowest part at elevation 59+/- . Thus, there is an 18 foot change in grade in the property.
5. The submitted plan shows a proposed retaining wall up to five and a half feet high in the rear, north side of the property. Proposed screening behind that wall and near the northern property line will improve the existing conditions, and will not have an unreasonable impact on the contiguous residential properties to the north. Two detached, four-car parking garages at the westerly portion of the project, are proposed.

PARKING/TRAFFIC

6. Currently, there are three curb cuts on the subject property, one on Boston Post Road, and two on Academy Street. As part of this application, one Academy Street curb cut and the Boston Post Road curb cut will be closed off. The existing Academy Street curb cut will be changed slightly in location, and changed to be a “right turn only” out. This is designed to preclude traffic from turning left into the residential areas to the north.
7. The property has an easement for ten existing parking spaces located at 722 Boston Post Road, which is across the Boston Post Road from, and within 500 feet of the subject property.
8. A total of 22 on-site parking spaces are proposed within the on-site parking area, with one of those ten being reserved for handicapped-accessible parking. Eight of those spaces are proposed to be garage spaces. This parking area would be shared among the various proposed (commercial and residential) uses within the building. Under the Darien Zoning Regulations, development proposed solely within the subject application would require 37 spaces as follows:
 - a. One Space per 250 sf for 1st floor office. 6,171 sf proposed (Section 904m): 24.7 spaces required.
 - b. One space per bedroom in the 2nd and 3rd floor residential units (Section 615d): Twelve (12) bedrooms, 12 parking spaces required.
9. The applicant submitted information within Tab 6 of the application booklet, and at the public hearing noting that the subject property owner has a perpetual easement together with the rights of ingress and egress for parking of ten (10) vehicles across the street at 722 Boston Post Road. It was agreed that the ten spaces across the street should be used for the first floor office employees, which would allow for most spaces on-site for visitors. While the Commission acknowledges that there is on-street parking allowed on Academy Street, which can serve as “overflow” parking, that on-street parking has not been taken into affect as part of this application.
10. Parking for the proposed uses are subject to approval by the Planning and Zoning Commission under the shared parking provisions of Section 905 of the Zoning Regulations (Joint Parking) and/or Section 580 of the Zoning Regulations (Inclusionary Zoning).

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11. 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”
12. A Traffic and Parking Assessment was submitted as part of this application. Pages 3-4 of that Traffic and Parking Assessment reviews parking. The Town hired Michael Galante of Frederick P. Clark Associates to peer review the application.
13. The Architectural Review Board (ARB) sent a letter dated September 21, 2011 with their comments on this project.
14. The Darien Fire Marshal sent comments dated September 1, 2011. These included five comments:
- 1) Provide a fire hydrant on Academy Street near the entry drive;
 - 2) Verify that there is adequate turning radius for the driveway;
 - 3) Provide proper access to rescue windows;
 - 4) Site any plantings in the field with the Fire Marshal;
 - 5) Provide normal and emergency lighting for the exterior egress.

BUILDING HEIGHT

15. Sheet A2.01 of the submitted architectural plans show that the proposed building will have a flat roof with a parapet wall surrounding it to screen all HVAC units. The top of the flat roof is 34.6 feet above the average finished grade around the building. The Commission believes that in conjunction with the front of the building being twenty feet from the Boston Post Road, and the waivers being granted herein to allow the building to be closer to Academy Street, that a building height of 32.5 feet would be more appropriate and more compatible with the neighborhood. The Commission is willing to grant this waiver in part because of the colonial style of the proposed building, the courtyard design adjacent to Academy Street, and the topography of this lot. This building height increase could be in the form of a building with a flat roof 32.5 feet above the

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average finished grade around the building, with a parapet wall surrounding any HVAC units on the roof.

16. The Commission hereby makes a finding under Section 616f of the Zoning Regulations that “the accessory structures do not unreasonably impact abutting residential properties, and that the parking garages and turning area will not unreasonably impact adjacent residential properties.

STORMWATER MANAGEMENT

17. 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.

INCLUSIONARY ZONING

18. This Application is made under Section 580, Inclusionary Zoning. The required number of below market rate unit will be 1.09. If the requested map and regulation amendments are approved, the project will involve one incentive dwelling unit. The incentives under Section 585 are shown on the Zoning Chart that accompanies the site development plan.
19. Inclusionary Incentives granted as part of this application:
Under Section 585, the Commission has the discretion to grant waivers, provided the Commission finds that such waiver encourages the development of below market rate housing and is consistent with the surrounding neighborhood. The Commission hereby makes that finding, and grants the following incentives:
- a. Recreational or open space requirements may be reduced.
No waiver requested or granted.
 - b. Minimum yard requirements may be reduced.
The Commission grants a front yard setback reduction on Academy Street. A Special Permit has been granted to reduce the Academy Street front yard setback from 20 feet to 10 feet. A further 25% reduction from 10 feet to 7.5 feet has been granted via inclusionary incentive.
 - c. Maximum building coverage requirements may be increased.
The Commission grants a 25% increase in building coverage from 25% to 31.25%.
 - d. Parking requirements may be reduced.
The Commission does not reduce or provide a waiver for any of the parking requirements in Section 580, but rather, has found that parking is adequate under a shared parking agreement as allowed in Section 905.
 - e. Height may be increased to allow three stories.
The Commission hereby approves a height of three stories as noted above.
And as part of this approval, a new letter f was added:
 - f. Height may be increased to allow up a maximum building height of 32.5 feet.
The Commission hereby approves a maximum building height of 32.5 feet (this includes the inclusionary incentive).

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20. This application has invoked Section 580—Inclusionary Zoning, as the applicant has proposed more than five dwelling units.
21. As noted within the application materials, the proposal has a below market rate requirement of 1.09, based upon the calculations in Section 583 of the Darien Zoning Regulations. Thus the Commission has several options, but prefers:
 - A) Take a fee-in-lieu payment for the entire 1.09; or
 - B) Create 1 unit and take a fee-in-lieu for the .09.
 - B1) create the 1 unit on-site; or
 - B2) create the 1 unit off-site
22. It is up to the Commission to determine how this will be addressed. The Commission's decision on the inclusionary zoning unit is on the last page of this Resolution.

REQUIRED SPECIAL PERMIT AND INCLUSIONARY ZONING FINDINGS

23. The Special Permits approved herein include: a) the reduction of front yard setback from Academy Street from 20 feet down to 10 feet under Section 615b; b) dwelling units on upper floors under Section 614f; and c) the business and professional office use containing more than 3,000 square feet of gross office space under Section 614e. The Commission is NOT approving a medical office use under Section 614e as part of this application request. Any such request for a medical office must be made subsequently, when further details about the specific medical office is known.
24. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
25. The proposal conforms to the standards for approval as specified in Section 850 and Section 1005 (a) through (g) of the Darien Zoning Regulations.
26. 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.
27. The elements of the Site Plan, submitted as part of the application, **AS GRANTED WITH STIPULATIONS AND MODIFICATIONS 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 Site Plan Application #280, Special Permit Application #268, Land Filling & Grading Application #265, to replace the existing building at 745 Boston Post Road with a new mixed use building with associated landscaping and shared parking and perform related site development activities are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

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- A. Construction and other site activity shall be in accordance with the following plans as submitted to and reviewed by the Commission, as required to be modified herein, entitled:
- Site Development Plan depicting 745 Boston Post Road prepared for Baywater 745 BPR, LLC, by Redniss & Mead, dated August 12, 2011 (received Oct 14 2011), Drawing No. SDP.
 - Grading and Utility Plan depicting 745 Boston Post Road prepared for Baywater 745 BPR, LLC, by Redniss & Mead, dated October 14, 2011, Drawing No. SE-1.
 - Sediment & Erosion Control Plan depicting 745 Boston Post Road prepared for Baywater 745 BPR, LLC, by Redniss & Mead, dated October 14, 2011, Drawing No. SE-2.
 - Notes & Details depicting 745 Boston Post Road prepared for Baywater 745 BPR, LLC, by Redniss & Mead, dated October 14, 2011, Drawing No. SE-3.
 - 745 Post Road by Beinfield Architecture PC (Layouts and Elevations), dated 08-15-11, Sheet A1.01 through A1.06 and Sheets A2.01 and A2.02.
 - Stormwater Quality Improvement Measures, 745 Boston Post Road, by Redniss & Mead, dated 10/14/2011.(showing details of permeable pavers and vegetated bio-swale).
 - Landscape Plan, 745 Boston Post Road, by Environmental Land Solutions, LLC, scale 1"=20', dated 8/15/11, Drawing No. LP.1.
- B. In order to address the comments and concerns of the Fire Marshal, the applicant shall:
- 1) Provide a fire hydrant on Academy Street near the entry drive;
 - 2) Verify that there is adequate turning radius for the driveway;
 - 3) Provide proper access to rescue windows;
 - 4) Site any plantings in the field with the Fire Marshal;
 - 5) Provide normal and emergency lighting for the exterior egress.
- C. All utilities serving the 745 Boston Post Road property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring.
- D. 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.
- E. 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 landscaping plants to provide screening between this commercial property and the nearby residences to the north. The 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.

PARKING AND LOADING

- F. It is clear that the current proposed uses of business and professional office on the first floor and residential use of the upper floors will have parking needs satisfied in combination with the use of the parking across the street at 722 Boston Post Road. Those spaces across the street shall be

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used by employees of the 745 Boston Post Road office use(s). This will allow the on-site parking to be used by the office tenants for visitors/clients.

- G. Any change of use or change of tenants shall require review and action by the Planning and Zoning Commission. This would include a change from a business and professional office to a medical office.
- H. 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.
- I. Due to limited parking, a provision shall be filed in the Darien Land Records or in the leases of each apartment/condominium, stating that any detached parking garage must be used for vehicle parking and cannot be used for other purposes. Any parking garages constructed shall be set aside for residential uses on the property.
- J. 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.
- K. A snow removal plan shall be prepared by the applicant and filed with the Planning and Zoning Department. That plan shall address how to handle snow during large snowstorms (those of six inches or more within 24 hours).

DURING CONSTRUCTION:

- L. 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

- M. 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.
- N. By January 22, 2012 (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

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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 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 745 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.

- O. The Dumpster 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.
- P. 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.
- Q. All landscaping shall be installed per the submitted Landscape Plan referenced in Condition A, above. Any changes or substitutions must be approved in writing by the Planning and Zoning Commission.
- R. 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.
- S. 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.
- T. 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: possible Encroachment Permit from ConnDOT to eliminate the existing curb cut on Boston Post Road and to install new sidewalks and curbs (as noted in Mr. Galante's September 21, 2011 letter); a Demolition Permit for the existing building; and Street Opening Permit for the new driveway on Academy Street. 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.

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- U. 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.
- V. 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 (November 22, 2012). This approval may be extended as per Sections 858, 1009 and 1025.

All provisions and details of the plans, as required to be revised herein, 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.

IV. INCLUSIONARY ZONING ISSUES

The Commission finds that in this specific instance, it is in the best interests to take the fee-in-lieu payment, rather than having one unit constructed on site. This is for the following reasons:

- a. Since the calculation per Section 583 and 585 requires a below market rate requirement of 1.09, even if a unit was built on-site or off-site, there would still be a payment of the .09 unit (or \$23,850+/-).
- b. As noted in the resolution above, the Commission's options are as follows:
 - A) Take a fee-in-lieu payment for the entire 1.09; or
 - B) Create 1 unit and take a fee-in-lieu for the .09.
 - B1) create the 1 unit on-site; or
 - B2) create the 1 unit off-site
- c. At the public hearing, the applicant represented that to take the entire 1.09 obligation as a fee-in-lieu would result in \$362,234.25, which would be in the form of a cash payment to the Town of Darien.
- d. The specific calculation of the 1.09 below market rate requirement is shown on the Site Development Plan, Drawing No. SDP.
- e. The Commission notes that this is the second inclusionary zoning project approved. The first was at 23-33 Tokeneke Road, where the inclusionary units were constructed on-site. In this case, because the amount of money involved \$362,234.25, the Commission believes that there should be a fee-in-lieu payment in this case, since this amount of money is more likely to be able to be used on affordable housing somewhere in Town much sooner than that much smaller amount of \$23,850+/-.
- f. The applicant shall make payment per the requirements of the Darien Zoning Regulations, and the applicable provisions of the Connecticut General Statutes.