

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 28, 2020

Application Number: Proposed Amendment to the Darien Zoning Regulations (COZR #3-2020)
Business Site Plan Application #225-B
Special Permit Application #312

Street Address: 1897 Boston Post Road
Assessor's Map #42 Lot #6

Name and Address of Applicant and Property Owner(s): 1897 Post Road, LLC
c/o Jon Vaccaro
48 Ring's End Road
Darien, CT 06820

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

Activity Being Applied For: Proposal to amend Section 786.13 of the Darien Zoning Regulations to increase the maximum floor area of dwelling units in the Neighborhood Business (NB) Zone from 1,000 square feet to 1,200 square feet; and to amend Section 787(d) to allow for dwelling units to be located on third floors as an inclusionary zoning incentive under Section 585 of the Regulations.

Proposal to expand the footprint and floor area of the first floor of the existing commercial building, and to add new apartments on a new second floor and partial third floor; reconfigure parking; add landscaping; and to perform related site development activities.

Property Location: The 0.49+/- acre subject property is located on the north side of Boston Post Road at the northwest corner formed by its intersection with Dickinson Road.

Zone: Neighborhood Business (NB) Zone.

Dates of Public Hearing: July 7 & 14, 2020
Deliberations Held: July 14, 2020

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

Publication of Hearing Notices
Dates: June 25 & July 2, 2020 Newspaper: Darien Times

Date of Actions: July 28, 2020

ZONING REGULATION AMENDMENTS:

ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, AUGUST 23, 2020 AT 12:01 P.M.

SITE PLAN APPLICATION / SPECIAL PERMIT APPLICATION:
APPROVED WITH CONDITIONS

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WITH AN EFFECTIVE DATE OF SUNDAY, AUGUST 23, 2020 AT 12:05 P.M.

Scheduled Date of Publication of Actions: Newspaper: Darien Times
August 6, 2020

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

- the proposed use and activities must comply with all provisions of Sections 780, 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'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:

ZONING REGULATION AMENDMENT PROPOSALS

1. The proposal is to amend Section 786.13 of the Darien Zoning Regulations to increase the maximum floor area of dwelling units in the Neighborhood Business (NB) Zone from 1,000 square feet to 1,200 square feet; and to amend Section 787(d) to allow for dwelling units to be located on third floors as an inclusionary zoning incentive under Section 585 of the Regulations. The Commission finds that this increase is in line the maximum floor areas allowed in other zones in which apartments are allowed on upper floors of mixed-use buildings.
2. The proposed additional sentence added to the Regulations (*Dwelling units located on the third floor of a building shall be deemed "incentive units" for purposes of Section 585, provided that the use of the second floor shall be limited to dwelling units*), allows dwelling units to be located on third floors, as inclusionary zoning incentive under Section 585. The current version of Section 585 does not clearly specify what would qualify as an incentive unit in the NB Zone. That section provides for an increase in density. However, in the NB Zone, not more than six dwelling units are permitted on any site, regardless of the lot area. (Section 787(d)) This limit is not likely to be reached in the NB Zone due to the size of the individual lots, and the limited buildable areas on lots that extend beyond the zone boundary.
3. Allowing third floor apartments would trigger the 25-percent affordable requirement, and require dwelling units on the second floor. Also, unless a project contains a total of at least five units, the third floor incentive would not apply, as Section 585 applies only to projects that are subject to Section 580, which means that the project must include five or more dwelling units. This is substantially more consistent with the objective of Inclusionary Zoning, which is *"intended to encourage the development of below market rate dwelling units within the Town of Darien, consistent with Section 8-2(i) of the General Statutes of Connecticut."* (Section 581)

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AREAS AFFECTED BY ZONING AMENDMENT PROPOSALS

4. The proposed amendments would apply only to the NB Zone. There are two NB Zones in Darien – one is a 5.5+/- acre area along Boston Post Road in Noroton between Dickinson Road and Noroton Avenue. The second area is a 2.5+/- acre area along Tokeneke Road between Cliff Avenue and the Darien/Norwalk Town Line. The total area of the properties that are all or partially in the NB Zone is 6.26 acres. The lot areas range from 0.04 acres at 6 Rings End Road, to 0.73 acres at 1950 Boston Post Road in the Noroton area, 0.11 acres at 282 Tokeneke Road to 0.70 acres at 285 Tokeneke Road. The Applicant’s property at 1897 Boston Post Road is 0.4934± acres.
5. Given the relatively small lot areas in the NB Zone, the limited depth of the NB Zone portion of most properties, and the off-street parking, landscape buffer, rear yard and parking lot setback requirements, adopting the proposed amendments would not result in large-scale developments. The Commission finds that all new commercial development in the NB Zone requires special permit approval, which allows the Commission to review projects on a case-by-case basis, to ensure that they would not present unacceptable impacts on neighboring properties.
6. The Commission notes that the proposed zoning amendment application was referred to the City of Norwalk, with no comments received from the City.

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 Maintain Residential Character and to Diversify Darien’s Housing Portfolio.
 1. Seek to provide for a range of housing types and densities to meet a broad array of housing needs.
 2. Evaluate and consider eliminating size restrictions for multi-family units and rely instead on building size and bulk standards.
 3. To accommodate the needs of an aging population, the POCD states that Darien may consider allowing additional multi-family units in appropriate places and configurations to address potential future needs.
 - b. Policies to Guide Business and Economic Development.
 1. The quality of residential life in such a community is enhanced by well-planned commercial uses within the Town.
 2. Continue to encourage business and economic development to provide jobs, provide goods and services, and enhance the tax base.
 3. Continue to encourage vibrant commercial areas.

BUSINESS SITE PLAN AND SPECIAL PERMIT APPLICATION PROPOSALS

8. The proposal is to expand the footprint and floor area of the first floor of the existing commercial building, and to add new apartments on a new second floor and partial third floor; reconfigure parking; add landscaping; and to perform related site development activities.

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9. The existing 3,000+/- square foot building on the site was constructed in the late 1960s, and has been used as a retail bank branch for most of its history. The most recent use of the building was as a retail tile store and a bank ATM. Access to the site is now through a one-way entrance drive from Dickinson Road, circulating in a counterclockwise direction to a one-way exit onto Boston Post Road.
10. The Applicant proposes to keep the first floor masonry walls of the existing building and add new structural framing to support a second and, partial third floor addition above, and to construct a new 20' x 60' addition with basement along the easterly side of the building. The completed mixed-use building will contain one or two retail (commercial sales and service) tenants on the first floor, and three one-bedroom apartments and two two-bedroom apartments on the second floor and partial third floor. The existing drive-up teller canopy is proposed to be removed. The one-way entrance from Dickinson Road is proposed to be shifted to the north, perpendicular to Dickinson Road, with the driveway exit still on the Boston Post Road.
11. With five proposed new dwelling units, the project is subject to Section 580 of the Regulations, which requires a minimum of 12 percent of the units be set aside as affordable units, subject to income eligibility and maximum rent based on 80 percent of the State Median Income (SMI) for the State of Connecticut. One of the one-bedroom apartments is proposed to be designated as a deed-restricted affordable unit as part of the project.
12. The apartment sizes will vary from 732 to 1,156 square feet for the one-bedroom units, and 1,175 and 1,197 square feet for the two-bedroom units.
13. A "Model Block" sidewalk design presently exists along the front of the property. No changes are proposed to the "Model Block" features with direct frontage on the Boston Post Road. Currently, the Model Block features do not extend onto Dickinson Road, and the Commission finds that such Model Block features on Dickinson Road in this location are not required.
14. Several member of the public spoke during the public hearing on the application with concerns about landscaping and screening, the scale and density of the proposal, parking, traffic, and safety, and the provision of affordable housing. Mr. McDonald of 39 Dickinson Road submitted a letter for the record detailing his concerns dated July 7, 2020. Mr. Murphy of 34 Dickinson Road submitted a letter for the record detailing his concerns dated July 10, 2020. Several additional emails/letters were submitted for the record in support of the proposal.

LOCAL REVIEWS AND APPROVALS

15. The Architectural Review Board (ARB) reviewed the architectural plans for the site at their meeting on May 27, 2020 as part of ARB #10-2020, 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.
16. On June 24, 2020, Bob Buch, the Darien Fire Marshal noted in his comments that "the building is required to have a fire sprinkler system".

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17. On June 10, 2020 The Western Connecticut Council of Governments (WestCOG) submitted comments on the application for the record. WestCOG wrote, “The opinion of WestCOG staff is that the proposal is of local interest and with minimal inter-municipal impact”.

LANDSCAPING, SCREENING & LIGHTING

18. The landscape plan for the site includes a variety of evergreen and deciduous trees, as well as bushes/shrubbery throughout the property. A row of fast-growing Thuja Green Giant are proposed along the rear of the site on the shared property line with 34 Dickinson Road. These trees will replace the existing hemlocks. The Commission finds that the twelve (12) new 8-9 foot high Thuja Green Giant and other plantings will enhance the existing screening and provide a suitable buffer between the proposed use and adjoining residential properties.
19. The McCool Landscape Design last revised 6-26-20 shows a six-foot high solid panel fence will also remain on the north side of the site to provide additional separation of the parking area from the nearby single-family residential neighbors.
20. Lighting of the parking lot will include a combination of free standing (pole) and on-building lighting fixtures, which will provide a solid cutoff to prevent glare toward the residential neighbors. No light spillage beyond the property lines is anticipated.
21. As shown on the Landtech plan sheet C-1, a screened dumpster enclosure will be located along the northwesterly boundary of the site, near the current dumpster location.
22. The rooftop mechanical equipment will be located on a flat roof surface behind, and fully screened by, the upper portion of the roof, such that the mechanicals will not protrude above the 35-foot ridge of the building.
23. The Commission finds that the existing/proposed parking areas along the northerly and westerly property boundaries are within the current 25-foot buffer required by Section 944 of the Regulations. The applicant has requested that the parking be allowed to remain in place, except for minor adjustments necessary to meet the current parking space and aisle dimension requirements of the Regulations. The Commission finds that the existing and proposed landscaping along the northerly boundary, will provide adequate screening from the residential property to the north.

STORMWATER MANAGEMENT

24. The submitted Zoning Location Survey shows a reduction in impervious surface on-site of 330+/- square feet. The Commission finds that the proposed redevelopment of the site will result in an overall reduction in developed site area (impervious surface) and thus no drainage improvements are required or necessary for the site.
25. The Commission finds that if implemented pursuant to the submitted plans, the proposed site development plans will have no adverse impacts to adjoining property owners or downstream drainage systems.
26. Site Plan Sheet C-1 shows how the new building addition will connect to catch basins on-site.

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PARKING AND CIRCULATION AND LOADING

27. The Commission finds that based on the combined commercial square footage and number of residential bedrooms, a total of 25 parking spaces are required for the project by Section 904 of the Regulations. The applicant has requested that the on-site parking space requirement be reduced by one space. This request does not account for allowed reductions based on inclusionary zoning incentives (Section 585 of the Regulations) or the shared parking regulations in Section 905.
28. Milone & Macbroom submitted a parking assessment report for the record on May 27, 2020. That report concludes that the proposed land uses have compatible time-of-day parking demand patterns such that there are multiple uses of spaces by more than one land use. Some spaces will be used during the day by the commercial uses on site and then those same spaces will be used by the on-site residential uses at night. Based on this study, the Commission finds that 24 parking spaces will be adequate to serve the proposed use.
29. Angled parking spaces are proposed along the northerly and westerly property boundaries, with parallel parking proposed along the northerly and westerly walls of the building. One handicapped accessible space is proposed on the south western portion of the site. One-way counterclockwise circulation is proposed to remain.
30. The applicant has requested a waiver of the loading space requirement for the site. The Commission notes that the site has not had a loading space in the past and in light of the continued commercial sales and service uses that the building is intended for, the Commission finds that a loading space is not necessary.

SITE PLAN AND SPECIAL PERMIT FINDINGS

31. 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.
32. 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.
33. 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.
34. The plan has been reviewed by the Commission and is in general compliance with the intent, purposes and objectives of Section 1020.
35. 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

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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 #3-2020) is hereby adopted subject to the foregoing and following modifications and understandings:

NEW WORDING UNDERLINED. DELETED WORDING IN STRIKEOUT:
(Table of Contents and Appendix C of the Zoning Regulations to be amended accordingly.)

A. The Commission hereby amends Section 786, Area and Bulk Requirements, of the Zoning Regulations as follows:

13. Maximum Floor Area of each Dwelling Unit	1,000 <u>1,200</u> sq. ft. (See Note <u>Section</u> 787 d.)
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B. The Commission hereby amends Section 787(d), Special Controls, of the Zoning Regulations as follows:

- d. If more than two dwelling units, than at least 30% of the total number of units shall be limited to one bedroom. One off-street parking space per bedroom shall be required. The off-street parking space must be located within the Neighborhood Business Zone and not within the required buffer area or adjacent residential zone. The total number of dwelling units shall not exceed six dwelling units on any site. Dwelling units located on the third floor of a building shall be deemed “incentive units” for purposes of Section 585, provided that the use of the second floor shall be limited to dwelling units.

These zoning regulation amendments shall take effect on Sunday, August 23, 2020 at 12:01 p.m.

NOW THEREFORE BE IT RESOLVED that Business Site Plan Application #225-B and Special Permit Application #312 are hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

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

SURVEY

- Zoning Location Survey Depicting Proposed Conditions, Prepared for 1897 Post Road, LLC, 1897 Boston Post Road by William W. Seymour & Associates, P.C., dated May 18, 2020.

ENGINEERING PLANS

Plans generally titled ‘Proposed Improvements for a Proposed Building, Addition & Driveway, 1897 Post Road, LLC, 1897 Boston Post Road’, Prepared by LandTech, dated May 11, 2020:

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- Sheet C-1, Site Plan;
- Sheet C-2, Soil and Sediment Control Plan;
- Sheet C-3, Notes and Details;
- Sheet L-1, Lighting Plan.

LANDSCAPE PLAN

- Landscape Design, 1897 Post Road, LLC, 1897 Boston Post Road, Prepared by Ungemack-McCool Landscape Associates, dated April 24, 2020, last revised June 26, 2020.

ARCHITECTURAL PLANS

Plans generally titled '1897 Boston Post Road, ARB Submittal', Prepared by James Schettino Architects, dated March 31, 2020, last revised May 6, 2020:

- Sheet A0.1, Title Sheet;
- Sheet A2.1, Foundation Plan;
- Sheet A2.2, First Floor Plan
- Sheet A2.3, Second Floor Plan;
- Sheet A2.4, Attic Plan;
- Sheet A3.1, Roof Plan;
- Sheet A5.1, Front and Left Elevations;
- Sheet A5.2, Rear and Right Elevations;
- Sheet A5.3, Perspective Views;
- Sheet A6.1, Building Sections.

The interior architectural floor 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.

- D. All utilities serving this property shall be underground. These include, but are not limited to, electrical, telephone, cable TV, and all other wiring.

SEDIMENT & EROSION CONTROLS

- E. 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 required 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 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.

PARKING & LOADING

- F. The Commission hereby reduces the total parking required for the site by one parking space in accordance with Section 585 of the Regulations. The final location and number of handicapped accessible parking spaces shall be determined by the Darien Building Official.

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G. The Commission hereby waives the requirement for a loading space on the site.

STORMWATER MANAGEMENT

H. 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.

PLANTINGS

- I. Substitutions may be made by the applicant on “decorative” plantings with prior written approval of the Planning & Zoning Director. The Thuja Green Giant along the northern property line, as shown on the revised landscape plans, dated June 26, 2020, shall remain as proposed.
- J. The applicant shall ensure the viability and health of the plantings on the northern portion of the site along the shared property line with 34 Dickinson Road for one (1) year. Any plantings not maintained in a vigorous growing condition through this period shall be replaced with new plantings at the beginning of the next immediately following growing season.

AS-BUILTS AND CERTIFICATIONS REQUIRED

- K. Prior to the issuance of a Certificate of Occupancy (CO), the applicant shall submit the following:
1. An as-built photometric plan (including, but not limited to, showing the location of the on-site lighting), is required to ensure that the property is developed according to plan and does not create impacts from lighting to surrounding neighboring properties. Adjustments of the light fixture orientation and shielding shall be made as needed to protect the residential neighbors from light spillage and/or glare.
 2. Verification from the project engineer that all aspects of the building construction and site development have been completed in compliance with the approved plans.
 3. Verification from the landscape designer that the landscaping has been installed pursuant to the approved plans.
 4. Deed-restriction on the one affordable unit shall be filed in the Darien Land Records.
 5. As-built survey showing that the building complies with Building Height and setbacks and coverage.
- L. 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 includes, but is not limited to the requirement for Zoning and Building Permit applications. The Building Department may require a Demolition Permit or Dismantling Permit, due to the amount of the building to be removed. A Street Opening Permit from the Department of Public Works is required for the proposed relocation of the driveway on Dickinson Road, and possibly for drainage connections. A State of CT DOT permit may be needed. Future commercial tenant(s) will require review and action by the Planning & Zoning Commission. New signage for the commercial uses will require review by the Architectural Review Board.

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- M. 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.
- N. This permit shall be subject to the provisions of Sections 1009 and 1025 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (July 28, 2021). This approval may be extended as per Sections 1009 and 1025.

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 60 days of this action or this approval shall become null and void. A Special Permit form must be filed prior to the issuance of a Zoning or Building Permit.