



**TOWN OF DARIEN
PLANNING AND ZONING COMMISSION
APPLICATION FORM**

RECEIVED

FEB 26 2019
TOWN OF DARIEN
PLANNING & ZONING

Application is hereby submitted for approval in accordance with the following Sections of the Darien Zoning Regulations (check all that apply).

- | | |
|---|---|
| <input type="checkbox"/> Section 810 Coastal Site Plan Review | <input type="checkbox"/> Section 1000 Special Permit Requirements |
| <input type="checkbox"/> Section 820 Flood Damage Prevention | <input type="checkbox"/> Section 1020 Site Plan Requirements |
| <input type="checkbox"/> Section 850 Land Filling, Excavation
and Earth Removal | <input type="checkbox"/> Section 1051 Protected Town Landmarks |
| <input checked="" type="checkbox"/> Section 1110 Change of Zoning Regulations and/or Zoning Map | <input type="checkbox"/> Subdivision Application |
| <input type="checkbox"/> Other (specify) _____ | |

Property Location:

Street Address: 77 Leroy Avenue

Assessor's Map(s) # 74 as Lot(s) # 1&2

Subject property is situated on the west side of Leroy Avenue (street)
approximately -0- feet southwest from the corner formed by the intersection of
Leroy Avenue and West Avenue (streets).

Zoning District(s): LW & R-1/5 Size of Site: 20,377± square feet, 0.468± acres

The subject property is is not as a result of this project will become tied into the Town sanitary sewer system.

The subject property is is not as a result of this project will become tied into the public water system (Aquarion Water Co.).

The subject property is is not within 500 feet of an adjoining municipality.

Applicant:

Name: Pemberton 16, LLC

Address: 177 Golden Pond Lane
Fairfield, CT 06824

Phone #: _____

E-mail address: _____

Signature: Authorization Letter

Property Owner:

Name: Pemberton 16, LLC

Address: 177 Golden Pond Lane
Fairfield, CT 06824

Phone #: _____

E-mail address: _____

Signature: Authorization Letter

DARIEN PLANNING AND ZONING COMMISSION
ZONING APPLICATION FORM
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Representative or Contact Person (to whom all correspondence shall be addressed)

Name: Robert F. Maslan, Jr., Esq.

Company/Firm: Maslan Associates PC

Phone #: 203-656-3800

Address: 30 Old Kings Highway South

Darien, CT 06820

Email address: RMaslan@maslanlaw.com

Signature: 

Summary of proposed activity and development:

The Applicant petitions the Planning and Zoning Commission to amend Section 590 of the Zoning

Regulations by adding a new Section 597, as set forth in the Narrative.

(A more detailed explanation should be attached to this application).

Application Fee of \$560.00

See Appendix B - Schedule of Fees of Darien Zoning Regulations.
Make checks payable to the "Town of Darien". Cash is not accepted.

See requirements under Section 1040 for the applicant's responsibility regarding notification of nearby property owners.

Unless specifically waived in advance and in writing by the Planning & Zoning Director, all required materials must be submitted as part of this application:

For Business Site Plan applications under Section 1020:

See Section 1020 of the Darien Zoning Regulations

For Subdivision Applications see the Darien Subdivision Regulations

DARIEN PLANNING AND ZONING COMMISSION
 ZONING APPLICATION FORM
 PAGE 3 OF 3

The following information is required:

*Development Plan(s) completed in accordance with "Site Plan Checklist" –
 Twelve (12) Sets of Plans including:*

	<u>Submitted</u>	<u>Waived</u>
Existing Conditions based on "A-2" Survey	<input type="checkbox"/>	<input type="checkbox"/>
Site Development Plan	<input type="checkbox"/>	<input type="checkbox"/>
Grading and Storm Drainage Management Plan	<input type="checkbox"/>	<input type="checkbox"/>
Computations and Analysis of Stormwater Runoff	<input type="checkbox"/>	<input type="checkbox"/>
Landscaping Plan	<input type="checkbox"/>	<input type="checkbox"/>
Architectural Floor Plans and Elevations	<input type="checkbox"/>	<input type="checkbox"/>
Utility Plans	<input type="checkbox"/>	<input type="checkbox"/>
Chart or Table of Zoning Data	<input type="checkbox"/>	<input type="checkbox"/>
Soil Erosion and Sedimentation Control Plan	<input type="checkbox"/>	<input type="checkbox"/>
Staging or Phasing Plan	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> <i>For Coastal Site Plan Reviews under Section 810 of the Zoning Regulations:</i>		
Base Map showing regulated area(s)	<input type="checkbox"/>	<input type="checkbox"/>
Environmental Assessment Report	<input type="checkbox"/>	<input type="checkbox"/>
Review of CAM policies & goals	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> <i>For Flood Damage Prevention Applications under Section 820 of the Zoning Regulations:</i>		
Base Map of Flood Zones and Elevations	<input type="checkbox"/>	<input type="checkbox"/>
Architectural Floor Plans including elevation of each floor level within the structure	<input type="checkbox"/>	<input type="checkbox"/>
Engineering Report and certification regarding impact on flood conditions	<input type="checkbox"/>	<input type="checkbox"/>
Engineering Report and certification regarding structural stability	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> <i>For Land Filling & Regrading Applications under Section 850 of the Zoning Regulations:</i>		
Detailed Plans of Existing and Proposed Conditions	<input type="checkbox"/>	<input type="checkbox"/>
Report Detailing Operation methods, and Evaluating Impacts	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> <i>For Special Permit Applications under Section 1000 of the Zoning Regulations:</i>		
Detailed Statement of Existing & Proposed Uses	<input type="checkbox"/>	<input type="checkbox"/>
Traffic Report addressing Trip Generation, Traffic Movement and Parking Requirements	<input type="checkbox"/>	<input type="checkbox"/>

**APPLICATION OF
PEMBERTON 16, LLC
77 LEROY AVENUE**

February 8, 2019

APPLICATION INDEX

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PETITION OF
PEMBERTON 16, LLC
77 LEROY AVENUE

February 8, 2019

NARRATIVE

The Applicant, Pemberton 16, LLC (“Pemberton”), is the Declarant of the age-restricted condominium development located at 77 Leroy Avenue, and currently owns the 11 market rate condominium units. As such, Pemberton has control over the management of the condominium.

Pemberton petitions the Planning and Zoning Commission to amend Section 590 of the Darien Zoning Regulations by adding a new Section 597. The purpose of the proposed text is to set forth an age restriction that is in compliance with federal and state law concerning housing discrimination.

The following is the proposed Section 597:

“597. Elderly Housing Developments in the Leroy-West Affordable Housing Overlay Zone.

- “a. Multifamily housing for elderly persons may be developed in this overlay zone in accordance with the following requirements:**
- “1. Housing for elderly persons shall mean housing intended and operated for occupancy by persons 55 years of age or older; and**
 - “2. At least 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older; and**
 - “2. The development shall publish and adhere to policies and procedures that demonstrate the intent required under this Section 597 and Section 807(b)(2)(C) (42 U.S.C. § 3607(b)) of the federal Fair Housing Act; and**
 - “3. The development must comply with all rules and regulations issued by the Secretary of Housing and Urban Development for verification of occupancy, including 24 C.F.R. §§ 100.305, 100.306, and 100.307 of the Code of Federal Regulations, and all other applicable federal and state statutes and regulations.**

- “b. 1.5 parking spaces per dwelling unit shall be provided. All on-site parking spaces comply with Sections 226 and 900 of these Regulations with respect to design standards, and shall include handicap parking spaces as required by the Americans with Disabilities Act.”**

The purpose of this proposed section is to create an opportunity for the development of housing for persons who are 55 years of age or older, subject to federal and state laws and regulations that allow such housing. The current age restriction, which requires only the “primary occupant” of each unit to be 62 years of age or older, does not comply with the requirements of the federal Fair Housing Act. The proposed Section 597 will comply with the applicable federal law, which requires that only one member of at least 80 percent of the occupied units be 55 years of age or older.

I. BACKGROUND

The proposed regulation will apply to property that is located on the Leroy-West Affordable Housing Overlay Zone (the “LW Zone”), which is located at the southwest corner of the intersection of Leroy Avenue and West Avenue (the “Subject Property”). The underlying zone is the R-1/5 Residence Zone. The current LW Zone regulations (Section 590) do not require any form of elderly housing. Section 596(a) requires 1.5 parking spaces per elderly unit.

The Subject Property consists of 20,377± square feet of land, and is developed with a three-story, 16-unit multifamily residential building with 24 parking spaces located in the ground level parking garage, and 2 non-striped loading areas located alongside the entrance driveway. The history of the development is set forth in Pemberton’s pending application to remove the existing elderly housing restriction, which, as written, provides for housing in which only one member of each unit be 62 years of age or older.

II. THE CURRENT AGE RESTRICTION

A. The Darien Zoning Regulations

The Zoning Regulations contain several references to housing for persons who are 62 years of age or older, but none of those references apply to housing in the LW Zone.

1. Section 210 (“Definitions”) defines “Dwelling Unit, Senior Citizen or Elderly” as “A dwelling unit for occupancy by at least one person who is 62 years of age or older.”
2. Section 210 (“Definitions”) defines “Elderly” as “Persons 62 years of age or older.”
3. Section 430 (Active Senior Residential Overlay Zone) provides for housing in which all occupants are 62 years of age or older. (See Section 434 [“All dwellings allowed under this

Section 430 shall be occupied only by persons age 62 years of age or older.”)]

4. Section 500 (Designed Business and Residential Zone [the “DBR Zone”]) contains an incentive for senior housing in which occupancy is limited to “families of which at least one person is age 62 or older.” Section 514 of the DBR Zone Regulations provides for housing for elderly persons in the DB-1 and DB-2 Zones “limited to the Darien Housing Authority and/or an entity officially designated by the Town of Darien only, in order to provide ‘Housing for Elderly Persons’ under Section 8-112A, et seq. of the General Statutes and/or Moderate Income Housing.” The DBR Zone is an overlay zone that applies in the DB-1 and DB-2 Zones.¹
5. Section 700 (Designed Office and Research Zones [“DOR-1,” “DOR-5”]) mentions “senior living facilities” in Section 701 (Background and Purposes). However, the list of allowed uses in the DOR Zones includes only assisted living and memory care facilities.

With the exception of Old Town Hall Homes, which was developed under the State Elderly Housing Program, no other elderly or senior housing development in Darien is restricted to occupancy in which only the “primary occupant” need be 62 years of age or older.

B. Federal Fair Housing Act²

The federal Fair Housing Act prohibits housing discrimination based on familial status, which means that an elderly person cannot be denied a housing opportunity because the person resides with a younger family member, such as a spouse or a child. 42 U.S.C. § 3604.

There are two exceptions to the prohibition of familial status discrimination. The first is housing in which every member of every housing unit in the development must be 62 years of age or older. The second is housing in which at least one member of at least 80 percent of the housing units in the development is 55 years of age or older. 42 U.S.C. § 3607(b). The familial status prohibition

¹ Old Town Hall Homes was developed in 1988 through the State’s Elderly Housing Program, which was established by Chapter 28 Part VI of the Connecticut General Statutes. Section 8-112A Connecticut General Statutes is a definitional statute within that Part. The Leroy West development was not developed under the State’s Elderly Housing Program.

² Connecticut state law prohibits housing discrimination based on familial status or age. Section 46a-64c(b)(4), however, incorporates the federal Age-55 and Age-62 Exemptions. Accordingly, the discussion in this Section B applies equally to Connecticut housing law.

was added to the Fair Housing Act in 1988, and the two exceptions have been modified since then. Currently, the Age-62 Exemption contain no requirements other than the minimum age for all residents. The Age-55 exception requires that the housing facility or community publish and adhere to policies and procedures that demonstrate the intent of the exception, and comply with certain regulations promulgated by the Secretary of Housing and Urban Development.

A third exception applies under 24 C.F.R. § 100.302, which provides, "The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program." This exemption would allow a development under a State program which provided for a different age requirement, provided the program is approved by the Secretary of Housing and Urban Development.

It appears that the reason why the Darien Zoning Regulations define senior housing as housing in which at least one resident of the dwelling unit is 62 years of age or older is because when the definition was enacted, the federal Fair Housing Act allowed such a residential requirement, and Old Town Hall Homes was developed under the State Elderly Housing Program. No other housing development in Darien is subject to the same age requirement. The current definitions do not comply with the current version of the Age-62 exemption, because it does not require that all occupants be 62 years of age or older.

C. The Stefanoni Age Restriction

The current age restriction that applies to the Leroy-West project requires only that the "primary occupant" of all units in the building be 62 years of age or older.³ The Stefanonis included this restriction in their affordable housing application, and the Superior Court required the Planning and Zoning Commission to approve the application. Apparently, the issue of noncompliance with federal law was not raised during the application or appeal.

Since the approval, the condominium declarant included in the condominium Declaration the age restriction that was stated in the Stefanonis' application. The six affordable units were sold to purchasers who believe that they have a contractual right to allow a person under 62 years of age to live in their units. Based on the current federal Age-62 exemption, occupancy by a person under 62 years of age would not comply with the exemption, and could constitute discrimination based on familial status.

The proposed text amendment would correct this potential violation by allowing the condominium association to amend its Declaration to comply the Age-55 Exemption.

³ The text of the age restriction reads as follows: "Each unit in the Building shall have as its primary occupants an individual who is age sixty two (62) or above."

III. THE TOWN PLAN OF CONSERVATION AND DEVELOPMENT

The Town Plan of Conservation and Development (the "POCD") recommends allowing multi-family housing for seniors. The proposed text amendment is consistent with those recommendations. In a discussion entitled, "Housing Needs Of An Aging Population," (POCD at Page 104) the POCD makes the following statement:

To accommodate future housing needs, Darien may consider allowing:

. . . .

additional multi-family units in appropriate places and configurations to address potential future needs,

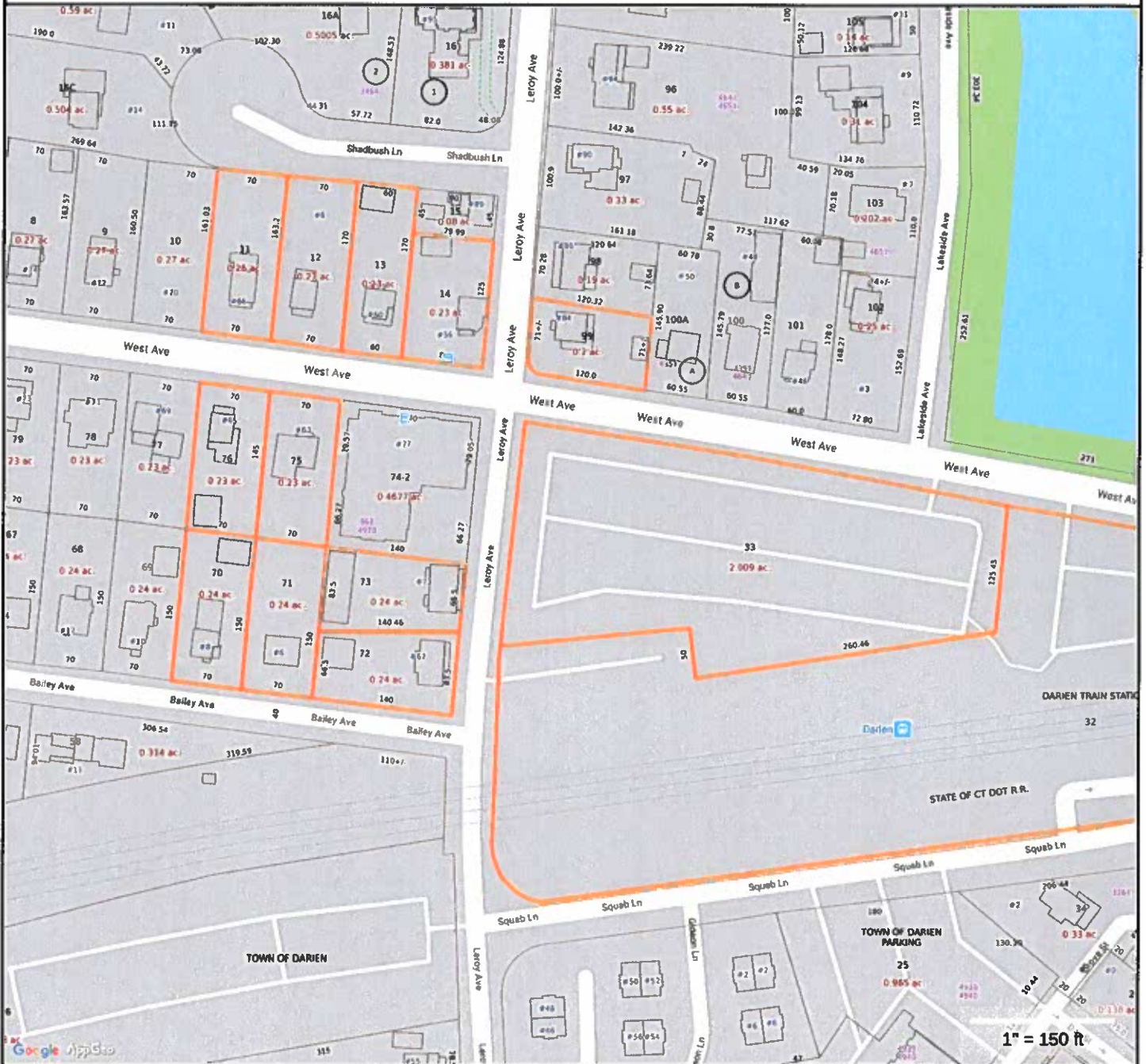
In addition to bringing the age restriction on Leroy-West into compliance with federal law, the proposed text amendment would provide housing for seniors over 55 years of age to occupy these units with younger family members.

IV. CONCLUSION

As discussed above and in Pemberton's pending application to amend the site plan, the current age restriction has had a negative effect on the marketing of the market rate units for sale and for rent. Changing the age restriction to comply with the Age-55 Exemption would cure the nonconformity with the federal Age-62 exemption.

The alternative of amending the current age restriction to require that all occupants of all units be at least 62 years of age would not be possible, as Pemberton does not have sufficient ownership of such units to effect such a revision. Changing the age restriction to the Age-55 Exception would involve a lesser restriction, and the current owners of the affordable units have indicated their consent to such a revision.

MAP OF PROPERTIES WITH 100 FEET OF LW ZONE (77 WEST AVENUE)



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

Town of Darien, CT makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 8/1/2018
Data updated 8/1/2018

PETITION OF
PEMBERTON 16, LLC
FOR
77 LEROY AVENUE
FEBRUARY 8, 2019

LIST OF NEIGHBORING PROPERTY OWNERS
(EXCLUDING UNITS OWNED BY APPLICANT)

Map 17 Lot 99	Ronald A. Buttendorf 84 Leroy Avenue Darien, CT 06820
Map 18 Lot 12	Marc Wadley Erica Wadley 6 Shadbush Lane Darien, CT 06820
Map 18 Lot 13	Kevin P. Blunnie Sarah Sheikh 60 West Avenue Darien, CT 06820
Map 18 Lot 14	Nicholas P. Everdell Keara S. Everdell 56 West Avenue Darien, CT 06820
Map 39 Lot 70	Robert D. Farley Megan E. Farley 8 Bailey Avenue Darien, CT 06820
Map 39 Lot 71	Douglas T. Lockhart 115 Barlow Road Fairfield, CT 06824
Map 39 Lot 72	Leroy Properties, LLC 23 Butlers Island Road Darien, CT 06820

Map 39 Lot 73	Peter J. Peterson Linda B. Peterson 73 Leroy Avenue Darien, CT 06820
Map 39 Lot 75	Lina M. Donoso 63 West Avenue Darien, CT 06820
Map 39 Lot 76	Stephen Muecke Sarah Muecke 65 West Avenue Darien, CT 06820
Map 39 Lot 74-2	Michael E. Watters 77 Leroy Avenue Unit 201 Darien, CT 06820
Map 39 Lot 74-2	Jeanne Turner Boyd 77 Leroy Avenue Unit 206 Darien, CT 06820
Map 39 Lot 74-2	Kathleen McDermott 77 Leroy Avenue Unit 208 Darien, CT 06820
Map 39 Lot 74-2	Thomas K. Maye 77 Leroy Avenue Unit 306 Darien, CT 06820
Map 39 Lot 74-2	Patricia M. Broderick 77 Leroy Avenue Unit 308 Darien, CT 06820
Map 73 Lot 33	Charles A. Koons, Jr. c/o Kim Wagner Wells Fargo Bank 205 Church Street, Box 404 New Haven, CT 06502
Map 73 Lot 32	State of CT DOT Office of Rails 50 Union Avenue 3rd Floor West New Haven, CT 06519

Map 18 Lot 11	Elizabeth W. Ozzano 66 West Avenue Darien, CT 06820
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PEMBERTON 16, LLC
177 GOLDEN POND LANE
FAIRFIELD, CT 06824

October 15, 2018

Town of Darien
Planning and Zoning Commission
Zoning Board of Appeals
Environmental Protection Commission
Architectural Review Board
2 Renshaw Road
Darien, CT 06820

RE: 77 Leroy Avenue, Darien

Dear Ladies and Gentlemen:

As record owners of property located at 77 Leroy Avenue, Darien, we hereby authorize the law firm of Maslan Associates P.C. and its attorneys to file any and all applications related to the property.

Thank you.

Very truly yours,



Douglas Poling, Manager

MASLAN ASSOCIATES P.C.

Attorneys at Law

Robert F. Maslan, Jr.*
*Also Admitted In New York

30 OLD KINGS HIGHWAY SOUTH
DARIEN, CONNECTICUT 06820
TELEPHONE (203) 656-3800
FACSIMILE (203) 656-1624

Legal Assistants
Suzann C. Maslan

Writer's e-mail:
rmaslan@maslanlaw.com

February 8, 2019

Donna Rajczewski, Town Clerk
Town of Darien
2 Renshaw Road
Darien, CT 06820

**Re: Pemberton 16, LLC
Petition to Amend Darien Zoning Regulations**

Dear Madam Clerk:

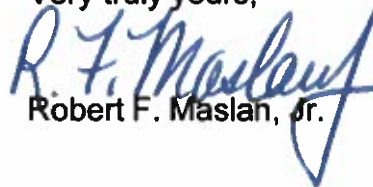
We represent Pemberton 16, LLC, LLC. Please accept for recording the enclosed Application/Petition to Amend the Darien Zoning Regulations. As you know, proposed zoning regulation amendments must be filed with the Town Clerk.

Please stamp the additional two copies, one for the Planning and Zoning Department, and one for our file.

Please feel free to call us if any additional information is required.

Thank you.

Very truly yours,


Robert F. Maslan, Jr.

Enclosure

cc: Pemberton 16, LLC
Jeremy B. Ginsberg, Town Planner