

# 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:  
maslan@maslanlaw.com

August 23, 2018

Jeremy B. Ginsberg, Director  
Planning and Zoning Department  
2 Renshaw Road  
Darien, CT 06820

**Re: COZM #2-2018, COZR #6-2018  
Site Plan Application #303  
Special Permit Application #59G  
Land Filling & Regrading Application #437  
Baywater Housing Partners, LLC**

Dear Jeremy:

This letter responds to several questions and comments that have been raised during the application process. The first section responds to questions we received from Fred Doneit by email, and the second section responds to comments made during the public hearing before the Planning and Zoning Commission. Questions and comments appear as numbered paragraphs, and our responses follow each numbered paragraph. Kindly include this letter and attachment in the application files, and provide copies to the Commission members.

## **I. Planning and Zoning Staff Items – Zoning Considerations**

**1. How marriage affects the special needs units (should language be changed from a maximum of 6 units per building to a maximum of 6 occupants per building?).**

Response: Section 4(16) of the revised proposed text amendment addresses this by limiting occupancy to six residents per building.

**2. How does one (or an agency) determine if someone qualifies for the special needs units? How would the Planning and Zoning office verify the deed restriction for affordable housing with people with special needs?**

Response: Section 3(a)(i) of the revised proposed text now requires that special needs residents be qualified for services by the Connecticut Department of Developmental Services (“DDS”). A DDS fact sheet explaining the requirements is attached to the revised proposed text amendments. The deed restriction will set forth the qualifications for residency.

**3. How is fair housing applied.**

The proposed regulations comply with the fair housing laws.

**4. Provision requiring units to be operated by a nonprofit agency certified and licensed in caring for/supporting individuals with special needs. Can you invite a representative of one of the groups to attend the next hearing?**

Response: Section 3(c) of the revised proposed text provides that special needs housing be managed by a nonprofit organization in the business of providing housing services for intellectually disabled persons. We have invited representatives of such an agency to attend the next session of the public hearing.

**5. Consistency with the Plan of Conservation and Development (“POCD”) with respect to Wilder's arguments.**

Response: The POCD uses the term “predominantly,” which is not the same as “exclusive.” At page 103, the POCD recommends housing diversity, and mentions Knobel Hill, Kensett, The Heights at Darien, Garden Homes—all of which are high density developments—and The Cottage. Immediately following this list, the POCD states,

“Darien will always have a strong presence of single-family detached houses and will always strive to retain its single-family residential character. However, Darien can, at the same time, gradually diversify its housing portfolio to meet a broader range of housing needs of present and future residents.” (Application page a-11; emphasis added)

Mr. Gleason’s argument ignores this strong statement concerning housing diversity, including housing for the intellectually disabled and housing for seniors.

**6. Would the Applicant modify the regulation proposal to prioritize housing for those with special needs versus seniors? Perhaps eliminate seniors and solely focus on those with special needs (assuming the data shows less traffic for residences that cater to those with special needs).**

Response: The Planning and Zoning Commission can modify the proposed regulations to include a priority for adults with special needs. The inclusion of seniors was included to address a concern expressed by a neighbor that there would be insufficient or no demand for special needs housing.

**7. Why is the East Lane site being pursued, versus placing inclusionary units restricted to people with special needs and seniors at the Corbin site?**

Response: The Applicant developed this concept to address a shortage of housing for adults with special needs, whose incomes typically are substantially lower than the income limit required under Darien's inclusionary zoning regulations. Lower rents, coupled with significant costs for a fair market purchase of the site, the additional costs of creating fully accessible units, and elevators for one half of the units make this aspect of the overall project more costly than including inclusionary housing units at the Corbin site.

Mr. Gleason made the point that we are proposing to build 12 units in 9,000 square feet, versus 12 units in 18,000 square feet, and that our motivation was economic. The reality is that the lower rents for single person units are substantially less than the rents for larger units that can accommodate families of four or more.

**8. If the income restrictions were changed to 80% of the state median income (versus proposed 40%), would it be more feasible to put more units at the Corbin site (realizing those units restricted for people with special needs would require housing that specifically allows for licensed care/support personnel?)**

Response: At 80% of the state median income, it is highly unlikely that any adults with special needs would be able to afford to rent the units created.

**II. Planning and Zoning Staff Items – Site Plan issues:**

**1. Whether a storage building/shed(s) or garage could be placed/constructed on the site.**

Response: We do not believe that external storage and garages are necessary. The site plan is amended to show a storage shed for future use if it becomes necessary. In the building at 745 Boston Post Road, the developer (a Baywater affiliate) did not include storage areas or basements and this has presented no negative issues.

**2. Cut and fill details/number of truckloads.**

**3. Details regarding blasting/chipping and effects on adjoining property owners, estimated volume of ledge removal, time required, alternatives (hoe ramming)?**

Response to 2 & 3:

Earthwork volume: Based on the grading plan, Tighe & Bond estimates that roughly 1,000 cubic yards of excess material will be exported from the site to

meet the required grades for the installation of the driveways, parking areas and building foundations, and topsoil and seeding within the disturbance limits.

**Blasting:** Any on-site blasting would involve a pre-blast survey that would include photographic documentation of existing conditions for all structures within a predetermined blast radius from the site. Typically, this radius is set at 500-feet, but could be amended to satisfy the concerns of abutting neighbors whose property is outside that radius. Houses located in close proximity to the site could also be equipped with gauges to measure and record the seismic impact from each blast to ensure they fall within acceptable tolerances. This would enable the blasting contractor to have real time feedback on the impact of each blast and to amend the size of charges if necessary to minimize potential risks to the neighbors. A blasting spec would be prepared based on state and local regulations and the blasting contractor's insurance requirements. A possible alternative to blasting includes hoe ramming; however, hoe ramming is much slower than blasting and would include a significant amount of noise over a much longer period of time than blasting.

**4. How many large trees to be removed? Show on plans and flag in field.**

Response: Five mature trees will be removed. The trees have been marked in the field, and are shown on the updated site plan.

**5. Changes to better comply with Section 944 – maybe move HVAC and dumpster. It was noted that the Planning and Zoning Commission can determine what to waive in Section 944, but it should be noted that this Section applies to any use requiring a Special Permit or Site Plan Approval, with only single-family residences being exempt.**

Response: The site plan is revised to show the moveable items out of the 25-foot buffer. Section 944 authorizes the Planning and Zoning Commission to reduce the buffer in non-single-family sites that abut residential zones and other residential sites.

**6. Pedestrian considerations - crossing Old King's Highway North, access to services/amenities. Would the applicant be willing to install a sidewalk in the small gap between Fairmead Road and Parklands Drive?**

Response: We do not believe that this should be an issue. The Cottage on Edgerton Street has existed for several years without continuous sidewalks to West Avenue or the shopping centers in Noroton Heights. We understand that this has never been an issue given that few of the residents actually walk from The Cottage to the shopping centers.

Special needs residents who are not capable of walking safely along neighboring streets without being accompanied by a staff member will not be permitted to do so. This concept is really no different from allowing young children to walk unaccompanied on Old Kings Highway North or any other neighborhood street.

**7. Feasibility of reducing number of units on the site (see #8 under zoning considerations above) and adding more units at Corbin. For example, could you create a single building with 8-10 units for affordable housing for people with special needs and put the balance on the Corbin site?**

Response: We deliberately designed the individual homes at 6 units each to maintain the single-family scale of the buildings, out of respect for the residential neighbors. For this reason, we do not want to build a single, larger building on the site. One neighbor, Mr. Wilsey of 1 Wakeman Road, recently commented to us that he appreciated the two-building design. Given the significant shortage of housing for adults with special needs in Connecticut, and in Darien, we believe that we should build as many units as is feasible. Given that the site is currently zoned and approved for a day care center or nursery school for up to 45 students, and can run continuously until 11 p.m. six days per week, we see no logical reason for reducing the size of the project as proposed.

**8. Please have the traffic experts comment on the relevancy of the Darien Green Office Park and Parklands assisted living development on the corner of Old Kings Highway North and East Lane.**

Response: The traffic consultants, including Mr. Galante, agree that the proposed project will not generate a significant amount of traffic or result in a negative impact on existing traffic. Concerns about traffic generation and impacts resulting from the assisted living facility should have been addressed in the public hearing on that project. It should be noted that the 1966 day care/nursery school approval existed before Darien Green and Parklands were built.

**III. Additional Items Raised During July 31, 2018 Public Hearing**

**1. Commissioner Riva asked about sizing the lots, and bulk requirements.**

Response: The revised proposed regulation requires a minimum lot area that is 175 percent of the minimum lot area in the underlying zone. This allows two buildings to be built on lots that are 87.5 percent of the area necessary for two separate building lots. The proposed buildings are not any larger than allowed in the residential zones, as they comply with building coverage, height and setback requirements.

Jeremy B. Ginsberg, Director  
Planning and Zoning Department  
August 23, 2018  
Page 6 of 6

**2. A neighbor expressed concern that the proposed special needs housing would not comply with the Medicare settings rule.**

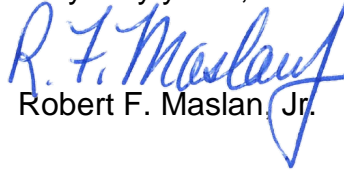
Response: We have consulted with the Department of Developmental Services, which has advised us that this project would not violate the settings rule. This project is fully integrated into the surrounding residential neighborhood. In addition, the residents will be able to choose whether to live in one of the residential units.

---

We look forward to answering any additional questions when the public hearing resumes on August 28, 2018.

Thank you for your continued attention to these applications.

Very truly yours,



Robert F. Maslan, Jr.

Attachment

cc: Baywater Housing Partners, LLC

## ELIGIBILITY FACT SHEET INTELLECTUAL DISABILITY

In order to be eligible for supports or services from the Department of Developmental Services (DDS), a person must:

1. Be a resident of the State of Connecticut and
2. Have an intellectual disability as defined in Connecticut General Statutes Section 1-1g (see below)  
OR  
Have a medical diagnosis of Prader-Willi Syndrome (PWS), which is a neurobehavioral genetic disorder that must be diagnosed by a physician.

People who have a diagnosis of autism spectrum disorder, but do not have an intellectual disability may be eligible for services from the Autism Spectrum Disorder Program. Please click this link for more information. <http://www.ct.gov/dds/cwp/view.asp?a=2730&q=442840>

### Intellectual Disability

#### Definition

Per Connecticut General Statutes Section 1-1g, intellectual disability is defined as a significant limitation in intellectual functioning and deficits in adaptive behavior that originated during the developmental period before 18 years of age. Intellectual disability was formerly referred to as mental retardation in Connecticut Statutes and many psychological and other clinical evaluations.

#### What does this mean?

A person has a valid Full Scale IQ score of 69 or below as indicated on intelligence/cognitive tests and significant limitations in adaptive functioning, that began during the developmental period before the age of 18.

#### What tests do I need?

To show that an individual has an intellectual disability, you will need to submit a copy of all intelligence/cognitive tests and tests of adaptive functioning completed prior to the age of 18. Full Scale IQ scores on intelligence/cognitive tests need to be 69 points or lower. Significant limitations in intelligence and adaptive skills must be present at the same time and have existed before the individual was 18 years of age.

#### Where can I get tested and who can test me?

You can get tested for an intellectual disability at a clinic, hospital, or school (if you are under age 21). The evaluator should have a specialty in the age range of the individual and have training, experience, and a competency in diagnosing intellectual disability. This might include a psychiatrist, psychologist, neurologist, developmental pediatrician, certified school psychologist or any other appropriately trained professional with expertise in this area.

#### What if I am missing documents or have other special circumstances?

If you are unable to obtain educational documents or have other special circumstances, the following link will provide you guidance. <http://www.ct.gov/dds/cwp/view.asp?a=2039&q=535386>

#### What if I am found ineligible?

If a decision of ineligibility is made, the reasons for this decision will be explained in the notification letter. Also included will be a form for you to submit to request a hearing on the finding of ineligibility. You may submit this form within 60 days of receiving the eligibility determination.

#### What happens if I am determined eligible?

Once eligibility is determined, a DDS Region will be assigned to help you access services and supports. However, eligibility for services does not assure that requests for services can be met immediately. Services of the Department of Developmental Services are provided on a priority basis and within available appropriations. The following link will provide you with the region assigned to your town. <http://www.ct.gov/dds/cwp/view.asp?a=3&q=395462&ddsPNavCtr=|#47125>

