

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 12, 2013

Application Number: Proposed Amendments to Zoning Regulations (COZR #4-2013)

Application Put Forth by: Tokeneke Club, Inc.

Name and Address of:
Property Owner: Tokeneke Club, Inc.
4 Tokeneke Beach Drive
Darien, CT 06820

Name and Address of Applicant &:
Applicant's Representative: Wilder G. Gleason, Esq.
Gleason & Associates, LLC
455 Boston Post Road, Suite 201
Darien, CT 06820

Activity Being Applied For: Proposal to modify the definition of Building Coverage in Section 210 of the Darien Zoning Regulations. This change would include only the first and largest court of any pervious tennis or recreational court in the calculation of "Building Coverage" for lots in commercial zones or special permit uses on lots in residential zones.

Property is located at: This regulation amendment would apply to all properties within the Town of Darien.

Date of Public Hearings: July 30, 2013 continued to September 10, 2013
Deliberations held: October 15, 2013

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

Publication of Hearing Notices
Dates: July 19 & 26, 2013 Newspaper: Darien News

Date of Action: November 12, 2013

Action: **ADOPTED WITH MODIFICATIONS**
THIS REGULATION AMENDMENT WILL TAKE EFFECT ON
SUNDAY, DECEMBER 29, 2013 AT TWELVE NOON.

Scheduled Date of Publication of Action:
November 22, 2013 Newspaper: Darien News

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

1. The subject proposal put forth by the Tokeneke Club is to modify the definition of Building Coverage in Section 210 of the Darien Zoning Regulations. This change would include only the first and largest court of any pervious tennis or recreational court in the calculation of "Building Coverage" for lots in commercial zones or special permit uses on lots in residential zones.

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Currently, all tennis courts on a property count towards Building Coverage. This proposal would not affect residential uses of property in residential zones.

2. The existing definition of Building Coverage reads as follows:
Building Coverage: The combined percentage of the land covered by the roof area or outside dimensions of all structures on the lot including eaves and other similar projections. Coverage shall include dwellings; garages; storage/accessory buildings; commercial buildings; porches; decks; covered courtyards and walkways; pools; tennis and other recreational courts; and other structures that are located on or above the ground. Driveways, uncovered walks, patios, terraces and other at grade surfaces shall not be included in building coverage, but shall be included in the calculation of developed site area. (See Subsection 223 for illustration.)
3. Another application is now pending which was put forth by the Planning and Zoning Commission to amend to the Zoning Regulations. That application includes proposed amendments to a number of regulations, including a proposed change to the definition of Building Coverage. Both this application and the one put forth by the Commission will be decided separately, and may result in changes to the definition of Building Coverage.
4. As explained at the public hearing, the Tokeneke Beach Club was constructed in the early 1900s, prior to the establishment of Zoning Regulations in Darien. It contains approximately nine tennis courts as well as other facilities on their five acre property. The other private clubs in Town have much larger acreages and therefore building coverage is not a concern to those clubs.
5. In 1985, the Darien Zoning Regulations were modified to include tennis courts in the definition of building coverage. At that time, many of the Regulations were amended so that many things that were not included in building area were then counted as Building Coverage. The 1985 Regulation does not include all impervious surfaces, but does include such items as tennis courts and swimming pools. It does not include driveways or patios.
6. At the public hearing, the applicant said that the Tokeneke Beach Club wants to be treated like the other Clubs in Town that have much larger tracts of land, the only exception to that would be the Noroton Yacht Club that has several tennis courts and is similarly situated on a small acreage site. Due to the fact that the Tokeneke Beach Club is now over 20% maximum allowed Building Coverage, proposed modifications to the site need to go before the Zoning Board of Appeals. If the proposed change in the definition is incorporated, the Building Coverage would go down to 17% +/- which is less than the 20% allowed in the residential zones.
7. The applicant provided comparisons of Building Coverage with other nearby communities relative to building area or building coverage. It notes that only Darien counts tennis courts towards building coverage in all instances. The 2006 Town Plan of Conservation & Development recommends that the Planning & Zoning Commission regulate site development of all impervious surfaces, not just building coverage.
8. At the public hearing, one of the neighbors made the allegation that this definition change would be spot zoning. The applicant responded that this is not spot zoning--they are just proposing to change the definition of "Building Coverage" regarding unusual site conditions such as the Tokeneke

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Beach Club. The Commission agrees that while this definition change would have an effect on very few properties in Town at the current time, it does apply to many properties throughout Darien.

9. It was represented that the total Building Coverage of the Tokeneke Beach Club property is 37.8% of the land area; 14.5% of that is actually building and structures and 23.3% of that is the tennis courts. The existing tennis courts were in existence prior to 1985 when the Regulations were changed to include tennis and other courts in the building coverage calculations. Using the proposed new definition, the building coverage would be 17.2% of the lot area.
10. At the public hearing, Zoning Enforcement Officer David Keating said that in 1985 when the Regulations were being updated, there was an effort to clarify the definition of building coverage to make sure that things were either clearly counted or clearly not counted as Building Coverage. Since tennis courts, paddle tennis courts and swimming pools all must comply with setback requirements and all require permits and had substance, mass, or volume, they were included in the definition of building coverage. Patios, terraces and driveways do not require permits and generally do not have anything located above ground, thus they were specifically excluded from the definition of Building Coverage.
11. The Darien Regulations allowing 20% Building Coverage in residential zones is more generous than other communities but those other communities do not include tennis courts in their calculations of Building Coverage. The attorney for the applicant said that Darien is the only town that does count a tennis court completely and requires a Special Permit for tennis courts in all cases. In some other communities in the area, they regulate the total impervious surfaces and do not allow more than 50% or so of the land area to be covered by impervious surfaces.
12. The applicant said that the Noroton Yacht Club and Tokeneke Beach Club are the most impacted properties in Town by the existing definition of Building Coverage because larger percentages of their land are covered by tennis courts. Other locations that have multiple tennis courts have large pieces of property. The Tokeneke Beach Club is a Special Permit use and under the jurisdiction of the Planning & Zoning Commission.
13. It was noted that in residential zones, the Town of Darien does not regulate the total impervious surfaces on a property, just Building Coverage. Creating a new Regulation about impervious surfaces would require a whole new public hearing.
14. Tennis courts are now an Accessory Use Requiring a Special Permit in residential zones as allowed by Section 405b of the Darien Zoning Regulations. This means that the Planning & Zoning Commission has a public hearing and a review of every new tennis court proposed within the Town of Darien. That would not change with this definition change. Private Clubs in Darien are also Special Permit uses, so changes to the Clubs also require review and action by the Planning & Zoning Commission.
15. At the public hearing, Planning and Zoning Director Jeremy Ginsberg explained that any regulation amendment must be consistent with the 2006 Town Plan of Conservation and Development. The following is a portion of the Town Plan related to this matter:

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Page 3-3: “The Planning and Zoning Commission should consider, review, or study: ...Amending the definition of Building Coverage to include all impervious surfaces, including all accessory buildings and impervious driveways, parking areas, walks, and terraces, or alternately create a maximum Developed Site Area within all residential zones.”

16. As required by Statute, this application was referred to the State of CT DEEP, and the Southwestern Regional Planning Agency (SWRPA). The State of CT DEEP noted in an email dated July 30, 2013, “No concerns with COZR #3-2013 and COZR #4-2013.” As noted in their July 2, 2013 email to Jeremy Ginsberg, at the SWRPA meeting held on July 1, 2013, the following staff comment was approved regarding this application, “The proposed zone change to modify the definition and calculation of Building Coverage to include only the first and largest court of any pervious tennis or recreational court is not likely to have any adverse inter-municipal impacts.”
17. The Commission hereby modifies the applicant’s proposal by deleting reference to the “first” court, since that could result in confusion between that and the “largest” court.
18. Section 8-3(d) of the Connecticut General Statutes requires that notice of this decision be published in a local paper, and a copy of the regulation change be filed with the Town Clerk prior to the zoning regulation amendments taking effect.

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NOW THEREFORE BE IT RESOLVED that ***Proposed Amendments of the Darien Zoning Regulations*** regarding modifications to subsection 210 (Definition of Building Coverage) is ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 29, 2013 AT TWELVE NOON.

The proposed amendments to subsection 210 (Definition of Building Coverage) is ADOPTED WITH MODIFICATIONS. The Commission finds that this amendment, as modified, is consistent with the 2006 Town Plan of Conservation and Development as amended.

Building Coverage: The combined percentage of the land covered by the roof area or outside dimensions of all structures on the lot including eaves and other similar projections. Coverage shall include dwellings; garages; storage/accessory buildings; commercial buildings; porches; decks; covered courtyards and walkways; pools; tennis and other recreational courts; and other structures that are located on or above the ground. Driveways, uncovered walks, patios, terraces and other at grade surfaces shall not be included in building coverage, but shall be included in the calculation of developed site area. (See Subsection 223 for illustration.)

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(The inside cover page of the Zoning Regulations, the Table of Contents, and Appendix C-Schedule of Amendments also shall be modified accordingly)

The approved wording for this Section is as follows:

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New wording in bold, deletions in strikeout:

1) Modify subsection 210 Definitions

Building Coverage: The combined percentage of the land covered by the roof area or outside dimensions of all structures on the lot including eaves and other similar projections. Coverage shall include dwellings; garages; storage/accessory buildings; commercial buildings; porches; decks; covered courtyards and walkways; pools; tennis and other recreational courts; and other structures that are located on or above the ground. **For pervious tennis courts and other pervious recreational courts located on lots in a commercial zone or on a residential lot with a Special Permit use thereon, only the largest such court shall count in Building Coverage.** Driveways, uncovered walks, patios, terraces and other at grade surfaces shall not be included in building coverage, but shall be included in the calculation of developed site area. (See Subsection 223 for illustration.)