

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
October 7, 2014**

Application Number: Proposed Amendments to Zoning Regulations (COZR #2-2014)

Application Put Forth by: Penelope Glassmeyer

Name and Address of:
Applicant: Penelope Glassmeyer
23 Butler's Island Road
Darien, CT 06820

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

Activity Being Applied For: Proposing to amend the Darien Zoning Regulations by establishing an overlay zone that would apply to larger sites in the R-1 Residence Zone served by public water supply and sanitary sewer. It would allow multi-family age-restricted developments by Special Permit in the R-1 Zone, if the overlay zone is placed upon a property.

Property is located at: This regulation amendment as proposed by Penelope Glassmeyer would potentially apply to properties within R-1 zone within the Town of Darien, which are of the minimum lot size outlined in the proposed amendment and are served by public water and sewer. The decision herein modifies only the Darien Zoning Regulations to create an overlay zoning district, but does not apply that overlay zone to any particular property or location.

Date of Public Hearings: June 24, 2014 continued to July 15, 2014,
July 29, 2014 and July 31, 2014

Deliberations held: September 2, 2014 and September 9, 2014 and September 23

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

Publication of Hearing Notices

Dates: June 13 & 20, 2014 Newspaper: Darien News

Date of Action: October 7, 2014

Action: **ADOPTED WITH MODIFICATIONS
THIS REGULATION AMENDMENT WILL TAKE EFFECT ON
SUNDAY, OCTOBER 26, 2014 AT TWELVE NOON.**

Scheduled Date of Publication of Action:

October 17, 2014 Newspaper: Darien News

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

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1. The subject application is to amend the Zoning Regulations to create an Overlay Zone which could then be applied to certain properties within the R-1 Zone at the sole discretion of the Planning & Zoning Commission. The proposed amendment would allow a higher density of housing for people that are 62 years of age and older, while restricting the size, location and placement of dwelling units on the site. This could provide additional housing opportunities for this targeted population.
2. Any proposed use of this Overlay Zone will require Special Permit and Site Plan approval from the Planning & Zoning Commission. Any proposed development using these Regulations would be subject to a Special Permit requirement, and the Planning & Zoning Commission would need to make positive findings regarding traffic, noise, intensity of use, consistency with surrounding property uses, maintaining existing community character and other factors. There shall be special controls applicable that would include having only one primary driveway, and possibly an emergency access driveway if needed or required by the Commission.

ISSUES REGARDING PROVISION OF PUBLIC WATER & SEWER

3. One of the provisions of the proposed overlay zone is that the property be served by public water and public sanitary sewers. It was noted that sanitary sewers already serve nearly all properties within the R-1 Zone. The Commission agrees with the applicant, that in order to protect public health, this is an essential provision of the proposed Regulations.

ISSUES REGARDING AGE LIMITATIONS

4. At the public hearing, the applicant's representative, Attorney Robert Maslan, said that the age 62 restriction would be applicable because Federal and State laws prevent discrimination based on age or familial relations except for persons that are 62 years of age and older. Condominium documents and/or deed restrictions would include restrictions on the age of residents and the monitoring and reporting requirement to the Town to make sure that the units are continuously used in compliance with the Zoning Regulations. The Town shall require that the deed restrictions be included in the Darien Land Records and that compliance reports be periodically submitted. The definition of elderly as age 62 or over is a current definition within Section 210 of the Zoning Regulations. The Commission believes that any such development shall only include recreation facilities that are designed for adult use by the targeted population, not for children.
5. The Commission agrees with the applicant's representative, and believes that the minimum age should be 62 and therefore all residents in such a development would need to comply with that standard.

ISSUES REGARDING MINIMUM LOT SIZE REQUIRED

6. The proposal includes a minimum lot size required of 130,000 square feet. This is 2.984 acres. In reviewing the Zoning Regulations, the Commission notes that all minimum lot sizes for zones in Darien are in acres or fractions of acres and are not rounded down to 'a builder's acre' or otherwise rounded down. Acreage is the unit of measure most used for lot sizes under the Darien Zoning Regulations. For the sake of consistency, the Commission believes that a three (3) acre minimum lot size would be appropriate for this type of development.

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ISSUES REGARDING AREAS OF TOWN SUBJECT TO OVERLAY ZONE

7. At the public hearing, it was noted that there are several properties in Darien, other than the applicant's property, which might be of sufficient size to potentially qualify for the new Overlay Zone. However, it was further noted that none of these properties would be subject to this Regulation Amendment unless a specific application is made to the Planning & Zoning Commission and the Commission adopts the Overlay Zone for those particular properties, which would then still be subject to the requirements of this Regulation, and to Special Permit review. There might be other situations where smaller parcels could be assembled and result in land area of three acres or more. The Commission understands that because this Regulation amendment could potentially apply to many properties in Town, it could represent a substantial change to the single-family neighborhood character of certain areas within Darien. However, it is the intention of the Commission that this Regulation amendment shall be applied so as to preserve the single-family residential character of the surrounding area.

ISSUES REGARDING BUILDING SIZE

8. The proposed Regulation amendment provides that in order to qualify, a property must be at least 130,000 square feet in area, which is less than three acres in size. The minimum lot depth and frontage requirements of the R-1 Zone would apply but the proposed Building Coverage would be limited to 15% of the lot area (as opposed to 20% normally allowed in the R-1 Zone) and the buildings would be limited to only 2 stories of above-grade occupied space (as opposed to 2 ½ allowed in the R-1 Zone). A limit on dwelling unit size is also included in the provisions.
9. In a July 10, 2014 letter, the applicant's representative suggested a Maximum Finished Floor Area of 3,000 square feet per dwelling unit, above grade. The Commission believes that this limit is appropriate and in keeping with this Regulation. The two and a half story limit adopted herein will allow finished space in up to one-half of the basement, but no finished space in the attic. The Commission believes that since an attic cannot be finished, that a 28 foot building height is appropriate, and also is consistent with the DCR Zone.

ISSUES REGARDING NUMBER OF UNITS/DENSITY

10. There was discussion regarding the maximum density that should be allowed and whether the density bonus of the inclusionary housing provision (Section 580 of the Regulations) should be applicable in addition to the increase in density afforded by the proposed Regulation amendment. The Commission believes that all of Section 580 bonus provisions should not apply to applications submitted under Section 430.
11. The Commission believes that there should be a limit of no more than two (2) units per acre developed or built within the R-1 zone with the use of this overlay zone. The Commission has included in the Regulations a specific chart/formula listing how many affordable units shall be constructed/acquired and deed-restricted, in relation to the number of market-rate units approved. Any below market rate units constructed on-site shall be comparable to the market-rate units constructed in terms of the total minimum size, total minimum number of bedrooms and bathrooms, and the adopted regulations include specifics regarding the size of the below market rate units.

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ISSUES REGARDING CONSERVATION AREA/OPEN SPACE AND PARKING

12. One proposed provision is the requirement for a conservation easement on the property. The Commission agrees with requiring such a provision so that at least ten percent of the total lot area be preserved as conservation area, which will enable any applicant to permanently protect any natural features on-site.
13. Another issue that was discussed during the public hearing was the minimum parking requirements to be included in the proposed regulations. Section 904 outlines various off-street parking space requirements for various uses. The proposed overlay zone would allow one and two-family residences for the elderly, and thus, the Commission must decide whether Section 904a or 904c is appropriate to reference. Section 904c requires at least 1.5 parking spaces per elderly housing unit and Section 904a requires at least two parking spaces for each single family or two-family residence. The Commission believes that Section 904a is appropriate in this zone. The Regulations specify minimum numbers of parking spaces that are required, but additional on-site parking spaces could be created as conditions might dictate.

COMMENTS REGARDING THE LOCUST HILL ROAD/SETTLER'S TRAIL PROPERTY

14. At the public hearing, there was some discussion about the conceptual plan for the property owned by Knobel Hill LLC on Locust Hill Road, at the corner of Settler's Trail. That conceptual plan showed five or six buildings with one access driveway from Settler's Trail. This conceptual plan is not sufficient for the Commission to act upon. If the subject application to amend the Regulations is adopted, then a very detailed site specific plan would need to be provided. A request to amend the Zoning Map to have the overlay zone be applicable to a specific site, and a Special Permit application and a Site Plan application would then be submitted to the Commission for review and action regarding any particular property.
15. The Commission acknowledges that no formal site plan or special permit application was submitted as part of this application. The conceptual plan shown to the Commission is entitled, "Conceptual Development for Overlay Zone" and is dated June 23, 2014. It is sufficient for the Commission to understand conceptually how a development might occur on that property. However, that plan does not provide details of how the development would actually take place, and further details would be needed to see if the plan complies with the provisions adopted herein.

CONSISTENCY WITH 2006 TOWN PLAN OF CONSERVATION & DEVELOPMENT

16. There are numerous sections of the Town Plan of Conservation & Development that are relevant to the proposed amendment. Those sections were submitted as part of the application, and other information regarding demographic characteristics of Darien were also submitted by the applicant's representative in support of the need for this type of housing.
17. Page 1-2 of the 2006 Town Plan of Conservation & Development states, "Change in the Town's demographics may have an influence on the Darien Zoning Regulations. Zoning regulations conversely may also affect demographics. For example, changes in housing policy through the Zoning Regulations, such as allowing accessory apartments, or rezoning portions of the Town, may result in subsequent population increases as a result of new and/or different types of

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housing units being allowed and constructed.” In this case, providing dwelling units specifically designated for a growing demographic within Darien addresses a need within the community.

18. The 2006 Town Plan of Conservation and Development supports the creation of housing for Darien residents 62 years of age and older. Page A1-3 of the Plan shows a gradual increase in the over-65 population from 2,036 in 1980 to 2,436 in 2000. Recommendation 13 on page 9-5 of the Plan notes that “as trends change through time, the Commission should consider methods to accommodate such in the Darien Zoning Regulations. Examples include...senior housing developments, cluster housing . . . , and larger condominiums. The Zoning Regulations should continue to be reviewed to ensure that they meet the changing demographic needs of the community, while maintaining existing community character.” Page A9-5 contains the following statement: “Where logical, the Commission should consider rezoning properties for use as either senior housing or for condominiums.”
19. Section 8-3(d) of the Connecticut General Statutes requires that notice of this decision be published in a local newspaper, 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*** establishing a new “Active Senior Residential Overlay Zone” is ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, OCTOBER 26, 2014 AT TWELVE NOON.

(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:
New wording in bold, deletions in strikeout:

SECTION 430. ACTIVE SENIOR RESIDENTIAL OVERLAY ZONE

431. Background and Purposes

Housing for active senior “empty nesters” is an important element of residential development within the Town. Such housing enables older residents to continue to reside in Town by living in specially designed single-family residences. The Active Senior Residential Overlay Zone allows the development of such dwellings, by permitting increased density on larger parcels in the R-1 Zone, while preserving the single-family residential character of the surrounding area. Increased density on larger lots, combined with strict limitations on building coverage and height, provides opportunities for active senior housing. Developments approved pursuant to this Section shall comply with the requirements of the federal Fair Housing Act (42 U.S.C.

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§§ 3600-3620) and similar state statutes (e.g., CGS 46a-64b, 46a-64c) that pertain to housing for persons sixty-two (62) years of age and older.

432. Uses Requiring Special Permits

The following uses shall be permitted subject to approval of a Special Permit in accordance with Section 1000 and the standards set forth below:

- a. Housing for those age 62 and older shall be permitted by Special Permit only on properties that meet all of the following criteria contained in this Section 430, including Accessory uses allowed in the R-1 Zone.

433. Site Requirements—Basic Services

All development proposed under this Section shall be give due consideration to proximity to services such as public utilities, available forms of public transportation within the community, shopping facilities, and access to major highways and commuter roads. An analysis of the availability of such services shall be submitted as part of any application to demonstrate that the requirements of this Subsection have been fulfilled. At a minimum, the site must be:

- a. in the R-1 Residence Zone;
- b. of at least three acres in size; and
- c. served by public water and public sanitary sewer of sufficient capacity to serve the development.

434. Age Restriction

All dwellings allowed under this Section 430 shall be occupied only by persons age 62 years of age or older. Prior to the issuance of a Zoning Permit for commencement of construction, a restrictive covenant or declaration identifying the location and unit number and street address and current owner(s) (or occupants if a rental unit) of each dwelling unit and describing the age restriction must be recorded on the Darien Land Records. The deed restriction or declaration must be approved by the Planning and Zoning staff and Town Counsel prior to being recorded on the Darien Land Records, and shall be binding upon all future use of the dwelling(s).

435. Area and Bulk Requirements

The following requirements shall be deemed to be the minimum or maximum requirement in every instance of their application. Dimensions are in feet unless otherwise indicated.

1. Minimum Lot Area	3 acres
2. Minimum Lot Width	200 feet
3. Minimum Street Frontage	200 feet

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4. Minimum Lot Depth	200 feet
5. Minimum Front Yard	40 feet
6. Minimum Side Yard- each side	25 feet
7. Minimum Side Yard- total of two sides	50 feet
8. Minimum Rear Yard	40 feet
9. Accessory Structures	
9A. Minimum Distance from Front Lot Line	40 feet
9B. Minimum Distance from Side Lot Line	25 feet
9C. Minimum Distance from Rear Lot Line	40 feet
10. Maximum Height in Stories (see Note 1)	2 ½ stories
11. Maximum Height in Feet	28 feet
12. Maximum Building Coverage	15%
13. Maximum Developed Site Area (see Note 2)	60%
14. Minimum Distance between Structures	20 feet
15. Maximum Finished Floor Area per Dwelling Unit (see Note 1 and Section 438c)	3,000 square feet
16. Maximum Number of Dwelling Units (round down to the nearest whole number. See Section 438e)	2 per acre

Note 1: The Regulations allow for the finishing of up to ½ of the basement. No attic space is allowed to be finished at all. Any finished space in the basement does not count towards the 3,000 square foot maximum in Item 15.

Note 2: The definition of Developed Site Area set forth in Section 210 shall apply to developments created under this Section.

Note 3: Each elderly below market-rate housing unit required to be constructed or acquired shall be at least 800 square feet in size, and the average size of all of the elderly below market rate housing units associated with the development shall be equal to or greater than 50% of the average size of the on-site market rate units within the development. Each elderly below market-rate housing unit shall be no less than 800 square feet in size, and have no less than the average of the number of bedrooms in the on-site market rate units, rounded down. See Section 438 regarding below market rate housing units.

436. Special Controls

- a. One common driveway shall serve all dwelling units and structures on the site, provided that the Commission may require an additional means of access for emergencies only.**
- b. No structures, terraces, swimming pools, or sports courts shall be located within the minimum yard areas.**
- c. All required yards shall consist of natural or landscaped screening from abutting properties and streets. The minimum 25 foot buffer requirements of Section 944 shall apply to this Special Permit use within the R-1 Zone.**

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- d. **Only single-family and two-family dwellings shall be permitted. No more than two dwelling units shall be located within the same building.**
- e. **On-site parking shall be provided in accordance with Section 904a.**
- f. **Finished, occupied space shall be located only on up to two and one-half (2-1/2) levels within a building (the first floor and second floor and a portion of the basement), but not in an attic. Any attic shall remain unfinished and shall be used only for mechanical equipment and/or for storage.**

437. Conservation Area Requirement

Developments under this Section shall include an area of at least ten (10) percent of the total lot area as conservation area, subject to a conservation easement recorded on the Darien Land Records. The conservation easement area may include some or all of the required buffer area as well as other portions of the site as may be appropriate. The conservation easement document shall be approved by the Planning and Zoning staff and Darien Town Counsel, and recorded on the Land Records prior to the issuance of Zoning and Building Permits for construction of new structures on the development site.

438. Requirement for below-market rate units

- a. **A below market rate dwelling unit is one which is affordable to households with an income equal to or less than 80 percent of the State Median Income for the State of Connecticut. All below market rate units constructed (or acquired) and deed-restricted under this Section shall comply with the age restrictions in Section 433.**
- b. **To calculate the minimum number of elderly below market rate units required to be constructed (or acquired) either on-site or off-site and deed-restricted, the following shall apply:**
 - **Less than 5 market-rate elderly units: 0 elderly below market rate units**
 - **5-6 market-rate elderly units: 2 elderly below market rate units**
 - **7-9 market-rate elderly units: 3 elderly below market rate units**
 - **10-12 market-rate elderly units: 4 elderly below market rate units****One elderly below market rate unit shall be constructed (or acquired) and deed-restricted for each three elderly market rate units thereafter. (Round any fractional requirement for below market rate units up to the nearest whole number).**
- c. **Each elderly below market-rate housing unit required to be constructed or acquired must comply with both of the following requirements: a) the average size of all the below market-rate units shall be at least 50% of the average size of the on-site market rate elderly units constructed; and b) each unit shall not be less than**

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800 square feet in size. Any on-site elderly below market rate housing unit shall have no less than the average of the number of bedroom sin the on-site market rate units, rounded down.

- d. Section 580 (Inclusionary Zoning) provisions for incentives, density bonus, and for requiring below market rate dwelling units are not applicable to the use of the Active Senior Residential Overlay Zone, since this overlay zone has a separate below market rate requirement.**
- e. The total number of units on-site (market rate and below market-rate) shall not exceed a density of 2.0 per acre in the R-1 Zone. Any additional required below market-rate units beyond that density must be constructed or acquired off-site.**

439. Program Administration

The administration of the below market rate unit(s) shall comply fully with Sections 586 and 587 of the Darien Zoning Regulations.

440. Consistency with Other Regulations

To the extent not modified by this Section 430, all other zoning regulations governing development within the R-1 Residence Zone shall apply to developments under this Section 430.