

PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 24, 2015

Application Number: Amendments to Darien Zoning Map (COZM2-2015)
Amendments to Darien Zoning Regulations (COZR4-2015)
put forth by 1950 Post Road, LLC

Name and Address of Applicant: 1950 Post Road, LLC
c/o 48 Ring's End Road
Darien, CT 06820

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

Activity Being Applied For:

- 1) Amend the **Darien Zoning Map** by changing the current boundary between the NB Zone and the R-1/2 Zone to run along the property boundaries, rather than being 100 feet from the Boston Post Road right-of-way; and
- 2) Amend Section 604(c) of the **Darien Zoning Regulations** to allow dwelling units on upper floors: The application was subsequently amended to include regulation amendments to Sections 601, add a new subsection 604(e), and to create a new Section 605 Note d(3).

Property Locations:

The Zoning Map amendments would:

- a) Rezone the following parcels from being split-zoned, to be entirely within the NB Zone:
 - 1926 Boston Post Road. Shown on Assessor's Map #51 as Lot #38.
 - 1936 Boston Post Road. Shown on Assessor's Map #51 as Lot #39.
 - 1950 Boston Post Road. Shown on Assessor's Map #51 as Lot #40.
 - 1958 Boston Post Road. Shown on Assessor's Map #51 as Lot #41.
- b) One parcel which will be rezoned to become entirely within the R-1/2 Zone is:
 - 8 Ring's End Road. Shown as Assessor's Map #51 as Lot #34.
- c) Parcels in the vicinity which will not be changed:
 - 6 Ring's End Road. Shown as Assessor's Map #51 as Lot #35.
 - 1910 Boston Post Road. Shown as Assessor's Map #51 as Lot #36.
 - 1918 (sometimes referred to as 1914) Boston Post Road. Shown as Assessor's Map #51 as Lot #37.

Date of Public Hearing: October 6, 2015 continued to October 27, 2015
Deliberations held on: November 3, 2015

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

Publication of Hearing Notices

Dates: September 25 & October 2, 2015

Newspaper: Darien News

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Date of Actions: November 24, 2015

Actions: **Zoning Map Amendments** ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 13, 2015 AT TWELVE NOON.

Zoning Regulation Amendments ADOPTED WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 13, 2015 AT TWELVE NOON.

Scheduled Date of Publication of Actions: December 4, 2015 Newspaper: Darien News

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

- the proposed Zoning Regulation and Zoning Map amendments must be consistent with the Town Plan of Conservation & Development for the Commission to approve this project.

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

1. The subject applications consist of the following:
 - a) Amendments to Darien Zoning Map (COZM2-2015)**, Proposing to: 1) amend the Darien Zoning Map by changing the current boundary between the NB Zone and the R-1/2 Zone to run along the property boundaries, rather than being 100 feet from the Boston Post Road right-of-way;
 - b) Amendment to Darien Zoning Regulations (COZR4-2015)**, and 2) amend Section 604(c) of the Darien Zoning Regulations to allow dwelling units on upper floors. As noted on the previous page of this decision, during the public hearing process, in response to concerns, the applicant modified the application to include Regulation amendments to other sections of the Regulations;

A separate, but related application has been formally submitted, and that has a separate decision by this Commission:

- c) Business Site Plan Application #289-A/Special Permit, Land Filling & Regrading #351-A, 1950 Post Road, LLC**. Proposing to: demolish the existing structures on the 1950 Boston Post Road site; build a two-story mixed use building with associated on-site parking; and perform related site development activities.
2. At the public hearing, Attorney Robert Maslan represented the applicant and property owner of 1950 Boston Post Road, and said that they are proposing to amend the Zoning Map to shift the zoning boundary that separates the residential R-1/2 zone from the Neighborhood Business (NB)

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zone. At present, the NB zone only extends 100 feet south of the Boston Post Road, yet the subject property at 1950 Boston Post Road extends approximately 297-307 feet south of the Boston Post Road. Attorney Maslan said that in the 1920s, when the zoning boundaries were first established in Darien, they were frequently drawn as being parallel to the streets, regardless of where property lines were located or would be located in the future. At that time, there were no parking requirements because few people owned cars and most cars were parked on streets. Later, the Zoning Regulations included parking requirements and were clarified to indicate that business related parking could not occur in the residential zones.

ZONING MAP AMENDMENTS

3. Attorney Maslan said that the proposed amendment of the zone boundary line is consistent with several portions of the Town Plan of Conservation & Development which he submitted. He noted that in Chapter 9, the Town Plan indicates a hesitancy to rezone residential property to commercial due to the need to protect residential character. He said that in this case, rezoning will result in only the parking area being in the residential zone and adequate and sufficient buffer areas will need to be provided to protect the nearby residential properties.
4. The proposed rezoning on the south side of the Boston Post Road would affect properties at 1958, 1950, 1936 and 1926 Boston Post Road. He said that there is also a very small piece of property at 8 Ring's End Road, which is residential, that would be changed from the NB zone to the R-1/2 residential zone.
5. Attorney Maslan noted that the neighbors have indicated that a small house at 6 Ring's End Road is technically in the Neighborhood Business Zone although it is a residence. He said that at some point that business property might be merged with other business property to which it is adjacent or the small property might accommodate a small house. He said whether the existing small house and small property stays in the Neighborhood Business Zone or is changed to the Residential Zone is a decision for the Commission and not part of this application. During deliberations, the Commission discussed that they could pursue a separate application to rezone that 6 Ring's End Road property in the near future.
6. At the public hearing, Attorney Maslan pointed out the existing split-zoned lots. In his application materials he specifically referenced Page 9-3 of the Town Plan, which reads as follows:

Over the next ten years, the Planning and Zoning Commission should continue to study and continue to consider amending the zoning map. This may be appropriate in areas where existing zone boundary lines split properties and are not a set distance from a street.

Some residential district boundaries follow streets rather than rear lot lines, split lots between different districts, or do not appropriately reflect existing lot sizes. In large measure, this is due to those lines having been established as measurements back from a street centerline or right-of-way, before a Town lot line base map existed. It is recommended that these residential zoning district boundaries be studied and carefully

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reviewed for possible adjustment. Some boundaries which follow streets which should be further considered for alteration include:

- *Hoyt Street properties north of Woodway Road, which are split zoned R-2 and R-1/2;*
- *Holmes Avenue properties which are split zoned R-1/5 and R-1/3;*
- *Fairmead Road properties which are split zoned R-1 and R-1/2;*
- *Hecker Avenue properties near Frate Court, which are split zoned R-1/5 and R-1/3.*

On page 9-5 of the Town Plan, the following recommendation is noted:

Continue to limit (in most circumstances) commercial and business impacts and intrusion on adjacent residential properties and streets.

ZONING REGULATION AMENDMENTS

7. Attorney Maslan said that in addition to the proposed amendment of the Zoning Map, he is also proposing an amendment to the Zoning Regulations that would clarify that dwelling units in the NB Zone are only permitted on the upper floor or floors of existing buildings. He proposed deleting the word “existing” so that a newly constructed building, or a building to be constructed, could be approved with dwelling units on upper floors.
8. In response to comments received at the first public hearing, a revised version of zoning regulation amendments was submitted. This revision modified Sections 601 and 604 and 605. This version was dated October 13, 2015.
9. During the public hearing, Attorney Maslan said that the minimum buffer area of the commercial use and activity including parking and access driveways to the nearest residential property needs to be at least 25 feet. He said that the Regulations could be changed by the Planning & Zoning Commission to mandate that no buildings are placed in the portion of the land to be changed from residential to business and those areas can only be used as the buffer areas and as parking, but not active principal business structures. The Commission agrees that this is appropriate.
10. It was noted that development activities shown on the associated Site Plan would include the construction of a parking lot, associated parking lot lighting, and a patio. Mr. Olvany asked about the phrase “street line” put forth by Mr. Maslan. Mr. Maslan said that this would be Boston Post Road in the present case, but in the NB zone in the other part of Darien, it could refer to Tokeneke Road. Mr. Olvany suggested using “front street line” or “primary street line”. Mr. DiDonna noted the change of the phrase “upper floor(s)”.
11. At the public hearing, Mr. Maslan explained that based upon his reading, the zoning map amendment and zoning regulation amendment are both consistent with the Town Plan of Conservation & Development.
12. This application was referred to the Western Connecticut Council of Government (which replaced the South Western Regional Planning Agency – SWRPA) and they found that it would have minimal inter-municipal impact, as noted in a September 2, 2015 email from Jonathan Chew of WestCOG.

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NEIGHBOR COMMENTS AND CONCERNS

13. At the public hearings on October 6 and 27, neighbors voiced their concerns with both the zoning map amendment, zoning regulation amendment and related site plan. Mr. Terry Gaffney of 8 Ring's End Road submitted a letter dated October 27, 2015. He had previously asked that 6 Ring's End Road be rezoned from commercial to residential. He wanted to ensure that any changes are compatible with the residential zone. Mrs. Lisa Cerussi of 12 Ring's End Road said that she would prefer that there be no zone change. Her concerns were lack of privacy and potential noise. She requested that special controls be implemented, including a thirty foot buffer on all sides, and a buffer zone to include both landscaping and fencing. She also asked why 6 Ring's End Road was not to be changed as part of the zoning map amendment application.

CONSISTENCY WITH 2006 TOWN PLAN OF CONSERVATION & DEVELOPMENT

14. The Commission finds that both the zoning regulation amendments and zoning map amendments are consistent with the 2006 Town Plan of Conservation & Development. As noted above, specific references are made in the Town Plan about split-lot situations. In this specific instance, and based upon the facts presented, the Commission believes that rezoning certain properties is appropriate.

15. 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.

NOW THEREFORE BE IT RESOLVED that the **Amendments to the Darien Zoning Map (COZM2-2015)**, are hereby ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 13, 2015 AT TWELVE NOON.

The Commission hereby approves the amendments to the Darien Zoning Map as shown on the submitted map entitled:

- "Compilation Plan Depicting Proposed Zone Line Revision 1950 Boston Post Road" prepared for Jon Vaccaro, Darien, Connecticut, by William W. Seymour & Associates, dated July 14, 2014.

This map shows areas to be rezoned from the R-1/2 to NB Zone, and areas to be rezoned from the NB to the R-1/2 zone. According to the submitted survey, the area to be rezoned from R-1/2 to NB is 46,929+/- square feet, and the area to be rezoned from NB to R-1/2 is 2,878+/- square feet.

NOW THEREFORE BE IT RESOLVED that **Amendments to the Darien Zoning Regulations (COZR4-2015)**, are hereby ADOPTED WITH MODIFICATIONS WITH AN EFFECTIVE DATE OF SUNDAY, DECEMBER 13, 2015 AT TWELVE NOON.

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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)

NEW WORDING IN BOLD, DELETIONS IN STRIKEOUT:

The Commission hereby adopts the revised version submitted by the applicant, with minor changes. This modifies Sections 601; subsection 604c; adds a new subsection 604e; and adds a new Note d(3) to Section 605.

601. Background and Purposes

This zone is intended to provide local neighborhoods with conveniently located, controlled zones in which needed and desirable commercial sales and services, public and semi-public uses and other similar services can be offered in a manner which will not be detrimental to the surrounding residential area. **To minimize impacts to abutting residential properties, all development activities located more than 100 feet from the street line shall require special permits, and no buildings shall be located more than 100 feet from the front street line.**

604. Principal Uses Requiring Special Permits

The following uses shall be permitted subject to approval of a Special Permit in accordance with Section 1000:

- a. Any permitted use involving the sale of prepared food whether intended for consumption on or off the premises.
- b. Protected Town Landmarks.
- c. Dwelling units located on ~~the second floor of an existing building~~ **upper floor(s).**
- d. Personal Service Businesses.
- e. All development located more than 100 feet from the front street line.**

605. Area and Bulk Requirements

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Notes:

- a. Requirements for yards and buffers control lot sizes.
- b. As stated above, but no parking shall be permitted in front of any building unless the setback from the street line is at least 75 feet. On streets of less than 50 feet width, the front yard setback shall be measured from the center line of the street and 25 feet shall be added to the required front yard setback. See Subsection 372 for requirement where setback of existing buildings is greater or less than minimum requirement.
- c. None, except as follows:

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- (1) If a side yard is provided, it must be at least 4 feet, except where access to parking space is provided through a side yard, in which case the yard shall be at least 25 feet in width. Where access is provided jointly by two adjoining properties, the side yard may be reduced by 12 1/2 feet provided the full 25 feet wide access is assured.
 - (2) Where a side yard abuts a Residential Zone, it shall equal the side yard requirement of said abutting Residential Zone.
- d. As specified, except as follows:
- (1) Where a rear yard abuts a Residential Zone, the rear yard requirement shall be at least equal to the rear yard requirement of the adjoining Residential Zone;
 - (2) Where the lot is a corner lot and its rear yard is not adjacent to land in any other zone, the rear yard requirement shall equal the side yard requirement-;
 - (3) No buildings shall be located more than 100 feet from the front street line.**

This modified Sections 601; subsection 604c; added a new subsection 604(e); and added a new Note d(3) to Section 605 all take effect on Sunday, December 13, 2015 at twelve noon.